

Policy 4119.11: Sexual Harassment

Status: ADOPTED

Original Adopted Date: 08/20/2008 | Last Revised Date: 06/07/2023 | Last Reviewed Date: 06/07/2023

The Governing Board is committed to providing a safe work environment that is free of harassment and intimidation. The Board prohibits sexual harassment against District employees, as well as retaliatory behavior or action against any person who complains, testifies or otherwise participates in the complaint process established for the purpose of this policy.

Sexual harassment may include, but is not limited to, harassment that is based on a person's sex, gender, gender identity, gender expression, sexual orientation or pregnancy, childbirth, or related medical conditions.

This policy shall apply to all District employees and, when applicable, shall also apply to other persons on District property or with some employment relationship with the District, such as unpaid interns, volunteers, contractors, and job applicants.

Any District employee who engages or participates in sexual harassment, as is defined herein, or related retaliation, or who aids, abets, incites, compels, or coerces another to commit sexual harassment, as is defined herein, or related retaliation, is in violation of this policy and shall be subject to appropriate disciplinary action, up to and including dismissal, in accordance with the law and any applicable collective bargaining agreement.

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)
(cf. 4119.11 - Sexual Harassment And Gender-Based Harassment)

Where a student is found to have engaged in sexual harassment, or related retaliation, in violation of this policy, the District shall take appropriate disciplinary actions and/or other appropriate corrective measures or interventions. For students in grades 4-12, disciplinary action may include suspension and/or expulsion, provided that, in imposing such discipline, the entire circumstances of the incident(s) shall be taken into account.

(cf. 5144 - Discipline)
(cf. 5144.1 - Suspension and Expulsion/Due Process)

Sexual Harassment Under District Policy

For purposes of this policy and Board Policy and Administrative Regulation 4030 – Nondiscrimination in Employment, “sexual harassment” means any unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal, visual, or physical conduct of a sexual nature, whether it occurs between individuals of the same or different sex, under any of the following conditions (Ed. Code, § 212.5; 5 CCR § 4916; Gov. Code, § 12940; 2 CCR §§ 11029-11034):

1. Submission to the conduct is explicitly or implicitly made a term or a condition of the employee's employment;

2. Submission to, or rejection of, the conduct by the employee is used as the basis of an employment decision affecting the employee;
3. The conduct has the purpose or effect of having a negative impact upon the employee's work, or progress, or has the purpose or effect of creating an intimidating, hostile, or offensive working environment. The conduct is sufficiently severe, persistent, pervasive or objectively offensive, so as to create a hostile or abusive working environment or to limit the employee's ability to participate in or benefit from the terms or conditions of the employee's employment; and/or
4. Submission to, or rejection of, the conduct by the employee is used as the basis for any decision affecting the employee regarding benefits and services, honors, programs, or activities available at or through the District.

Examples of conduct that might constitute sexual harassment include, but are not limited to:

1. Unwelcome verbal conduct such as sexual flirtations or propositions; graphic comments about an individual's body; overly familiar conversations; pressure for sexual activity; sexual jokes or stories; unwelcome sexual slurs, epithets, threats, or innuendoes; derogatory comments; sexually degrading descriptions; the spreading of sexual rumors
2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit e-mails; displaying sexually suggestive objects; and/or
3. Unwelcome physical conduct such as massaging, grabbing, fondling, stroking, or brushing the body; touching an individual's body or clothes in an overly familiar or sexual way; cornering, blocking, leaning over, or impeding normal movements.

Any act of retaliation against an individual who reports a violation of this policy, or who participates in an investigation into alleged conduct prohibited by this policy, is prohibited.

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 an employee means conduct on the basis of sex that satisfies at least one of the following:

1. A District employee conditioning the provision of an aid, benefit, or service of the District on the employee's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable individual to be so severe, pervasive, and objectively offensive that it effectively denies the employee equal access to the terms and/or conditions of employment; and/or
3. "Sexual assault" as defined in United States Code, title 20, section 1092(f)(6)(A)(v), "dating violence" as defined in United States Code, title 34, section 12291(a)(10), "domestic violence" as defined in United States Code, title 34, section 12291(a)(8), or "stalking" as defined in United States Code, title 34, section 12291(a)(30).

