

MANTECA UNIFIED SCHOOL DISTRICT

All Personnel

BP 4119.11(a)
4219.11
4319.11

SEXUAL HARASSMENT

The Governing Board prohibits sexual harassment of district employees and job applicants. The Board also prohibits retaliatory behavior or action against district employees or other persons who complain, testify or otherwise participate in the complaint process established pursuant to this policy and administrative regulation.

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

(cf. 4030 - Nondiscrimination in Employment)

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

1. Providing training to employees in accordance with law and administrative regulation
2. Publicizing and disseminating the district's sexual harassment policy to staff

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

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

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. (5 CCR 4964)

Any district employee or job applicant who feels that he/she has been sexually harassed or who has knowledge of any incident of sexual harassment by or against another employee, a job applicant or a student, shall immediately report the incident to his/her supervisor, the principal, district administrator or Superintendent.

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

Complaints of sexual harassment shall be filed in accordance with AR 4031 - Complaints Concerning Discrimination in Employment. An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.

(cf. 4031 - Complaints Concerning Discrimination in Employment)

Any district employee who engages or participates in sexual harassment or who aids, abets, incites, compels, or coerces another to commit sexual harassment against a district employee, job applicant, or student is in violation of this policy and is subject to disciplinary action, up to and including dismissal.

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SEXUAL HARASSMENT (continued)

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

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

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*

12950.1 *Sexual harassment training*

LABOR CODE

1101 *Political activities of employees*

1102.1 *Discrimination: sexual orientation*

CODE OF REGULATIONS, TITLE 2

7287.8 *Retaliation*

7288.0 *Sexual harassment training and education*

CODE OF REGULATIONS, TITLE 5

4900-4965 *Nondiscrimination in elementary and secondary education programs receiving state financial assistance*

UNITED STATES CODE, TITLE 42

2000d-2000d-7 *Title VI, Civil Rights Act of 1964*

2000e-2000e-17 *Title VII, Civil Rights Act of 1964, as amended*

2000h-2-2000h-6 *Title IX, 1972 Education Act Amendments*

CODE OF FEDERAL REGULATIONS, TITLE 34

106.9 *Dissemination of policy*

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:

OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Protecting Students from Harassment and Hate Crime, January, 1999

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>

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SEXUAL HARASSMENT

Note: The following administrative regulation is **mandated** pursuant to Education Code 231.5 and includes reasonable steps for preventing the occurrence of discrimination and harassment as required pursuant to Government Code 12940 (California Fair Employment and Housing Act).

The focus of this administrative regulation is on sexual harassment of employees. For information related to the sexual harassment of students, see BP/AR 5145.7 - Sexual Harassment.

Definitions

Note: In Oncale v. Sundowner Offshore Services, Inc., the U.S. Supreme Court held that same-sex sexual harassment could be actionable under Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17).

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 made against another person of the same or opposite sex in the work or educational setting when: (Education Code 212.5; Government Code 12940; 5 CCR 4916)

1. Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment.
2. Submission to or rejection of such conduct by the individual is used as the basis for an employment decision affecting him/her.

Note: Pursuant to Government Code 12940, conduct specified in item #3 below constitutes sexual harassment if it is sufficiently severe, pervasive, or offensive to create a hostile or abusive work environment for the victim, regardless of whether or not the alleged harasser is motivated by sexual desire for the victim.

3. The conduct has the purpose or effect of having a negative impact upon the individual's work or has the purpose or effect of creating an intimidating, hostile, or offensive work environment. Regardless of whether or not the alleged harasser was motivated by sexual desire, the conduct is sufficiently severe, persistent, pervasive, or objectively offensive as to create a hostile or abusive working environment or to limit the individual's ability to participate in or benefit from an education program or activity.
4. Submission to or rejection of the conduct by the other individual is used as the basis for any decision affecting him/her regarding benefits, services, honors, programs, or activities available at or through the district.

Note: Pursuant to Government Code 12940, the district may be held liable for sexual harassment committed against employees by clients, customers, or other third parties if the district knew, or should have known, of the harassment and failed to take immediate and appropriate corrective action to stop the harassment. The following paragraph clarifies that sexual harassment may include acts by supervisors, co-workers, or other parties and should be modified to reflect district practice.

