

All Personnel

BP 4119.11(a)

4219.11

SEXUAL HARASSMENT

4319.11

The following policy shall apply to all district employees, interns, volunteers, contractors, job applicants, and other persons with an employment relationship with the district.

The Governing Board is committed to providing a safe work environment that is free of harassment and intimidation. The Board also prohibits retaliatory behavior or action against district employees or other persons who complain, testify, or otherwise participate in the complaint process established pursuant to this policy and accompanying administrative regulation.

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 4030 - Nondiscrimination in Employment)

Sexual harassment includes, but is not limited to, harassment that is based on the sex, gender, gender identity, gender expression, or sexual orientation of the victim and harassment based on pregnancy, childbirth, or related medical conditions.

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation
2. Publicizing and disseminating the district's sexual harassment policy to employees and others to whom the policy may apply
3. Ensuring prompt, thorough, and fair investigation of complaints
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments

Any district employee who feels that they have been sexually harassed in the performance of their district responsibilities or who has knowledge of any incident of sexual harassment by or against another employee shall immediately report the incident to their direct supervisor, or the district's Title IX Coordinator. Employees may bypass their supervisor in filing a complaint if the supervisor is the subject of the complaint. A supervisor, principal, or other district administrator who receives a harassment complaint shall promptly notify the district's Title IX Coordinator.

Once notified, the Title IX Coordinator shall ensure the complaint is addressed through either AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures for complaints meeting the Title IX definition of sexual harassment or AR 4030 - Nondiscrimination in Employment as applicable. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to

SEXUAL HARASSMENT (continued)

consideration under state law, the Title IX Coordinator shall ensure that any implementation of AR 4119.12/4219.12/4319.12 concurrently meets the requirements of AR 4030.

(cf. 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaints)

Upon investigation of a sexual harassment complaint, any district employee found to have engaged or participated in sexual harassment or to have aided, abetted, incited, compelled, or coerced another to commit sexual harassment in violation of this policy is subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

(cf. 4117.7/4317.7 - Employment Status Reports)
(cf. 4118 - Dismissal/Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act, especially:

12940 Prohibited discrimination

12950 Sexual harassment; distribution of information

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

CODE OF REGULATIONS, TITLE 2

11009 Employment discrimination

11021 Retaliation

11023 Harassment and discrimination prevention and correction

11024 Sexual harassment training and education

11034 Terms, conditions, and privileges of employment

CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 42

2000e-2000e-17 Title VII, Civil Rights Act of 1964, as amended

CODE OF FEDERAL REGULATIONS, TITLE 34

106.1-106.9 Nondiscrimination on the basis of sex in education programs or activities

106.51-106.82 Nondiscrimination on the basis of sex in employment in education programs or activities

COURT DECISIONS

Legal Reference: (continued next page)

SEXUAL HARASSMENT (continued)

Legal Reference: (continued)

Department of Health Services v. Superior Court of California, (2003) 31 Cal.4th 1026
Faragher v. City of Boca Raton, (1998) 118 S.Ct. 2275
Burlington Industries v. Ellreth, (1998) 118 S.Ct. 2257
Gebser v. Lago Vista Independent School District, (1998) 118 S.Ct. 1989
Oncala v. Sundowner Offshore Serv. Inc., (1998) 118 S.Ct. 998
Meritor Savings Bank, FSB v. Vinson et al., (1986) 447 U.S. 57

Management Resources:

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS
Promising Practices for Preventing Harassment, November 2017

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>
Equal Employment Opportunity Commission: <http://www.eeoc.gov>
U.S. Department of Education, Office for Civil Rights:
<http://www.ed.gov/about/offices/list/ocr/index.html>

Policy
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revised: June 21, 2016
revised: November 7, 2017
revised: October 27, 2020
revised: March 9, 2021

VISALIA UNIFIED SCHOOL DISTRICT
Visalia, California

All Personnel

AR 4119.11(a)

4219.11

SEXUAL HARASSMENT

4319.11

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.

