

Sexual Harassment And Gender-Based Harassment

Prohibited Harassment

Harassment of a student on the basis of sex, including sexual harassment and gender-based harassment, is prohibited. Sexual and gender-based harassment can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. The District must respond appropriately to all instances of possible sexual or gender-based harassment of which it has actual or constructive notice. This includes investigating the alleged harassment, and when harassment has been found to have occurred, stopping it, remedying its effects on the student who was harassed, and preventing it from recurring. Sexual and gender-based harassment may create a hostile environment. If a hostile environment has been created, the District must take steps to address and eliminate the hostile environment.

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 educational setting.

Gender-based harassment includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, although they are not necessarily sexual in nature. Prohibited conduct includes harassment of a student for exhibiting what is perceived as a stereotypical characteristic for her or his sex, or for nonconformity with stereotypical notions of masculinity and femininity.

Sexual harassment and/or gender-based harassment denies or limits a student's ability to participate in or benefit from the District's school's program under any of the following conditions:

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student
3. The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment
4. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through any district program or activity. (EC 212.5; 5 CCR 4916)

Definition of Sexual Harassment

Examples of types of conduct that are prohibited in the district and may constitute sexual harassment include, but are not limited to:

1. Unwelcome leering, sexual flirtations, or propositions
2. Sexual slurs, epithets, threats, verbal abuse, or derogatory comments
3. Unwelcome or offensive comments about an individual's body, sexual jokes, sexually degrading descriptions, or obscene gestures;;

4. Derogatory posters, notes, stories, cartoons, drawings, pictures, or computer-generated images of a sexual nature;
5. Spreading sexual rumors;
6. Disparaging, offensive, or unwelcome sexual remarks about students enrolled in a predominantly single-sex class;
7. Unwelcome touching of an individual's body or clothes in a sexual way (including massaging, grabbing, fondling, stroking, or brushing the body);
8. Impeding or blocking movements or any physical interference with school activities when directed at an individual on the basis of sex; and
9. Displaying sexually suggestive objects.

Examples of types of conduct that are prohibited in the district and may constitute gender-based harassment include, but are not limited to:

1. Slurs, threats, derogatory comments, unwelcome jokes, or degrading descriptions related to or because of a student's gender or gender identity
2. Disparaging remarks about a student or aggression toward a student because that student displays mannerisms or a style of dress inconsistent with stereotypical characteristics of the student's sex
3. Hostility toward a student because that student pursues an interest or participates in an academic or athletic activity more typically favored by a student of the opposite sex
4. Disparaging remarks about a student because the student socializes with students of the opposite sex, or is predominately friends with students of the opposite sex;
5. Unwelcome references to the student as being a member of the opposite sex, such as referring to a female student as "he" or referring to a male student as a "girl";
6. Ostracizing or refusing to participate in group activities with a student during class projects, physical education classes, or field trips because of that student's sex, gender expression, or gender identity;
7. Intimidating a student to discourage that student from enrolling in a particular area of study or school activity because of his or her gender;
8. Taunting a student who is struggling with a subject of the curriculum by insisting that students of that gender are bad at that subject area; and
9. Teasing or gender-based remarks about students because they are enrolled in a predominately single-sex class.

School-Level Complaint Process and Grievance Procedures

1. Notice and Receipt of Complaint

Any student who believes he/she has been subjected to sexual harassment or gender-based harassment (collectively, "sex-based harassment"), or who has witnessed or has knowledge of such harassment, may

file a complaint with any school employee. Complaints should be made in writing when practicable, preferably using the Discrimination, Harassment, or Bullying Complaint Form (hereinafter, the "Complaint Form"). The Complaint Form will be available in public locations in the school that are accessible to students and on the school's and District's websites. Students will be given the opportunity to submit complaints anonymously through a designated drop-box in the school and through the website forms.

Any school employee who observes any incident of sex-based harassment involving a student, or receives a complaint or other notice of such harassment, shall, within 24 hours, report this information to the Principal or the Principal's designee, whether or not the targeted student files a complaint. If the Principal delegates authority to a designee, the designee shall perform the duties of the Principal described below. An employee may make a complaint of sexual or gender-based harassment directly to the District's Title IX Coordinator instead of the Principal or the principal's designee, including in any case in which the alleged incident involves the individual to whom the complaint would ordinarily be made. If the Title IX Coordinator receives a complaint directly, the Title IX Coordinator shall perform the duties of the Principal described below.

