

Regulation 4119.11: Sex Discrimination and Sex-Based Harassment

Status: DRAFT

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The district does not discriminate on the basis of sex in any of its programs or activities and complies with Title IX of the Education Amendments of 1972 and its implementing regulations. Sex discrimination, including sex-based harassment, is prohibited in district education programs and activities.

The following administrative regulation shall apply to all allegations of sex discrimination and sex-based harassment by and against district employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by a student.

Definitions

Sex discrimination includes treating an employee differently based on the employee's sex, which includes differential treatment based on sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery; parental, family, or marital status; or association with a person or group with one or more of these actual or perceived characteristics.

Sex discrimination, including sex-based harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct and occurs when prohibited conduct is so severe, persistent, or pervasive that it creates an intimidating, threatening, hostile, or offensive work environment; has the effect of substantially or unreasonably interfering with an employee's term or condition of employment; or otherwise adversely affects an employee's employment opportunities.

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, sex stereotypes, sex characteristics, or other bases specified above. Conduct will constitute sex-based harassment when it takes the form of: (34 CFR 106.2, 106.11)

1. **Quid pro quo harassment:** A district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service in the district's education program or activity conditioning the provision of district aid, benefit, or service on a student's participation in unwelcome sexual conduct
2. **Hostile environment harassment:** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the district's education program or activity

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sex-based harassment in violation of district policy if it has a continuing effect on a student's ability to participate in or benefit from district educational programs or activities.

3. **Sexual assault, dating violence, domestic violence, or stalking,** as defined in 34 CFR 106.2

Introduction:

~~Prohibited~~ 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, regardless of whether the conduct is motivated by sexual desire. ~~directed at another person of the same or opposite gender in the work or educational setting~~ **when:** Conduct is considered to be sexual harassment when made against another person of the same or opposite sex in the work or educational setting under any of the following conditions: (Education Code 212.5; Government Code 12940; 2 CCR 11034)

1. Submission to the conduct is made ~~either explicitly~~ **expressly** or ~~implicitly~~ **by implication** a term or condition of the individual's ~~other's~~ employment;
2. Submission to or rejection of such conduct ~~by the other individual~~ is used as the basis for an employment decision affecting ~~the individual~~ **him/her**;
3. The conduct has the purpose or effect of ~~having a negative impact upon~~ **unreasonably interfering with** the ~~other~~

individual's work or academic performance; or of creating an intimidating, hostile or offensive work or educational environment; or of adversely affecting the other individual's evaluation, advancement, assigned duties, or any other condition of education, employment or career development;

4. Submission to or rejection of the conduct by the other individual is used as the basis for any decision affecting the individual him/her regarding benefits, services, honors, programs, or activities available at or through the district. (Education Code 212.5)

Other examples of conduct prohibited by this policy, whether committed by a supervisor or any other employee, includes but is not limited to:

1. Unwelcome leering, sexual flirtations or propositions;
2. Unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments or sexually degrading descriptions;
3. Graphic verbal comments about an individual's body, or overly personal conversation;
4. Sexual jokes, stories, drawings, pictures or gestures;
5. Spreading sexual rumors;
6. Touching an individual's body or clothes in a sexual or offensive way;
7. Cornering or blocking of normal movements;
8. Displaying sexually suggestive objects in the educational or work environment;
9. Retaliation against an individual who reports a potential violation of the district's sexual harassment policy or who participates in the investigation of a sexual harassment complaint.

Examples of Sex Discrimination and Sex-Based Harassment

Examples of actions that might constitute sex-based harassment under state and/or federal law in accordance with the definitions above, in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, include, but are not limited to:

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

Title IX Coordinator/Compliance Officer

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX in accordance with Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, and oversee the district's response to discrimination complaints processed under Administrative Regulation 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at: 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

Training

The Superintendent or designee shall ensure that all employees receive training regarding sex discrimination and sex-based harassment in accordance with state and federal law.

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours, and nonsupervisory employees receive at least one hour, of classroom or other effective interactive training and education regarding sexual harassment as specified in Government Code 12950.1. All newly hired employees and employees promoted to a supervisory position shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

A supervisory employee is any employee having the authority, in the interest of the district, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, adjust their grievances, or effectively recommend such action, when the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (Government Code 12926)

Such training may be completed by employees individually or as part of a group presentation, may be completed in shorter segments as long as the applicable hourly requirement is met, and may be provided in conjunction with other training provided to the employees. The training shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. (Government Code 12950.1)

The district's sexual harassment training and education program shall include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

1. Information and practical guidance regarding federal and state laws concerning the prohibition, prevention, and correction of sexual harassment
2. The types of conduct that constitute sexual harassment
3. Remedies available for victims in civil actions, and potential employer/individual exposure/liability
4. Strategies to prevent harassment in the workplace
5. Supervisors' obligation to report sexual harassment, discrimination, and retaliation of which they become aware
6. Practical examples which illustrate sexual harassment, discrimination, and retaliation using training modalities such as role plays, case studies, and group discussions, based on factual scenarios taken from case law, news and media accounts, and hypotheticals based on workplace situations and other sources
7. The limited confidentiality of the complaint process
8. Resources for victims of unlawful harassment, such as to whom they should report any alleged harassment
9. Steps necessary to take appropriate remedial measures to correct harassing behavior, which includes the district's obligation to conduct an effective workplace investigation of a harassment complaint
10. What to do if the supervisor is personally accused of harassment
11. The essential elements of the district's anti-harassment policy, and how to use the policy if a harassment complaint is filed

Employees shall receive a copy of the district's sexual harassment policy and administrative regulations, which they shall read and acknowledge that they have received.