“Sexual assault” means actual or intentional physical sexual acts against an individual 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 sections 261, 266c, 286, 287, 288, 288a, 289 and 243.4.

“Dating violence” means violence committed by an individual 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 an individual with whom the victim shares a child in common, by an individual who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by an individual 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 individual against an adult or youth victim who is protected from that individual's acts under the domestic or family violence laws (34 U.S.C. § 12291(a)(8)).

“Stalking” means engaging in a course of conduct directed at a specific individual that would cause a reasonable individual 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 individual’s will” may include force, duress, violence, fear of immediate harm, or an individual's inability to consent.

(cf. 4119.12 - Title IX Sexual Harassment Complaint Procedures)

Sexual Harassment Reports

Any district employee, or person covered by this policy, who feels that they have been subjected to sexual harassment, or related retaliation, in the performance of their District responsibilities or while on school grounds or participating in a District program or activity, is encouraged to immediately report the conduct to their supervisor or the District’s Title IX Coordinator, identified below. Any employee who has knowledge of any incident of sexual harassment or related retaliation, by or against another employee or person covered under this policy, shall immediately report the incident to their direct supervisor or the District’s Title IX Coordinator. A supervisor or administrator who receives a complaint of sexual harassment or related retaliation shall promptly notify the District’s Title IX Coordinator.

Title IX Coordinator

The District designates the position/individual identified below as responsible for coordinating its efforts to comply with Title IX of the Education Amendments of 1972, as well as to oversee, investigate, and/or resolve complaints alleging sexual harassment in accordance with Administrative Regulation 4030 – Nondiscrimination in Employment and Administrative Regulation 4119.12 – Title IX Sexual Harassment Complaint Procedures.

The Title IX Coordinator may be contacted at:

Jose Espinoza
Director, Office of Educational Equity | Title IX Coordinator | Equity Compliance Officer
1108 Bissell Avenue

Richmond, CA 94801
Phone: (510) 231-1118
Email: jespinoza2@wccusd.net

(cf. 4030 - Nondiscrimination in Employment)
(cf. 4119.12 - Title IX Sexual Harassment Complaint Procedures)

All complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions. (2 CCR 11023)

Complaint Procedures

Title IX Complaints:

If the alleged conduct, if taken to be true, meets the definition of 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 4119.12 – 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 4119.12.

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 4030 – Nondiscrimination in Employment. This determination shall be made by the Title IX Coordinator.

(cf. 4030 - Nondiscrimination in Employment)
(cf. 4119.12 - Title IX Sexual Harassment Complaints)

Preventative Measures

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual harassment, in accordance with the law and the corresponding administrative regulation, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulations.
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.

5. Providing supportive measures to both the complainant and the individual alleged to have perpetrated the conduct (respondent), as appropriate, including but not limited to, interim separation of the complainant and the respondent.

The Superintendent or designee shall periodically evaluate the effectiveness of the District's strategies to prevent and address sexual harassment and related retaliation. Such evaluation may involve conducting regular anonymous employee surveys to assess whether sexual harassment is occurring or is perceived to be tolerated, partnering with researchers or other agencies with the needed expertise to evaluate the District's prevention strategies, and using any other effective tool for receiving feedback on systems and/or processes. As necessary, changes shall be made to the sexual harassment policy, complaint procedures, or training.

Record-Keeping

In accordance with law, the Superintendent or designee shall maintain a record of all written complaints of harassment or discrimination, and related retaliation, to enable the District to monitor, address, and prevent repetitive behavior, in accordance with the District's applicable complaint procedure(s).

