

# West Contra Costa USD

## Board Policy

### Sexual and Gender-Based Harassment

#### BP 5145.7

#### Students

The West Contra Costa Unified School District Board of Education, hereinafter referred to as the Board, is committed to maintaining a safe school environment that is free from harassment and discrimination. The Board prohibits sexual and gender-based harassment of students by other students, employees, or other persons, while on school grounds, while going to or coming from school, while at school activities on or off school grounds, while on District transportation, or while otherwise in a District program or activity. The Board also prohibits retaliatory behavior or action against any persons who files a complaint, testifies, or otherwise participates in District complaint procedures.

#### Sexual Harassment Under District Policy

“Sexual harassment” under District policy means 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, under any of the following conditions: (Education Code, § 212.5; 5 CCR § 4916)

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.

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

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)

(cf. 5137 - Positive School Climate)

(cf. 5145.3 – Nondiscrimination, Harassment, Intimidation & Bullying)

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

Sexual harassment also includes nonconsensual touching and cyber sexual bullying, as defined and prohibited by the California Penal Code and Education Code.

“Nonconsensual touching,” as defined in Penal Code section 243.4, means touching another person’s intimate part against that person’s will. “Touch” means direct physical contact or contact through the clothing of either person. “Intimate part” means sexual organ, anus, groin, or buttocks of any person, or the breast of a female.

“Cyber sexual bullying,” as defined in Education Code section 48900(r)(2)(A)(iii), means electronic dissemination of or solicitation or incitement to electronically disseminate a sexually explicit image or recording, by a student to another student or to school personnel, that causes the student to be in fear of harm, or a substantially detrimental effect on the student’s physical or mental health, or the student’s ability to benefit from the educational environment.

Examples of conduct that may constitute sexual harassment under District policy, if unwelcome, include:

1. Suggestive or obscene letters, notes, invitations, graffiti, jokes, or comments; slurs; epithets; sexual gestures; and displays of sexually suggestive objects, pictures, or cartoons.
2. Groping, sexual touching, leering, and impeding or blocking movement.
3. Sexual conduct that would be considered criminal activity, including sexual assault and sexual exploitation.
4. Continuing to express sexual interest after being informed that the interest is unwelcome (reciprocal attraction, among peers, is not considered sexual harassment).
5. Threatening to withhold grades earned or deserved or suggesting a scholarship recommendation or college application will be denied, as a condition of receiving sexual favors.
6. Engaging in sexual behavior to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student.
7. Offering favors or educational benefits, such as grades, assessments, assignments, and recommendations in exchange for sexual favors.
8. Inappropriate sexual touching between students that, even if consensual, contributes to a sexually charged environment for other students who witness the behavior.
9. Any sexual conduct or expression of sexual interest by an adult toward a student regardless of reciprocity.

#### Gender-Based Harassment Under District Policy

Gender-based harassment is sexual harassment and 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 their sex, or for nonconformance with stereotypical notions of masculinity and femininity.

“Gender” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.” (Education Code §210.7).

“Gender identity” refers to a person’s gender-related identity, appearance or behavior whether or not different from that traditionally associated with the person’s physiology or assigned sex at birth.

“Gender expression” refers to external cues that one uses to represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.

“Transgender” describes people whose gender identity is different from that traditionally associated with their assigned sex at birth. “Transgender boy” and “transgender male” refer to an individual assigned the female sex at birth who has a male gender identity. “Transgender girl” and “transgender female” refer to an individual assigned the male sex at birth who has a female gender identity. An individual can express or assert a transgender gender identity in a variety of ways, which may but do not always include specific medical treatments or procedures. Medical treatments or procedures are not considered a prerequisite for one’s recognition as transgender.

“Gender nonconformity” refers to one’s gender expression, gender characteristics, or gender identity that does not conform to gender stereotypes “typically” associated with one’s legal sex assigned at birth, such as “feminine” boys, “masculine” girls and those who are perceived as androgynous. Sexual orientation is not the same as gender identity. Not all transgender youth identify as gay, lesbian or bisexual, and not all gay, lesbian and bisexual youth display gender-nonconforming characteristics.