2. Initiation of Investigation

The Principal shall initiate an impartial investigation of an allegation of sex-based harassment within 24 hours of receiving notice of the harassing behavior, regardless of whether a formal complaint has been filed. The district shall be considered to have "notice" of the need for an investigation upon receipt of information from a student who believes he/she has been subjected to harassment, the student's parent/guardian, an employee who received a complaint from a student, any student who witnessed the behavior, or upon any employee witnessing the behavior. The District is also deemed to have notice of any harassment about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a reasonably diligent inquiry.

In all cases, the individual designated to investigate the complaint will be impartial and have training or experience in handling complaints of sex-based harassment and in implementing the provisions of this administrative regulation.

If a district employee receives an anonymous complaint or media report about an alleged incident of sex-based harassment, the employee will report the alleged incident to the Principal, who shall consider the specificity and reliability of the information, the seriousness of the alleged incident, and whether any individuals can be identified who were subjected to the alleged harassment in determining whether it is reasonable to pursue an investigation.

Upon notification of a complaint or other notice of an incident of discrimination or harassment, the Principal will immediately complete Part I of the Discrimination, Harassment, and Bullying Investigation Form (hereinafter, the "Investigation Form"). The Principal will forward a copy of the Complaint Form and Investigation Form to the Title IX Coordinator.

Where the harassment alleged would, if true, constitute criminal conduct, the Principal will report the alleged conduct to law enforcement authorities. However, the Principal will follow the investigative process and procedures set forth in this Administrative Regulation regardless of whether the alleged harassment is being investigated by a law enforcement agency or other agency.

3. Confidentiality

No district employee involved in the investigation shall disclose information at any time during the course of or after an investigation that may reveal a student's sexual orientation, gender identity, or gender

nonconforming presentation to others, including the student's parents/legal guardians, unless legally required to do so, or

unless the student has authorized such disclosure. The Principal will inform any student who files a complaint on his/her own behalf or on behalf of another student that the District will take efforts to respect their privacy and the privacy of other students during the investigation and resolution process, consistent with applicable District policies and state and federal laws.

Prior to contacting a targeted student's parents/legal guardians regarding a complaint, the Principal will inquire into whether the targeted student has any concerns regarding revealing the nature of the alleged harassing conduct to their parents/legal guardians. If applicable, the student will be given the opportunity to meet with a school or district employee with appropriate training to respond to the particular concerns expressed, such as a guidance counselor or school psychologist. Any targeted student age 18 or above will have the option to request that information related to the complaint, investigation, or resolution, including related student records, not be disclosed to the student's parent/guardian. All school district employees involved in or who have knowledge of an investigation shall keep the complaint and information obtained in the investigation confidential, except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR 4964).

4. Initial Interviews

Upon notice of possible harassment through a formal complaint, informal complaint, or other means, the Principal will conduct an initial interview with the targeted student. If the targeted student and the student(s) who made the complaint are different, initial interviews will be conducted separately with each student. During the initial interview, each student will have an opportunity to make a formal complaint in writing using the Complaint Form (if not already completed), to describe the incident(s), identify witnesses who may have relevant information, and provide other evidence of the alleged harassment.

If the Principal determines that it is necessary to contact the parent/guardian of a targeted student, the initial interview will occur before the student's parent/guardian is contacted, absent extenuating circumstances.

5. Investigation Process

The Principal shall interview individuals who are relevant to the investigation, including, but not limited to, the student who is complaining, the person accused of harassment, anyone who witnessed the reported harassment, and anyone mentioned as having relevant information. The Principal shall review any records, notes, or statements related to the harassment, and may take other appropriate investigative steps, such as visiting the location where the harassment is alleged to have taken place.

When necessary to carry out the investigation or to protect student safety, the Principal also may discuss the complaint with the Superintendent or the Superintendent's designee, any employee whose knowledge of the students involved may help in determining who is telling the truth except any employee who is alleged to have been involved in the alleged harassment, law enforcement and/or child protective services, and district legal counsel or the district's risk manager.

6. Interim Measures

The Principal shall determine whether interim measures are necessary during and pending the results of the investigation, such as placing students in separate classes or transferring a student to a class taught by a different teacher. Any such actions, whether interim or permanent, shall avoid or minimize to the extent possible any disadvantage to the student who complained.

7. Optional Mediation

In cases of student-on-student harassment, when the targeted student and the alleged harasser agree, the Principal may arrange for them to resolve the complaint informally with the help of a counselor, teacher, administrator, or trained mediator. The Principal may inform the complainant of the availability of optional mediation, if any, during the initial interview, but must state that the student is under no obligation to participate in optional mediation. Under no circumstances will the student who complained be asked to work out the problem directly with the alleged harasser(s) unless all parties agree to supervised mediation. The complainant will be advised that he/she has the right to terminate the optional mediation process at any time.

