

Regulation 4319.11: Sex Discrimination and Sex-Based Harassment

Status: ADOPTED

Original Adopted Date: 01/23/2013 | **Last Revised Date:** 07/11/2018

This administrative regulation shall apply to all allegations of sexual harassment involving employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by or against a student.

Definitions

~~Prohibited sexual~~

The district does not discriminate on the basis of sex in any of its programs or activities and complies with Title IX of the Education Amendments of 1972 and its implementing regulations. Sex discrimination, including sex-based harassment, is prohibited in district education programs and activities.

The following administrative regulation shall apply to all allegations of sex discrimination and sex-based harassment by and against district employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by a student.

Definitions

Sex discrimination includes treating an employee differently based on the employee's sex, which includes differential treatment based on sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery; parental, family, or marital status; or association with a person or group with one or more of these actual or perceived characteristics.

Sex discrimination, including sex-based harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct and occurs when prohibited conduct is so severe, persistent, or pervasive that it creates an intimidating, threatening, hostile, or offensive work environment; has the effect of substantially or unreasonably interfering with an employee's term or condition of employment; or otherwise adversely affects an employee's employment opportunities.

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, sex stereotypes, sex characteristics, or other bases specified above. Conduct will constitute sex-based harassment when it takes the form of: (34 CFR 106.2, 106.11)

1. **Quid pro quo harassment:** A district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service in the district's education program or activity conditioning the provision of district aid, benefit, or service on a student's participation in unwelcome sexual conduct

2. **Hostile environment harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the district's education program or activity**

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sex-based harassment in violation of district policy if it has a continuing effect on a student's ability to participate in or benefit from district educational programs or activities.

3. **Sexual assault, dating violence, domestic violence, or stalking, as defined in 34 CFR 106.2**

Sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature, regardless of whether the conduct is motivated by sexual desire. Conduct is considered to be sexual harassment when made against another person of the same or opposite sex in the work or educational setting when under any of the following conditions: (Education Code 212.5; Government Code 12940; 2 CCR 11034)

1. ~~1-~~Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment;
2. ~~2-~~Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual;
3. ~~3-~~**The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment**
4. Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the district;

~~Prohibited sexual harassment also includes conduct which, regardless of whether or not it is motivated by sexual desire, is so severe or pervasive as to unreasonably interfere with the victim's work performance or create an intimidating, hostile, or offensive work environment.~~

Examples of Sex Discrimination and Sex-Based Harassment

Examples of actions that might constitute ~~sexual harassment~~**sex-based harassment under state and/or federal law in accordance with the definitions above**, in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, include, but are not limited to:

1. ~~1-~~**Unwelcome verbal conduct such as sex-based flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sex-based activity; sex-based jokes or stories; unwelcome sex-based slurs, epithets, threats, innuendoes;; derogatory comments, sexually; sex-based degrading descriptions;; or the spreading of sex-based rumors**
2. ~~2-~~**Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit emails; or messaging; or displaying sexually suggestive objects**

- ~~3.~~ Unwelcome physical conduct such as massaging, grabbing, fondling, stroking, or brushing the body; touching an individual's body or clothes in a sexual way; or cornering, blocking, leaning over, or impeding normal movements

Title IX Coordinator/Compliance Officer

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX in accordance with Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, and oversee the district's response to discrimination complaints processed under Administrative Regulation 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:

Mike Shepherd, Executive Director of Human Resources
11603 Donner Pass Rd. Truckee, Ca. 96161-4953
(530) 582-2500
mshepherd@ttusd.org

Training

The Superintendent Chief Learning Officer or designee shall ensure that all employees receive training regarding ~~the district's sexual~~ **sex discrimination and sex-based** harassment policies when hired and periodically thereafter. The training shall include how to recognize prohibited or harassing conduct, the procedures for reporting and/or filing complaints involving an employee, employees' duty to use the district's complaint procedures, and employee obligations when a sexual harassment report involving a student is made to the employee. The training shall also include information about processes for employees to informally share or obtain information about harassment without filing a complaint.

