

Policy 4119.11
Sex Discrimination and Sex-Based Harassment

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

The Board of Education is committed to providing a safe work environment that is free of discrimination, harassment, and intimidation. The Board of Education prohibits sex discrimination, including sex-based harassment, as defined in the accompanying administrative regulation, in district programs and activities by and against district employees

Additionally, The Board of Education also prohibits retaliatory behavior or action against district 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)

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sex discrimination and sex-based 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 sex discrimination and sex-based harassment policy to staff employees and others to whom the policy may apply
3. Ensuring prompt, thorough, fair, and equitable investigation of complaints through the appropriate state and/or federal procedure
4. 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
5. 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.

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.

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.

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT

Policy adopted: 11/18/2008 Livermore, California

Last revised: 08/29/2024

Replaced: Pending Board Approval

Regulation 4119.11

Sex Discrimination and Sex-Based Harassment

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 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

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. 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 expressly 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 the individual
3. The conduct has the purpose or effect of having a negative impact upon the other individual's work performance; creating an intimidating, hostile, or offensive work environment; or adversely affecting the other individual's evaluation, advancement, assigned duties, or any other condition of employment or career development
4. Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the District

Examples of Sex Discrimination and Sex-Based Harassment

Other examples of actions that might constitute sex-based harassment under state and/or federal law in accordance with the definitions above, 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; 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

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 or promoted supervisory employees shall receive training within six months of their assumption of the 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.

The District's training and education program for supervisory employees shall include information and practical guidance regarding the federal and state statutory law on the prohibition against and the prevention and correction of sexual harassment and the remedies available to the victims of sexual harassment in employment. The training shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation. (Government Code 12950.1)

In addition, the Superintendent or designee shall ensure that all employees receive periodic training regarding the District's sexual harassment policy, particularly the procedures for filing complaints and employees' duty to use the District's complaint procedures.

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 that 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 include 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 receives 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, the date of the training, the type of training, and the 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

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 Education policy and this administrative regulation:

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

1. Be displayed in a prominent location in the main administrative building 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)

All employees shall receive either a copy of information sheets prepared by the California Civil Rights Department (CRD) 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 CRD and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact CRD 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 CRD and the EEOC

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

Complaint Procedures

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.

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Policy adopted: 11/18/2008 Livermore, California

Last revised: 08/29/2024

Replaced: Pending Board Approval