12. Information, including practical examples, of harassment based on gender identity, gender expression, and

sexual orientation

13. Prevention of abusive conduct, including a review of the definition and elements of abusive conduct pursuant to Government Code 12950.1, the negative effects that abusive conduct has on the victim and others in the workplace, the detrimental consequences of this conduct on employee productivity and morale, and that a single act does not constitute abusive conduct unless the act is severe or egregious

Additionally, the Superintendent or designee shall ensure that all employees receive annual training related to their duties under Title IX in accordance with 34 CFR 106.8, and that a newly hired employee receive training promptly upon hire or change of position that alters the employee's duties under Title IX. (34 CFR 106.8)

The district's Title IX sex discrimination and sex-based harassment training shall include: (34 CFR 106.8)

1. The district's obligation to address sex-based discrimination, including sex-based harassment, in its education program or activity
2. The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment
3. The notification and information requirements specified in 34 CFR 106.40 and 106.44

The district's Title IX sex-based harassment training and education program shall also include additional training required of supervisors; investigators, decision makers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; facilitators of an informal resolution process; and Title IX Coordinators and designees. (34 CFR 106.8)

The Superintendent or designee shall retain for at least two years the records of any training provided to supervisory employees. Such records shall include the names of trained employees, date of the training, type of training, and name of the training provider. (2 CCR 11024)

Additionally, the Superintendent or designee shall retain for at least seven years the materials used to provide training as specified in 34 CFR 106.8, and to make these materials available, upon request, to members of the public. (34 CFR 106.8)

Notifications and Dissemination of Policy

To prevent unlawful sex discrimination and sex-based harassment, including retaliation, in district programs and activities, the Superintendent or designee shall provide notifications and implement measures to prevent discrimination and harassment as specified in Administrative Regulation 4030 - Nondiscrimination in Employment.

In addition to the measures to prevent discrimination as specified in Administrative Regulation 4030 - Nondiscrimination in Employment, the Superintendent or designee shall ensure that a copy of the Board policy and this administrative regulation:

1. Be displayed in a prominent location in the main administrative building, district office, or other area of the school where notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code 231.5)
2. Be provided to every district employee at the beginning of the first quarter or semester of the school year or whenever a new employee is hired (Education Code 231.5)
3. 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)

A copy of this policy shall be:

1. Distributed to all faculty, administrative staff, and support staff at the beginning of the first quarter or semester of the school year, or whenever a new employee is hired;
2. Posted prominently in the main administrative building or other area of a campus; and

3. Printed in any school or district publication that sets forth the school's or district's rules, regulations, procedures or standards of conduct. Education Code 231.5)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

All employees shall receive either a copy of an information sheets prepared by the California Civil Rights Department (CRD) Department of Fair Employment and Housing or the a copy of district information sheets that contains, at a minimum, components on: (Government Code 12950)

1. The illegality of sex-based harassment;
2. The definition of sex-based harassment under applicable state and federal law;
3. A description of sex-based harassment with examples of prohibited conduct;
4. The district's complaint process available to the employee;
5. The legal remedies and complaint process available through CRD and the Equal Employment Opportunity Commission (EEOC) the Fair Employment and Housing Department and Commission;
6. Directions on how to contact the CRD and the EEOC Fair Employment and Housing Department and Commission; and
7. The protection against retaliation provided by 2 CCR 11021.7287.8 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by CRD DFEH and the EEOC.

In addition, the district shall post, in a prominent and accessible location, CRD DFEH's poster on discrimination in employment and the illegality of sex-based harassment, and the CRD poster regarding transgender rights. (Government Code 12950)

Complaint Procedure:

All complaints and allegations of sex discrimination and sex-based harassment by and against employees shall be investigated and resolved as specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

If sex discrimination or sex-based harassment is found following an investigation, the Title IX Coordinator, or designee in consultation with the Title IX Coordinator, shall take prompt action to stop the sex discrimination or sex-based harassment, prevent recurrence, and address any continuing effects.

An employee or job applicant (the complainant) who believes he/she has been subjected to prohibited harassment shall promptly inform his/her supervisor, the district's Coordinator for Nondiscrimination in Employment, or the Superintendent.

The complainant should report the conduct as soon as the complainant knows of or discovers the harassment.

The complainant may file a written complaint in accordance with this procedure, or if he/she is an employee, may first attempt to resolve the situation informally with his/her supervisor.