8. Factors in Reaching a Determination; Evidentiary Standard

In reaching a determination about whether the alleged harassing conduct occurred, the Principal will apply a preponderance of the evidence standard; if the evidence establishes that it is more likely than not that the harassment occurred, then the Principal will proceed with resolution of the complaint as though the conduct did, in fact, occur. In reaching this determination, the Principal may take into account factors such as:

- a. Statements made by any witnesses interviewed during the investigation
- b. The details and consistency of each witness's account
- c. Evidence of how the complaining student reacted to the incident
- d. Any documentary or other evidence relating to the alleged harassment
- e. Evidence of any past instances of harassment by the alleged harasser
- f. Evidence of any past harassment complaints that were found to be untrue.

To judge the severity of the harassment, the Principal may take into consideration factors including, but not limited to:

- a. How the misconduct affected one or more students' education
- b. The type, frequency, and duration of the misconduct
- c. The identity, age, and sex of the harasser and the student who complained and the relationship between them
- d. The number of persons engaged in the harassing conduct and at whom the harassment was directed
- e. The size of the school, location of the incidents, and context in which they occurred
- f. Other incidents at the school involving different students.

9. Corrective Action

Where harassment is found to have occurred, the Principal will take prompt, appropriate action to end the harassment, prevent its recurrence, and address its effect on the targeted student. Examples of appropriate action include:

- a. Interventions for the individual who engaged in the harassment, such as parent notification, discipline, counseling, and training
- b. Separating the individual who engaged in the harassment and the target of the harassment, provided that such steps avoid or minimize to the extent possible any disadvantage to the target
- c. Interventions for the individual subject to the harassment, such as counseling and academic support
- d. Informing the target of the harassment and his or her family of how to report any subsequent problems
- e. Conducting follow-up inquiries to determine whether there have been any new incidents of harassment or any instances of retaliation against the harassed student or any witnesses, and responding promptly and appropriately to address continuing or new instances; and
- f. Training or other interventions for the larger school community to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond.

10. Written Report on Findings and Follow-Up

No more than 30 days after receiving the complaint, the Principal shall conclude the investigation and prepare a written report of his/her findings. This timeline may be extended for good cause. If an extension is needed, the Principal shall notify the targeted student and the student's parent/guardian (if the parent/guardian made the complaint), and explain the reasons for the extension.

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If sex-based harassment occurred, the report shall also include any corrective actions that have or will be taken to address the harassment and prevent any retaliation or further harassment, except to the extent such action includes confidential information that may not be disclosed under state or federal law or district policy. This report shall be presented to the student alleged to be the target of harassment or his/her parents/guardians, and the Superintendent or the Superintendent's designee. The Principal will summarize the decision and corrective actions in Part II of the Investigation Form. The Complaint Form, Investigation Form, report, and any other written investigatory documents will be maintained at the school site unless the investigation is conducted by the Title IX Coordinator. At the conclusion of the investigation, the Principal will forward a copy of the Complaint Form, Investigation Form, and report to the Title IX Coordinator.

In addition, the Principal shall ensure that the harassed student and his/her parent/guardian are informed of the procedures for reporting any subsequent problems. The Principal also shall make follow-up inquiries to see if there have been any new incidents or retaliation and shall keep a record of this inquiry and any response.

Enforcement of District Policy

The Superintendent or the Superintendent's designee shall take appropriate actions to enforce the district's sex-based harassment policy. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti
2. Providing training to students, staff, and parents/guardians about how to recognize harassment and how to respond
3. Disseminating and/or summarizing the district's policy and regulation regarding sex-based harassment

4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating the District's response to the parents/guardians of the complaining student and the alleged harasser(s)

Taking Appropriate Disciplinary Action

Disciplinary measures may be taken against any person who is found to have made a complaint of sex-based harassment that he/she knew was not true.

Notifications

A copy of the district's sexual and gender-based harassment policy and regulation shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code 48980; 5 CCR 4917)
2. Be displayed in a prominent location in the main administrative building or other area where notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code 231.5)
3. Be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session (Education Code 231.5)
4. 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)
5. Be included in the student handbook or beginning of year packet
6. Be provided to employees and employee organizations

Regulation TEHACHAPI UNIFIED SCHOOL DISTRICT

approved: October 8, 2013 Tehachapi, California