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SEXUAL HARASSMENT (continued)

Other examples of actions that might constitute sexual harassment, whether committed by a supervisor, a co-worker, or a non-employee, in the work or educational setting include, but are not limited to:

1. Unwelcome verbal conduct such as sexual flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sexual activity; sexual jokes or stories; unwelcome sexual slurs, epithets, threats, innuendoes, derogatory comments, sexually degrading descriptions, or the spreading of sexual rumors
2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit emails; 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; cornering, blocking, leaning over, or impeding normal movements

Training

Note: The following **optional** paragraph is consistent with a district's obligation to protect its employees from sexual harassment, and may be modified to reflect district practice. Although training is not legally required for all employees, Government Code 12940 requires districts to take reasonable steps to prevent harassment. In addition, since the language of BP/AR 5145.7 - Sexual Harassment requires employees to report sexual harassment against students, training such employees to recognize sexual harassment and address reports of incidents furthers the district's interest in protecting both employees and students against prohibited conduct. Thus, it is strongly recommended that districts periodically provide sexual harassment training or information to all their employees, especially those who work at school sites.

Provision of periodic training to all district employees could also help foster a positive work environment and mitigate damages against a district in the event of sexual harassment litigation. In Department of Health Services v. Superior Court (McGinnis), the California Supreme Court held that employers that have taken reasonable steps to prevent and correct workplace sexual harassment may be able to reduce damages in the event of a lawsuit. Such steps may include establishing anti-harassment policies and communicating those policies to employees.

The Superintendent or designee shall ensure that all employees receive training regarding the district's sexual harassment policies when hired and periodically thereafter. Such training shall include the procedures for reporting and/or filing complaints involving an employee, employees' duty to use the district's complaint procedures, and employee obligations when a sexual harassment report involving a student is made to the employee.

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

(cf. 5145.7 - Sexual Harassment)

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SEXUAL HARASSMENT (continued)

Note: **The remainder of this section is for use by districts with 50 or more employees.** Government Code 12950.1 requires such districts to provide two hours of sexual harassment training and education once every two years to every supervisory employee, defined as any employee with the authority to take employment action, including hiring, transferring, suspending, and disciplining other employees, or recommend such action if the exercise of that authority is not merely routine or clerical in nature. All newly hired supervisors or employees promoted to a supervisory position must receive the training within six months of their hire or assumption of the supervisory position. Compliance with this law does not insulate the district from any liability for harassment.

Governing Board members, as elected officials, are not usually considered "supervisors"; however, since Board members have the authority to hire, reward, or discipline the Superintendent and other employees, Board members may also be required to receive sexual harassment training. Districts should consult with legal counsel to ensure that the appropriate individuals receive training.

Although the law does not require districts with fewer than 50 employees to provide sexual harassment training to supervisors, court decisions have held that providing training may help mitigate damages in sexual harassment suits. Districts with fewer than 50 employees may delete or modify the remainder of this section to reflect district practice.

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

A *supervisory employee* is any employee with the authority to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend such action.

Note: Government Code 12950.1 and 2 CCR 11023 require that the training for supervisory employees contain specified components and be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

The district's sexual harassment training and education program for supervisory employees shall include the provision of: (Government Code 12950.1; 2 CCR 11023)

1. Information and practical guidance regarding federal and state laws on the prohibition against and the prevention and correction of sexual harassment, and the remedies available to the victims of sexual harassment in employment
2. Practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation

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SEXUAL HARASSMENT (continued)

Note: Pursuant to Government Code 12950.1, as amended by AB 2053 (Ch. 306, Statutes of 2014), the prevention of abusive conduct must be included as a component of the sexual harassment training for supervisors.

3. A component on the prevention of abusive conduct that addresses the use of derogatory remarks, insults, or epithets, other verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, and the gratuitous sabotage or undermining of a person's work performance
4. A copy of the district's sexual harassment policy and administrative regulation, which each participant shall acknowledge in writing that he/she has received
5. All other contents of mandated training specified in 2 CCR 11023

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, the type of training, and the name of the training provider. (2 CCR 11023)

Notifications

Note: Education Code 231.5 requires that the district provide copies of its policy on sexual harassment to staff, as specified below. In addition, 2 CCR 11023 requires that supervisory employees undergoing mandatory training receive a copy of the district's policy and acknowledge receipt of the policy; see item #4 in the section "Training" above.

A copy of the Board policy and this administrative regulation shall: (Education Code 231.5)

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
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

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

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

Note: Government Code 12950 requires the Department of Fair Employment and Housing (DFEH) to develop posters and information sheets on employment discrimination and the illegality of sexual harassment. These documents are available on DFEH's web site.

