

All Personnel

**SEXUAL HARASSMENT**

The Governing Board prohibits sexual harassment in the working environment of District employees or applicants by any person in any form. This Administrative Regulation (AR) 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.

I. Definition of Sexual Harassment

- A. Sexual harassment in the workplace is unwelcome conduct or communication of a sexual nature which has the purpose or effect of:
  - 1. Interfering with an individual's work performance;
  - 2. Creating an intimidating, hostile, or offensive working environment.
- B. 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 made against another person of the same or opposite sex in the work or educational setting when: (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. 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.
- C. Sexual harassment, whether committed by a supervisor, co-worker, or a non-employee, may occur through degrading sexual speech or actions ranging from verbal or physical annoyances or distractions to deliberate intimidation and frank threats or sexual demands. Sexual harassment may include, but is not limited to:
  - 1. Vulgar remarks.
  - 2. Sexual comments regarding a person's appearance.
  - 3. Physical touching, pinching, patting, cornering, blocking, or impeding free movement.

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4. Sexual propositions or advances (with or without threats to a person's job or promotion if that person does not submit).
5. Physical assault.
6. Sexually suggestive or degrading posters, cartoons, pictures or drawings.
7. Offensive sexual jokes, slurs, insults, innuendoes, or comments.
8. Spreading sexual rumors.
9. Comments about an individual's body.
10. Overly personal conversations or pressure for sexual activity.
11. Unwelcome sexual slurs, epithets, threats, innuendoes, derogatory comments, sexually degrading descriptions, or the spreading of sexual rumors.
12. Massaging, grabbing, fondling, stroking, or brushing the body.

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.

II. Training

The Superintendent/designee shall ensure that all employees receive training regarding the District's sexual harassment Board Policy (BP) 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/designee shall ensure that supervisory employees receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment. All such newly hired or promoted employees shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

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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)

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. Information and practical guidance regarding federal and state laws on the prohibition, prevention, and correction of sexual harassment, the remedies available to sexual harassment victims in civil actions, and potential District and/or individual exposure or liability.
2. The types of conduct that constitute sexual harassment and 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.
5. The essential elements of BP 4019, including the limited confidentiality of the complaint process and resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment, and how to use the BP 4019, AR 4030, and BP/AR 1312.3 if a harassment complaint is filed.

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6. A copy of the District's sexual harassment BP and AR, which each participant shall acknowledge in writing that he/she has 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.

The Superintendent/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)

III. District Sexual Harassment Investigative Unit

The District Sexual Harassment Investigative Unit will normally be comprised of three (3) members with at least one representative from the male gender and one representative from the female gender. A Human Resources Administrator will chair the Investigative Unit. Other members of the team will be District and school administrators who would normally have a "right to know about" sexual harassment claims and are considered confidential employees. The membership of the Sexual Harassment Investigative Unit will be shared with all employees annually.

IV. General Provisions

- A. Any questions regarding this AR should be directed to the Superintendent or the Human Resources Administrator.
- B. Any person who is dissatisfied with the manner in which the Sexual Harassment Investigative Unit conducts an investigation or resolves questions regarding BP and AR 4019 should contact the Superintendent or Human Resources Administrator to seek resolution of such issues.
- C. Although this AR anticipates the Sexual Harassment Investigative Unit is responsible for investigating all written complaints which have reached the formal complaint process, nothing in this AR is intended to prohibit the Superintendent from appointing different District administrators as investigators where appropriate.

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- D. All allegations of sexual harassment should be brought to the District's attention at the earliest possible time. The District will observe state and federal timelines for addressing allegations of sexual harassment and each case will be assessed on an individual basis. Allegations of sexual harassment shall be investigated in accordance with this AR and BP/AR 1312.3.
- E. The District recognizes that confidentiality is important to all parties involved in a sexual harassment investigation. To the extent practical, the confidentiality of the complainant, respondent and witnesses will be protected. Employees and/or students interviewed in accordance with these policies are directed to assist in maintaining such confidentiality.
  - F. The District will not tolerate retaliation against any individual for initiation, pursuit or assistance with a complaint of sexual harassment. Any employee who retaliates against any individual in violation of the BP dealing with sexual harassment and/or this AR may be subject to disciplinary action.
- G. Any employee who is determined to have falsely initiated, or participated in, a sexual harassment investigation may be subject to disciplinary action.
- H. The District shall not undertake any disciplinary action involving any respondent or complainant until a final decision has been rendered, except as herein provided. Any individual subjected to potential discipline shall have an opportunity to review all materials and provide a response. If, in the opinion of the Superintendent, immediate action is necessary, reasonable efforts to first inform the respondent and allow him/her an opportunity, under the circumstances, to respond to the allegations will be provided. For the purposes of this AR, placement on paid administrative leave shall not be considered disciplinary action.
- I. The complainant and the respondent may be assisted by a representative of their choice at any stage of these proceedings.
- J. A complainant may withdraw his/her complaint at any time during the complaint process. The withdrawal must be in writing.
- K. The investigation of sexual harassment complaints may continue even though the complainant has withdrawn her/his complaint if evidence gathered to date indicates that sexual harassment may have occurred.