(cf. 3580 - District Records)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4119.12 - Title IX Sexual Harassment Complaint Procedures)

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 receiving state financial assistance

UNITED STATES CODE, TITLE 20

1681-1688 Title IX prohibition against discrimination

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

106.51-106.6182 Nondiscrimination on the basis of sex in employment, in education programs or activities

COURT DECISIONS

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

Oncale 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 WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

adopted: August 20, 2008 Richmond, California

revised: January 6, 2016

revised: January 23, 2019

revised:

Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 11006-11086	<u>Discrimination in employment</u>
2 CCR 11009	Employment discrimination
2 CCR 11021	<u>Discrimination in employment - retaliation</u>
2 CCR 11023	<u>Harassment and discrimination prevention and correction</u>
2 CCR 11024	<u>Required training and education on harassment based on sex, gender identity and expression, and sexual orientation</u>
2 CCR 11034	<u>Terms, conditions, and privileges of employment</u>
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance

Ed. Code 200-262.4	Prohibition of discrimination
Gov. Code 12900-12996	Fair Employment and Housing Act
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12950	Sexual harassment
Gov. Code 12950.1	Sexual harassment training
Lab. Code 1101	Political activities of employees
Lab. Code 1102.1	Discrimination: sexual orientation

Federal

Description

20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 CFR 106.1-106.9	Nondiscrimination on the basis of sex in education programs or activities
34 CFR 106.51-106.61	Nondiscrimination on the basis of sex in employment in education program or activities
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended

Management Resources

Description

Court Decision	Burlington Industries v. Ellreth, (1998) 118 S.Ct. 2257
Court Decision	Department of Health Services v. Superior Court of California, (2003) 31 Cal.4th 1026
Court Decision	Faragher v. City of Boca Raton, (1998) 118 S.Ct. 2275
Court Decision	Gebser v. Lago Vista Independent School District, (1998) 118 S.Ct. 1989
Court Decision	Meritor Savings Bank, FSB v. Vinson et al., (1986) 447 U.S. 57
Court Decision	Oncale v. Sundowner Offshore Serv. Inc., (1998) 118 S.Ct. 998
U.S. Equal Employment Opportunity Com. Publication	Promising Practices for Preventing Harassment, November 2017
Website	CSBA District and County Office of Education Legal Services
Website	California Civil Rights Department
Website	U.S. Department of Education, Office for Civil Rights
Website	U.S. Equal Employment Opportunity Commission

Cross References

Code	Description
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0410	<u>Nondiscrimination In District Programs And Activities</u>
0450	<u>Comprehensive Safety Plan</u>
1312.3	<u>Uniform Complaint Procedures</u>
1312.3	<u>Uniform Complaint Procedures</u>
3530	<u>Risk Management/Insurance</u>
3600	<u>Consultants</u>
4030	<u>Nondiscrimination In Employment</u>
4030	<u>Nondiscrimination In Employment</u>
4040	<u>Employee Use Of Technology</u>
4040-E PDF(1)	<u>Employee Use Of Technology</u>
4112.9	<u>Employee Notifications</u>
4118	<u>Dismissal/Suspension/Disciplinary Action</u>
4118	<u>Dismissal/Suspension/Disciplinary Action</u>
4119.12	<u>Title IX Sexual Harassment Complaint Procedures</u>
4119.21	<u>Professional Standards</u>
4119.22	<u>Dress And Grooming</u>
4131	<u>Staff Development</u>
4212.9	<u>Employee Notifications</u>
4219.21	<u>Professional Standards</u>
4219.22	<u>Dress And Grooming</u>
4231	<u>Staff Development</u>
4300	<u>Administrative And Supervisory Personnel</u>
4312.9	<u>Employee Notifications</u>
4319.21	<u>Professional Standards</u>
4319.22	<u>Dress And Grooming</u>
5145.7	<u>Sexual Harassment</u>
5145.7	<u>Sexual Harassment</u>
5145.71	<u>Title IX Sexual Harassment Complaint Procedures</u>