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SEXUAL HARASSMENT (continued)

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

1. The illegality of sexual harassment
2. The definition of sexual harassment under applicable state and federal law
3. A description of sexual harassment, with examples
4. The district's complaint process available to the employee
5. The legal remedies and complaint process available through DFEH and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact DFEH and the EEOC
7. The protection against retaliation provided by 2 CCR 11021 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by DFEH and the EEOC

In addition, the district shall post, in a prominent and accessible location, DFEH's poster on discrimination in employment and the illegality of sexual harassment. (Government Code 12950)

MANTECA UNIFIED SCHOOL DISTRICT SEXUAL HARASSMENT COMPLAINT FORM

The School Board encourages the early, informal resolution of complaints at the school site level. Please report your concerns to your school principal or vice principal first unless that person is the one you're complaining about. The school principal/vice principal shall advise the complainant of the right to file a written complaint with the District Complaint/Compliance Officer via mail at P.O. Box 32, Manteca, CA 95336, or delivered to the District Office at 2271 W. Louise Ave., Manteca, or through email at complaints@musd.net. All sexual harassment complaints will be investigated and responded to in accordance with Board Policy 5145.7 (Students) or 4119.11 (All Personnel) as appropriate. All policies and procedures for other types of complaints are available on the District Website.

The School Board prohibits retaliation in any form for the filing of a complaint or participation in complaint procedures. Such participation shall not in any way affect the status, grades, or work assignments of the complainant or persons involved in the complaint investigation/resolution process. The identification of a complainant will remain confidential as appropriate.

| | | | |
|---|---|--|---|
| Name: | First: | Last: | |
| I am a: | <input type="checkbox"/> Student <input type="checkbox"/> Parent | <input type="checkbox"/> Certificated Employee <input type="checkbox"/> Classified Employee | <input type="checkbox"/> School Administrator <input type="checkbox"/> Other (please describe) |
| Street: | | | |
| City: | Zip Code | | |
| Phone: | Email | | |
| Today's Date: | | | |
| Date(s) of Problem(s): | | | |
| School/Department: | | | |
| Course Name or Grade Level: | | | |
| The person(s) who sexually harassed me is/are: | <input type="checkbox"/> Student <input type="checkbox"/> Parent | <input type="checkbox"/> Certificated Employee <input type="checkbox"/> Classified Employee | <input type="checkbox"/> School Administrator <input type="checkbox"/> Other (please describe) |
| | The name(s) of the individual(s) who discriminated, harassed, intimidated, and/or bullied me or another person is/are: | | |
| Witness(es) to this sexual harassment is/are: | <input type="checkbox"/> Student <input type="checkbox"/> Parent <input type="checkbox"/> There were no witness(es) | <input type="checkbox"/> Certificated Employee <input type="checkbox"/> Classified Employee | <input type="checkbox"/> School Administrator <input type="checkbox"/> Other (please describe) |
| | The name(s) of the individual(s) who witnessed this harassment and/or discrimination is/are: | | |
| This sexual harassment has already been reported to the following: | <input type="checkbox"/> Student <input type="checkbox"/> Parent <input type="checkbox"/> I have not reported this incident(s) to anyone before | <input type="checkbox"/> Certificated Employee <input type="checkbox"/> Classified Employee | <input type="checkbox"/> School Administrator <input type="checkbox"/> Other (please describe) |
| | The name(s) of the individual(s) who were told about this incident(s) is/are: | | |
| I have discussed my complaint with this person: | <input type="checkbox"/> Yes <input type="checkbox"/> No Date(s) of conversation(s): | | |
| The type of sexual harassment this person engaged in was: | <input type="checkbox"/> Verbal <input type="checkbox"/> Written (including emails) | <input type="checkbox"/> Physical | |
| | Please give examples of what was done: | | |
| Please describe your complaint in detail. You may attach additional pages if necessary to fully describe the situation. | Specific nature of the complaint; include names, dates, times, locations, witnesses, etc.: | | |

Date form was received:

| | |
|---|---|
| Please describe previous attempts to stop this sexual harassment. | <u>Dates and results of any previous meetings with site/district personnel regarding your concerns:</u> |
| What would you like the District to do as a result of your complaint? | <u>Suggested remedy:</u> |

Signature _____

Date _____

The School Board prohibits retaliation in any form for the filing of a complaint or participation in complaint procedures. Such participation shall not in any way affect the status, grades, or work assignments of the complainant or persons involved in the complaint investigation/resolution process. The identification of a complainant will remain confidential as appropriate.

| | |
|---|---|
| If applicable, explain why you believe that you were retaliated against for filing a sexual harassment complaint. | <u>Please give examples of retaliation:</u> |
|---|---|

Signature _____

Date _____