~~(cf. 1312.3~~ **--in accordance with state and federal law.**

~~Uniform Complaint Procedures)~~

Every two years, the Superintendent Chief Learning Officer or designee shall ensure that supervisory employees receive at least two hours, **and nonsupervisory employees receive at least one hour**, of classroom or other effective interactive training and education regarding sexual harassment: **as specified in Government Code 12950.1**. All ~~such~~ newly hired or promoted employees **and employees promoted to a supervisory position** shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

A supervisory employee is any employee having the authority, in the interest of the district, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, adjust their grievances, or effectively recommend such action, when the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment. ~~(Government Code 12926)~~ **(Government Code 12926)**

Such training may be completed by employees individually or as part of a group presentation, may be completed in shorter segments as long as the applicable hourly requirement is met, and may be provided in conjunction with other training provided to the employees. The training shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. (Government Code 12950.1)

The district's sexual harassment training and education program shall include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

The district's sexual harassment training and education program for supervisory employees shall be aimed at assisting them in preventing and effectively responding to incidents of sexual harassment, as well as implementing mechanisms to promptly address and correct wrongful behavior. The training shall include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

1. ~~1-~~ Information and practical guidance regarding federal and state laws ~~on~~ concerning the prohibition, prevention, and correction of sexual harassment, ~~the remedies~~
2. **The types of conduct that constitute sexual harassment**
3. **Remedies** available ~~to sexual harassment~~ for victims in civil actions, and potential district ~~and/or employer/individual exposure or~~ liability
4. ~~2-~~ ~~The types of conduct that constitute~~ **Strategies to prevent harassment in the workplace**
5. **Supervisors' obligation to report** sexual harassment, **discrimination**, and ~~practical~~ **retaliation of which they become aware**
6. **Practical** examples which illustrate sexual harassment, discrimination, and retaliation using training modalities such as role plays, case studies, and group discussions, based on factual scenarios taken from case law, news and media accounts, and hypotheticals based on workplace situations and other sources

~~3-~~ ~~A supervisor's obligation to report sexual harassment, discrimination, and retaliation of which he/she becomes aware and what to do if the supervisor himself/herself is personally accused of harassment~~

~~4-~~ ~~Strategies for preventing harassment, discrimination, and retaliation and appropriate steps to ensure that remedial measures are taken to correct harassing behavior, including an effective process for investigation of a complaint~~

7. ~~5-~~ ~~The essential elements of the district's anti-harassment policy, including the~~ **The limited confidentiality of the complaint process and resources**
8. **Resources** for victims of unlawful ~~sexual~~ harassment, such as to whom they should report any alleged ~~sexual~~ harassment
9. **Steps necessary to take appropriate remedial measures to correct harassing behavior, which includes the district's obligation to conduct an effective workplace investigation of a harassment complaint**
10. **What to do if the supervisor is personally accused of harassment**

The essential elements of the district's anti-harassment policy, and how to use the policy if a harassment complaint is filed

11. ~~6-~~ ~~A~~

Employees shall receive a copy of the district's sexual harassment policy and administrative ~~regulation~~ **regulations**, which each ~~participant~~ **they** shall **read and** acknowledge ~~in writing~~ that ~~he/she has~~ **they have** received.

