

# West Contra Costa Unified School District

## Board Policy 5145.7

### Sexual and Gender-Based Harassment

The West Contra Costa Unified School District Board of Education, hereinafter referred to as the Board, is committed to equal opportunity for all individuals in education within a safe school environment that allows all students equal access and opportunities to all of the District's programs and activities, including academic programs, educational supports, services, and enrichment activities.

The Board is committed to providing a safe educational environment and positive school climate to all students. In the West Contra Costa Unified School District, all students have the right to be educated in a positive and safe 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 prohibits retaliatory behavior or action against any persons who files a complaint, testifies, or otherwise participates in District complaint procedures.

The Superintendent or designee shall ensure that all staff receive training and all students receive age appropriate instruction and information on sexual and gender-based harassment. Student instruction and information shall include, but is not limited to:

1. What acts and behavior constitute sexual and gender-based harassment, including the fact that such harassment could occur between people of the same-sex and that sexual violence is a form of sexual harassment;
2. A clear message that students do not have to endure sexual or gender-based harassment.
3. Encouragement to report observed instances of sexual and gender-based harassment, even where the victim of the harassment has not complained;
4. Information about the District's procedure (Administrative Regulation 5145.3) for investigating complaints and the person(s) to whom a report of sexual and gender-based harassment should be made; and
5. Information about the rights of students and parents/guardians to file a criminal complaint, as applicable.

### Definition and Examples of Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. Examples of conduct that may constitute sexual harassment, 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;

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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.

### Definition and Examples of Gender-Based Harassment

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 their sex, or for nonconformance with stereotypical notions of masculinity and femininity. Gender identity is a person's personal sense of gender (e.g., being a boy or a girl), which may or may not be the same as their biological sex at birth. For transgender persons, the sex at birth (i.e., male or female) does not match their own internal sense of their gender identity. Since gender identity is internal, it isn't necessarily visible to others. Gender expression is a person's external manifestation of their gender identity. Gender expression is visible to others – it's the way a person expresses their gender identity through clothing, behavior, posture, mannerisms, speech patterns, activities and more. 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;

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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.

### Complaint Process

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, otherwise becomes aware, or personally observes possible sexual or gender-based harassment shall immediately report it to the District's Compliance Officer or the principal or vice principal of the relevant school site. Such reports will be processed in accordance with Administrative Regulation 5145.3.

The Superintendent or designee shall ensure that any complaints regarding sexual or gender-based harassment are immediately investigated in accordance with Administrative Regulation 5145.3.

When the Superintendent or designee has determined that harassment has occurred, he/she shall take prompt, appropriate action to end the harassment, prevent its recurrence and address its effects on the victim.

### Disciplinary and Other Measures

Any student who engages in sexual or gender-based harassment of anyone at school or at a school sponsored or school-related activity is in violation of this policy and 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.

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

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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.

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. (5CCR4964).

#### 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

1681-1688 Title IX, discrimination

##### 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:

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### OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance, January 2001

### WEB SITES

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/index.html>

### POLICY

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

adopted: November 3, 2010 Richmond, California

revised: March 26, 2014 Richmond, California