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- L. If the Human Resources Administrator is a party to the complaint, then the complaint should be filed with the Superintendent. The Superintendent will then act in his/her stead for the purposes of this AR.
- M. If the Superintendent is a party to the complaint, then the complaint should be filed with the President of the Board of Education.
- N. If a member of the Board of Education is a party to the complaint, then the complaint should be filed with the Superintendent.

Any employee or applicant who believes they have been sexually harassed are encouraged to utilize the District's sexual harassment complaint procedure. The procedure may begin at the informal or formal level. The District will also make available training and written materials to employees regarding sexual harassment and the procedure for resolving complaints of sexual harassment.

V. Sexual Harassment Complaint Procedures

All District employees have an obligation to ensure that sexual harassment does not occur.

A. Informal Complaint Process

1. Employees or applicants for employment who believe that they have been sexually harassed are encouraged to contact their immediate supervisor and/or initiate the sexual harassment complaint process by contacting the District's Human Resources Administrator or a member of the Sexual Harassment Investigative Unit.
2. If the respondent is a District employee, the Human Resources Administrator will notify the individual's supervisor of the complaint.
3. If the complainant and the respondent appear willing to resolve the complaint informally, the Human Resources Administrator will attempt informal resolution. Depending on the situation, the Human Resources Administrator may:
  - a. Bring both parties together to discuss the complaint and immediate resolution.

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- b. Serve as an intermediary between the complainant and the respondent.
  - c. Present a settlement proposal for consideration by the complainant and the respondent that resolves the complaint.
4. If informal resolution does not occur within twenty work days from the date of the initial complaint, either the complainant must complete and sign an "Employee Complaint Alleging Sexual Harassment" form which provides information on the alleged act(s) of sexual harassment, remedy sought, and other relevant facts; or the informal complaint is terminated by the complainant. This twenty workday timeline may be extended for an additional twenty workdays by written agreement between the complainant and the respondent.

**B. Formal Sexual Harassment Complaint Process**

1. The formal sexual harassment complaint process may begin at any time but no later than twenty workdays after the receipt of a signed and complete "Employee Complaint Alleging Sexual Harassment" form (unless extended as specified above). The formal sexual harassment complaint process is triggered by the expiration of the time for the informal stage or a determination on the part of the Human Resources Administrator that the complaint cannot be resolved informally.
2. The Human Resources Administrator shall notify all parties to the complaint that the formal investigation has begun.
3. In the formal sexual harassment complaint process, the Sexual Harassment Investigative Unit will conduct a thorough investigation of the alleged act(s) of sexual harassment.
  - a. The Investigative Unit will interview relevant witnesses.
  - b. The Investigative Unit will review relevant documents.
4. The Investigative Unit will issue a written response in accordance with the timelines described in BP/AR 1312.3. Copies will be sent to the Human Resources Administrator, the complainant, and the respondent. If the respondent is an employee, the employee's supervisor will be notified of the resolution of the complaint.

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The response will include and analyze relevant findings of fact and a conclusion with respect to the validity of the allegation(s) of sexual harassment.

5. When sexual harassment is found, the Human Resources Administrator will ensure that an appropriate remedy is applied.
6. The complainant and/or the respondent may appeal the decision(s) of the Human Resources Administrator to the Superintendent.
7. If the Superintendent is a party to the complaint, an appeal may be filed with the President of the Board of Education.

VI. Notification

- A. A copy of the District's "Sexual Harassment Information Pamphlet" and list of the members of the Sexual Harassment Investigative Unit will be distributed on an annual basis to all employees.
- B. A copy of BP 4019 shall be displayed in a prominent location at each school site and within each department at the Education Service and Support Center.
- C. BP 4019 shall 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.
- D. BP 4019 shall appear in any school or District publication that sets forth the school's or District's comprehensive rules, regulations, procedures, and standards of conduct.
- E. 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.



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5. The legal remedies and complaint process available through DFEH and the Equal Employment Opportunity Commission (EEOC).
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. (Government Code 12950)

Regulation  
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CHULA VISTA ELEMENTARY SCHOOL DISTRICT  
Chula Vista, California