A supervisor or manager who has received information about an incident of harassment, or has

observed such an incident, shall report it to the Coordinator or Superintendent, whether or not the complainant files a written complaint.

The written complaint should contain the following:

1. The complainant's name and contact information, and the name and contact information of any representative;
2. The name of the individual who allegedly committed the discrimination or harassment;
3. A description of the alleged discrimination or harassment including the date and location;
4. The names of any witnesses who may have relevant information;

5. Any evidence of the harassment, and any other pertinent information which may assist in investigating and resolving the complaint;

6. The complainant's signature or that of his/her representative.

Investigative Process

The Coordinator or designee shall initiate an impartial investigation of an allegation of discrimination or harassment within 15 work days of receiving notice of the behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The Coordinator or designee shall meet with the complainant to explain the district's complaint procedure and discuss the relief being sought by the complainant. The Coordinator shall inform the complainant that the allegations will be kept confidential to the extent possible, but that some information may be revealed as necessary to conduct an effective investigation.

If the Coordinator determines that a detailed fact-finding investigation is necessary he/she shall begin the investigation immediately. As part of the investigation, the Coordinator will interview the complainant, the accused, and any witness or person with possible relevant information.

When necessary to the investigation or to protect employee or student safety, the Coordinator may notify the Superintendent or designee, district legal counsel, or the district's risk manager.

The Coordinator shall determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed to prevent further harassment or discrimination.

The Coordinator shall ensure that any interim measure does not constitute retaliation.

Written Report on Findings and Corrective Action

No more than 30 work days after receiving the complaint unless extended by written agreement, the Coordinator or designee shall conclude the investigation and prepare a written report of his/her findings.

The report shall include findings and the reasons for the findings and shall summarize the investigation. If a determination has been made that harassment occurred, the report also shall include any corrective action(s) that have been or will be taken to address the behavior and ensure that retaliation or further harassment does not occur.

The report or a synopsis of the report shall be presented to the complainant, the person accused, and the Superintendent or designee.

Appeal to the Governing Board

The complainant or the person accused may appeal any findings to the Board within 10 working days of receiving the Coordinator's findings. The Superintendent or designee shall provide the Board with all information presented during the investigation. Upon receiving an appeal, the Board shall schedule an appeal as soon as practicable. Any complaint against a district employee shall be addressed in closed session in accordance with law. The Board shall render its decision within 10 working days of the Board meeting.

Additional Remedies

In addition to violating Board policy, sexual harassment may also violate Title VII of the Civil Rights Act of 1964, regulatory guidelines of the Equal Employment Opportunity Commission, and California law.

Complainants may be entitled to pursue civil law remedies including, but not limited to, injunctions, restraining orders or other orders.

Violation of this policy shall constitute just cause for discipline up to and including termination from employment.

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

2 CCR 11009

2 CCR 11021

2 CCR 11023

2 CCR 11024

2 CCR 11034

5 CCR 4900-4965

Ed. Code 200-270

Ed. Code 220.1

Ed. Code 220.3

Ed. Code 220.5

Gov. Code 12900-12996

Gov. Code 12940

Gov. Code 12950

Gov. Code 12950.1

Lab. Code 1101

Lab. Code 1102.1

Lab. Code 1197.5

Federal References

20 USC 1681-1688

29 CFR 1636

34 CFR 106.1-106.82

42 USC 2000e-2000e-17

42 USC 2000gg-2000gg-6

Management Resources References

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

Federal Register

U.S. Equal Employment Opportunity Com.
Publication**Description**

Discrimination in employment

Employment discrimination

Discrimination in employment - retaliation

Harassment and discrimination prevention and correction

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

Terms, conditions, and privileges of employment

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

[Prohibition of discrimination](#)

Prohibition of retaliation related to educational equity

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

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

[Fair Employment and Housing Act](#)[Unlawful discriminatory employment practices](#)[Sexual harassment](#)[Sexual harassment training](#)[Political activities of employees](#)

Discrimination: sexual orientation

Wages, hours, and working conditions

Description

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

Implementation of the Pregnant Workers Fairness Act

Nondiscrimination on the basis of sex in education programs

Title VII, Civil Rights Act of 1964, as amended

Pregnant Workers Fairness Act

Description

Burlington Industries v. Ellreth (1998) 118 S.Ct. 2257

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

Gebser v. Lago Vista Independent School District (1998) 118 S.Ct. 1989

Meritor Savings Bank, FSB v. Vinson et al. (1986) 447 U.S. 57

Oncale v. Sundowner Offshore Serv. Inc. (1998) 118 S.Ct. 998

[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

Management Resources References

Website
Website
Website
Website
Website

Description

[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](#)
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[Employee Use Of Technology](#)
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[Employee Notifications](#)
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[Professional Standards - Code Of Ethics](#)

[Complaints](#)

[Nondiscrimination/Harassment](#)

[Nondiscrimination/Harassment](#)

[Sex Discrimination and Sex-Based Harassment](#)

[Sex Discrimination and Sex-Based Harassment](#)

[Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures](#)

[Married/Pregnant/Parenting Students](#)