Examples of conduct that may constitute gender-based harassment include:

1. Disparaging remarks made to a student or aggression toward a student because that student displays mannerisms or a style of dress perceived as indicative of the other sex.
2. Hostility toward a student because that student participates in an athletic activity more typically favored by a student of the other sex.
3. Intimidating a student to discourage that student from enrolling in a particular area of study because of his/her gender.
4. Use of gender-specific slurs, whether written or spoken.
5. Taunting a student who wishes to participate in an extracurricular activity because that activity is more typically favored by a student of the other sex.

Any conduct prohibited under this policy, whether it be sexual harassment or gender-based harassment, that occurs off-campus or outside of school-related or school-sponsored programs or activities will be regarded as sexual harassment in violation of District policy, if it has a continuing effect on or creates a hostile school environment for the targeted student. Moreover, any conduct that meets the definition of “sexual harassment” under Title IX of the Education Amendments of 1972 (Title IX), as detailed below, is prohibited under District policy.

## Sexual Harassment Under Title IX

Some sexual harassment prohibited by District policy, as described above, may also be prohibited under Title IX. Under Title IX, sexual harassment toward a student means conduct on the basis of sex that satisfies at least one of the following:

1. An employee conditioning the provision of an aid, benefit, or service of the District on the student-victim'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 student equal access to the District's educational program or activity.
3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 U.S.C. § 1092 or 34 U.S.C. § 12291.

"Sexual assault" means actual or intentional physical sexual acts against a person without consent that may include: rape, rape and seduction, sodomy, lewd and lascivious acts, oral copulation, sexual penetration, sexual battery, and sexual assault, as defined under Education Code section 48900(n) and Penal Code section 261, 266c, 286, 288, 288a, 289 and 243.4.

"Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. (34 U.S.C. § 12291(a)(10).)

"Domestic violence" means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws. (Ed. Code, § 48900, subd. (n).)

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. (34 U.S.C. § 12291(a)(30).)

"Without consent" or "against that person's will" may include: force, duress, violence, fear of immediate harm, or one's inability to consent.

## Reporting Allegations of Sexual Harassment

Any student who feels that they are being or have been harassed based on sex or gender while on school grounds, while going to or coming from school, while at school activities on or off school grounds, while on District transportation, or while otherwise in a District program or activity, is encouraged to immediately contact a teacher or any other employee.

An employee who receives such a complaint, or otherwise becomes aware of or personally observes possible sexual or gender-based harassment shall immediately report it to the District's Title IX Coordinator, or the principal or vice principal of the relevant school site. Once notified, the Title IX Coordinator, principal, vice principal, or designee shall take the steps to address the

complaint or report in a manner that is consistent with the appropriate administrative regulation. Appropriate supportive measures shall also be offered to the complainant-victim upon receipt of any complaint or report.

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 5141.4 - Child Abuse Prevention and Reporting)

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

### Notice and Instruction Related to District Policy on Sexual Harassment

The Superintendent or designee shall inform students and parents/guardians of the District's sexual harassment policy by disseminating it through parent/guardian notifications, publishing it on the District's website, and including it in the student and staff handbooks. The District shall also create a poster that notifies students of the District's sexual harassment policy, and display the poster in a prominent and conspicuous location in the main administrative building or other area where notices of District rules, regulations, procedures, and standards of conduct are posted, and in each bathroom and locker room on campus.

The Superintendent or designee shall ensure that all District students receive age-appropriate information on sexual harassment. All District staff shall be trained regarding the District policies that prohibits sexual harassment of students.

### Complaint Processes

#### Title IX Complaints:

If the alleged conduct, if taken to be true, meets the definition sexual harassment under Title IX, as defined above, the complaint or allegation(s) shall be investigated or otherwise resolved in accordance with the procedures outlined in Title IX and AR 5145.71 – Title IX Sexual Harassment Complaint Procedures. This determination shall be made by the Title IX Coordinator. If a complaint does not rise to the level of sexual harassment under Title IX, it may need to be formally dismissed pursuant to Title IX and AR 5145.71.

#### All Other Sexual and Gender-Based Harassment Complaints:

If the alleged conduct, even if taken to be true, is sexual in nature or based on sex or gender, but does not meet the definition of sexual harassment under Title IX, the complaint or allegation(s) shall be investigated or otherwise resolved in accordance with the law and District procedures specified in AR 1312.3 - Uniform Complaint Procedures. This determination shall be made by the Title IX Coordinator.