7. ~~The definition and prevention of abusive conduct that addresses the use of derogatory remarks, insults, or epithets, other verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, and the gratuitous sabotage or undermining of a person's work performance~~

12. 8. Practical Information, including practical examples, of harassment based on gender identity, gender expression, and sexual orientation

13. ~~The Prevention of abusive conduct, including a review of the definition and elements of abusive conduct pursuant to Government Code 12950.1, the negative effects that abusive conduct has on the victim and other in the workplace, the detrimental consequences of this conduct on employee productivity and morale, and that a single act does not constitute abusive conduct unless the act is severe or egregious~~

Additionally, the Superintendent Chief Learning Officer or designee shall ensure that all employees receive annual training related to their duties under Title IX in accordance with 34 CFR 106.8, and that a newly hired employee receive training promptly upon hire or change of position that alters the employee's duties under Title IX. (34 CFR 106.8)

The district's Title IX sex discrimination and sex-based harassment training shall include: (34 CFR 106.8)

- 1. The district's obligation to address sex-based discrimination, including sex-based harassment, in its education program or activity**
- 2. The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment**
- 3. The notification and information requirements specified in 34 CFR 106.40 and 106.44**

The district's Title IX sex-based harassment training and education program shall also include additional training required of supervisors; investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; facilitators of an informal resolution process; and Title IX Coordinators and designees. (34 CFR 106.8)

The Superintendent Chief Learning Officer or designee shall retain for at least two years the records of any training provided to supervisory employees. Such records shall include the names of trained employees, date of the training, ~~the~~ type of training, and ~~the~~ name of the training provider. (2 CCR 11024)

Additionally, the Superintendent Chief Learning Officer or designee shall retain for at least seven years the materials used to provide training as specified in 34 CFR 106.8, and to make these materials available, upon request, to members of the public. (34 CFR 106.8)

Notifications

To prevent unlawful sex discrimination and sex-based harassment, including retaliation, in district programs and activities, the Superintendent Chief Learning Officer or designee shall provide notifications and implement measures to prevent discrimination and harassment as specified in Administrative Regulation 4030 - Nondiscrimination in Employment.

In addition to the measures to prevent discrimination as specified in Administrative Regulation

4030 - Nondiscrimination in Employment, the Superintendent or designee shall ensure that a copy of the Board policy and this administrative regulation:

Notifications

~~A copy of the Board policy and this administrative regulation shall: (Education Code 231.5)~~

1. ~~1-~~ Be displayed in a prominent location in the main administrative building, district office, or other area of the school where notices of district rules, regulations, procedures, and standards of conduct are posted **(Education Code 231.5)**
2. ~~2-~~ Be provided to every district employee at the beginning of the first quarter or semester of the school year or whenever a new employee is hired **(Education Code 231.5)**
3. ~~3-~~ Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct **(Education Code 231.5)**

All employees shall receive a copy of an information sheet prepared by the California **Civil Rights** Department of Fair Employment and Housing (~~DFEH~~**CRD**) or the district that contains, at a minimum, components on: (Government Code 12950)

1. ~~1-~~ The illegality of ~~sexual~~**sex-based** harassment
2. ~~2-~~ The definition of ~~sexual~~**sex-based** harassment under applicable state and federal law
3. ~~3-~~ A description of ~~sexual~~**sex-based** harassment, with examples
4. ~~4-~~ The district's complaint process available to the employee
5. ~~5-~~ The legal remedies and complaint process available through ~~DFEH~~**CRD** and the Equal Employment Opportunity Commission (EEOC)
6. ~~6-~~ Directions on how to contact ~~DFEH~~**CRD** and the EEOC
7. ~~7-~~ The protection against retaliation provided by 2 CCR 11021 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by ~~DFEH~~**CRD** and the EEOC

~~In addition~~**Additionally**, the district shall post, in a prominent and accessible location, the ~~DFEH~~**CRD** poster on discrimination in employment and the illegality of ~~sexual~~**sex-based** harassment, and the ~~DFEH~~**CRD** poster regarding transgender rights. (Government Code 12950)

Complaint Procedures

All complaints and allegations of sex discrimination and sex-based harassment by and against employees shall be investigated and resolved as specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

If sex discrimination or sex-based harassment is found following an investigation, the Title IX Coordinator, or designee in consultation with the Title IX Coordinator, shall take prompt action to stop the sex discrimination or sex-based harassment, prevent recurrence, and address any continuing effects.