

**Policy 4319.11: Sex Discrimination and Sex-Based Harassment**

Status: DRAFT

Original Adopted Date: 09/20/2001 | Last Revised Date: 04/10/2014

The following policy shall apply to all district employees, interns, volunteers, contractors, job applicants, and other persons with an employment relationship with the district.

**Introduction:**

The Governing Board is committed to providing all district employees with a safe working environment that is free from discrimination, harassment, and intimidation. Consistent with this policy, the Board prohibits all sexual discrimination, including sex-based harassment, of district employees and retaliation for complaining, testifying or participating in the complaint process pursuant to Board policy and as defined in the accompanying administrative regulations, in district programs and activities by and against district employees.

Additionally, the Board prohibits retaliatory behavior or action against any person who complains or testifies about conduct that reasonably may constitute sex discrimination, including sex-based harassment, reports such conduct, or otherwise participates or refuses to participate in the complaint process established for the purpose of this policy. (Education Code 220.1; 34 CFR 106.71)

For the purposes of this policy, district employees shall include applicants for employment in the district.

The Board designates the following as Coordinator for Nondiscrimination in Employment ("Coordinator"):

Assistant Superintendent of Human Resources

San Jose Unified School District

Human Resources Department

855 Lenzen Avenue, San Jose, CA 95126

(408) 535-6139

**1. Prohibition of Sexual Harassment**

Any district employee who permits, engages in or participates in sexual harassment of another district employee or student shall be in violation of this policy and subject to disciplinary action, up to and including dismissal.

An employee shall be deemed to have permitted sexual harassment where he/she has knowledge that a student or an employee has engaged in sexual harassment and fails to report the harassment to the appropriate authorities, whether or not the victim makes a complaint.

**2. Reporting Sexual Harassment:**

A supervisor, principal or district administrator other than the Superintendent or designee who receives a harassment complaint shall promptly notify the Superintendent or designee).

(cf. 4030 – Nondiscrimination in Employment)

(cf. 4117.4 – Dismissal)

(cf. 4118 – Suspension/Disciplinary Action)

(cf. 4218 – Dismissal/Suspension/Disciplinary Action)

(cf. 4318 – Suspension/Disciplinary Action)

Any district employee who feels that he/she has been sexually harassed or who knows of any possible sexual harassment involving another employee or student, shall immediately report the conduct to a supervisor, principal, district administrator, the Coordinator, or the Superintendent.

An employee may bypass his/her supervisor in reporting sexual harassment where the supervisor is the alleged

harasser or the employee is uncomfortable reporting to the supervisor.

Employee complaints of sexual harassment shall be filed in accordance with AR 4031 – Complaints Concerning Discrimination in Employment.

(cf. 4031 – Complaints Concerning Discrimination in Employment)

### 3. Prevention, Investigation, and Corrective Action.

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual discrimination and sex-based harassment including but not limited to:

1. a. Providing periodic training to employees in accordance with law and administrative regulation all staff regarding the district's sexual harassment policy, particularly the procedures for registering complaints and employees' duty in availing themselves of the complaint procedure in order to avoid harm;
2. b. Publicizing and disseminating the district's sexual discrimination and sex-based harassment policy to employees and others to whom the policy may apply all staff and posting in prominent locations;
3. c. Publicizing, in accordance with 34 CFR 106.8 and as specified in Administrative Regulation 4030 - Nondiscrimination in Employment, a Title IX notice of nondiscrimination to employees, applicants for employment, and bargaining units
4. Ensuring prompt, thorough, and fair, and equitable investigation of complaints through the appropriate state and/or federal procedures in a way that respects the privacy of all parties concerned to the extent possible;
5. d. Taking timely prompt and appropriate effective corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments to remedy any case of sexual harassment following the investigation.

The Superintendent or designee shall periodically evaluate the effectiveness of the district's strategies to prevent and address sex discrimination and sex-based harassment. Such evaluation may involve conducting regular anonymous employee surveys to assess whether sex discrimination and/or sex-based 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 harassment policy(ies), complaint procedures, or training, as appropriate and in accordance with law.

### Reports and Complaints

Any district employee who has experienced sex discrimination or sex-based harassment in the district's education program or activity may file a complaint with the district's Title IX Coordinator. (34 CFR 106.2, 106.44)

Any employee with knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment by or against another district employee, a student, or a third party in a district education program or activity shall notify the Title IX Coordinator within one workday. An employee may be subject to discipline for failure to timely report such conduct. (34 CFR 106.44)

Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

The Title IX Coordinator shall offer and coordinate supportive measures to be provided to the complainant and, if the district has begun grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures to be provided to the respondent as deemed appropriate under the circumstances. (34 CFR 106.44)

Upon investigation of a sex discrimination or sex-based harassment complaint, any district employee found to have engaged or participated in sex discrimination or sex-based harassment or to have aided, abetted, incited, compelled, or coerced another to commit sex discrimination or sex-based harassment in violation of this policy shall be subject

to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

**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 References

2 CCR 11006-11086

### Description

Discrimination in employment

2 CCR 11009

Employment discrimination

2 CCR 11021

Discrimination in employment - retaliation

2 CCR 11023

Harassment and discrimination prevention and correction

2 CCR 11024

Required training and education on harassment based on sex, gender identity and expression, and sexual orientation

2 CCR 11034

Terms, conditions, and privileges of employment

5 CCR 4900-4965

Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance

Ed. Code 200-270

[Prohibition of discrimination](#)

Ed. Code 220.1

Prohibition of retaliation related to educational equity

Ed. Code 220.3

Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression

Ed. Code 220.5

Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression

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

Lab. Code 1197.5

Wages, hours, and working conditions

### Federal References

20 USC 1681-1688

### Description

Title IX of the Education Amendments of 1972; discrimination based on sex

29 CFR 1636

Implementation of the Pregnant Workers Fairness Act

34 CFR 106.1-106.82

Nondiscrimination on the basis of sex in education programs

42 USC 2000e-2000e-17

Title VII, Civil Rights Act of 1964, as amended

42 USC 2000gg-2000gg-6

Pregnant Workers Fairness Act

### Management Resources References

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

**Management Resources References**

Federal Register

U.S. Equal Employment Opportunity Com.  
Publication

Website

Website

Website

Website

Website

**Description**

[Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896](#)

Promising Practices for Preventing Harassment, November 2017

[CSBA District and County Office of Education Legal Services](#)

[California Department of Education](#)

[California Civil Rights Department](#)

[U.S. Department of Education, Office for Civil Rights](#)

[Equal Employment Opportunity Commission](#)

**Cross References**

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**Description**

[Nondiscrimination In District Programs And Activities](#)

[Comprehensive Safety Plan](#)

[Comprehensive Safety Plan](#)

[Uniform Complaint Procedures](#)

[Uniform Complaint Procedures](#)

[Risk Management/Insurance](#)

[Risk Management/Insurance](#)

[Nondiscrimination In Employment](#)

[Nondiscrimination In Employment](#)

[Lactation Accommodation](#)

[Employee Use Of Technology](#)

[Employee Use Of Technology](#)

[Employee Notifications](#)

[Dismissal/Suspension/Disciplinary Action](#)

[Dismissal/Suspension/Disciplinary Action](#)

[Professional Standards](#)

[Professional Standards - Code Of Ethics](#)

[Dress And Grooming](#)

[Staff Development](#)

[Staff Development](#)

[Complaints](#)

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[Employee Notifications](#)

[Professional Standards](#)

[Professional Standards - Code Of Ethics](#)

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**Cross References**

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