(cf. 1312.3 - Uniform Complaint Procedures)

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

### Disciplinary and Other Measures

Upon completion of an investigation of a sexual or gender-based harassment complaint, whether the investigation followed AR 1312.3 or AR 5145.71, any student found to have engaged in sexual or gender-based harassment in violation of this policy or Title IX will receive interventions and may be subject to disciplinary action. Examples of interventions include

counseling, guidance, education about the impact of harassment, positive behavior support, referral to a student success team, transfer to alternative programs, and denial of participation in extracurricular or co-curricular activities or other privileges. For students in grades 4 through 12, disciplinary action may include suspension and/or expulsion, provided that in imposing discipline the entire circumstances of the incident(s) shall be taken into account.

(cf. 5144 - Discipline)

(cf. 5144.1 - Suspension and Expulsion/Due Process)

Upon completion of an investigation of a sexual or gender-based harassment complaint, any employee found to have engaged in sexual or gender-based harassment toward any student shall be subject to disciplinary action, up to and including termination in accordance with law and the applicable collective bargaining agreement.

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)

(cf. 4119.11/4219.11/4319.11 - Sexual and Gender-Based Harassment)

The District will respond to off-campus sexual or gender-based harassment if the harassment contributes to a hostile environment on campus, poses a threat or danger to the safety of students, or substantially disrupts school activities.

### Confidentiality and Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of sexual and gender-based harassment to enable the District to monitor, address and prevent repetitive harassing behavior in its schools. Additional record-keeping requirements for complaints that fall under Title IX are detailed in AR 5145.71 – Title IX Sexual Harassment Complaint Procedures.

(cf. 3580 - District Records)

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

All complaints and allegations of sexual and gender-based harassment shall be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR § 4964).

Legal Reference:

### EDUCATION CODE

[200-262.4](#) Prohibition of discrimination on the basis of sex

[48900](#) Grounds for suspension or expulsion

[48900.2](#) Additional grounds for suspension or expulsion; sexual harassment

[48904](#) Liability of parent/guardian for willful student misconduct

[48980](#) Notice at beginning of term

### CIVIL CODE

[51.9](#) Liability for sexual harassment; business, service and professional relationships

[1714.1](#) Liability of parents/guardians for willful misconduct of minor

## GOVERNMENT CODE

[12950.1](#) Sexual harassment training

## CODE OF REGULATIONS, TITLE 5

[4600-4687](#) Uniform complaint procedures

[4900-4965](#) Nondiscrimination in elementary and secondary education programs

## UNITED STATES CODE, TITLE 20

1092 Definition of sexual assault

1221 Application of laws

1232g Family Educational Rights and Privacy Act

1681-1688 Title IX of the Education Amendments of 1972

## UNITED STATES CODE, TITLE 34

12291 Definition of dating violence, domestic violence, and stalking

## UNITED STATES CODE, TITLE 42

1983 Civil action for deprivation of rights

[2000d-2000d-7](#) Title VI, Civil Rights Act of 1964

[2000e-2000e-17](#) Title VII, Civil Rights Act of 1964 as amended

## CODE OF FEDERAL REGULATIONS, TITLE 34

[106.1-106.71](#) Nondiscrimination on the basis of sex in education programs

## COURT DECISIONS

Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567

Flores v. Morgan Hill Unified School District, (2003, 9th Cir.) 324 F.3d 1130

Reese v. Jefferson School District, (2001, 9th Cir.) 208 F.3d 736

Davis v. Monroe County Board of Education, (1999) 526 U.S. 629

Gebser v. Lago Vista Independent School District, (1998) 524 U.S. 274

Oona by Kate S. v. McCaffrey, (1998, 9th Cir.) 143 F.3d 473

Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447

## Management Resources:

## CSBA PUBLICATIONS

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

Safe Schools: Strategies for Boards of Education to Ensure Student Success, 2011

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Q&A on Campus Sexual Misconduct, September 2017

Dear Colleague Letter: Title IX Coordinators, April 2015

Dear Colleague Letter: Sexual Violence, April 4, 2011

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

Policy WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

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