Title IX Coordinator

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures, as well as to investigate and resolve sexual harassment complaints under AR 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:

Administrator of Equity and Student Services – Title IX Coordinator
Assistant Superintendent – Human Resources Development

Address: 5000 W. Cypress Avenue, Visalia, CA 93277

Phone: (559) 730-7300

Email: studentservices@vusd.org

(cf. 4030 - Nondiscrimination in Employment)

(cf. 5145.7 - Sexual Harassment)

(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)

The district shall notify employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

Definitions

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 or not 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 under any of the following conditions: (Education Code 212.5; Government Code 12940; 2 CCR 11034)

1. Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment.
2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual.
3. The conduct has the purpose or effect of having a negative impact upon the

SEXUAL HARASSMENT (continued)

- 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.

For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, sexual harassment is defined as any of the following forms of conduct that occurs in an education program or activity in which a district school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)

1. A district employee conditioning the provision of a district aid, benefit, or service on the person's participation in unwelcome sexual conduct
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity
3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

(cf. 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaints)

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

1. Unwelcome verbal conduct such as sexual flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sexual activity; sexual jokes or stories; unwelcome sexual slurs, epithets, threats, innuendoes, derogatory comments, sexually degrading descriptions, or the spreading of sexual rumors
2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit emails; 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; cornering, blocking, leaning over, or impeding normal movements

SEXUAL HARASSMENT (continued)

Training

The Superintendent or designee shall ensure that all employees receive training regarding the district's sexual harassment policies when hired and periodically thereafter. The training shall include 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.

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 4030 - Nondiscrimination in Employment)
(cf. 5145.7 - Sexual Harassment)

Every two years, the Superintendent 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. All such newly hired 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)

(cf. 4300 - Administrative and Supervisory Personnel)

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 include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

1. Information and practical guidance regarding federal and state laws on the prohibition, prevention, and correction of sexual harassment

SEXUAL HARASSMENT (continued)

2. The types of conduct that constitute sexual harassment
3. Remedies available for victims in civil actions, and potential employer/individual exposure/liability
4. Strategies to prevent harassment in the workplace
5. A supervisor's obligation to report sexual harassment, discrimination, and retaliation of which they becomes 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
7. The limited confidentiality of the complaint process
8. Resources for victims of unlawful harassment, such as to whom they should report any alleged harassment
9. Strategies for preventing harassment, discrimination, and retaliation and appropriate steps to ensure that measures are taken to correct harassing behavior, including an effective process for investigation of a complaint
10. What to do if the supervisor is personally accused of harassment
11. The essential elements of the district's anti-harassment policy-and how to use the policy if a harassment complaint is filed

SEXUAL HARASSMENT (continued)

12. Information, including practical examples, of harassment based on gender identity, gender expression, and sexual orientation
13. 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

The Superintendent 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)

Notifications

The Superintendent or designee shall notify employees that the district does not discriminate on the basis of sex as required by Title IX, that the Title IX nondiscrimination requirement extends to employment, and that inquiries about the application of Title IX to the district may be referred to the district's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education. (34 CFR 106.8)

The district shall notify employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

SEXUAL HARASSMENT (continued)

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

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
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
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
4. Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the district's web site (34 CFR 106.8)
5. Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to employees or employee organizations (34 CFR 106.8)

All employees shall receive either a copy of information sheets prepared by the California Department of Fair Employment and Housing (DFEH) or a copy of district information sheets that contain, at a minimum, components on: (Government Code 12950)

1. The illegality of sexual harassment
2. The definition of sexual harassment under applicable state and federal law
3. A description of sexual harassment, with examples
4. The district's complaint process available to the employee
5. The legal remedies and complaint process available through DFEH and the Equal Employment Opportunity Commission (EEOC)

SEXUAL HARASSMENT (continued)

6. Directions on how to contact DFEH and the EEOC
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 and the EEOC

In addition, the district shall post, in a prominent and accessible location, DFEH's poster on discrimination in employment and the illegality of sexual harassment and the DFEH poster regarding transgender rights. (Government Code 12950)

Complaint Procedures

All complaints and allegations of sexual harassment by and against employees shall be investigated and resolved in accordance with law and district procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to AR 4030 - Nondiscrimination in Employment.

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

Regulation
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VISALIA UNIFIED SCHOOL DISTRICT
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