

Regulation 5145.7: Sexual Harassment

Status: ADOPTED

Original Adopted Date: 08/14/2018 | **Last Reviewed Date:** 08/14/2018

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 and California Education Code 234.1, as well as to investigate and resolve sexual harassment complaints under AR 1312.3 - Uniform Complaint Procedures. The coordinator/compliance officer(s) may be contacted at:

Director of Student Services
1376 Piedmont Rd
San Jose, CA 95132
(408) 923-1841

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 educational setting, under any of the following conditions: (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress.
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student.
3. The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment.
4. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through any district program or activity.

Examples of types of conduct which are prohibited in the district and which may constitute sexual harassment include, but are 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, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures, or computer-generated images of a sexual nature
5. Spreading sexual rumors
6. Teasing or sexual remarks about students enrolled in a predominantly single-sex class
7. Massaging, grabbing, fondling, stroking, or brushing the body
8. Touching an individual's body or clothes in a sexual way
9. Impeding or blocking movements or any physical interference with school activities when directed at an individual on the basis of sex
10. Displaying sexually suggestive objects
11. Sexual assault, sexual battery, or sexual coercion
12. Electronic communications containing comments, words, or images described above

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sexual harassment in violation of district policy if it has a continuing effect on or creates a hostile school environment for the complainant or victim of the conduct.

Reporting Process and Complaint Investigation and Resolution

Any student who believes that he/she has been subjected to sexual harassment by another student, an employee, or a third party or who has witnessed sexual harassment is strongly encouraged to report the incident to his/her teacher, the principal, or any other available school employee. Within one school day of receiving such a report, the school employee shall forward the report to the principal or the district's compliance officer identified in AR 1312.3. In addition, any school employee who observes an incident of sexual harassment involving a student shall, within one school day, report his/her observation to the principal or a district compliance officer. The employee shall take these actions, whether or not the alleged victim files a complaint.

When a report or complaint of sexual harassment involves off-campus conduct, the principal shall assess whether the conduct may create or contribute to the creation of a hostile school environment. If he/she determines that a hostile environment may be created, the complaint shall be investigated and resolved in the same manner as if the prohibited conduct occurred at school.

When a verbal or informal report of sexual harassment is submitted, the principal or compliance officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with the district's uniform complaint procedures. Regardless of whether a formal complaint is filed, the principal or compliance officer shall take steps to investigate the allegations and, if sexual harassment is found, shall take prompt action to stop it, prevent recurrence, and address any continuing effects.

If a complaint of sexual harassment is initially submitted to the principal, he/she shall, within two school days, forward the report to the compliance officer to initiate investigation of the complaint. The compliance officer shall contact the complainant and investigate and resolve the complaint in accordance with law and district procedures specified in AR 1312.3.

In investigating a sexual harassment complaint, evidence of past sexual relationships of the victim shall not be considered, except to the extent that such evidence may relate to the victim's prior relationship with the respondent.

In any case of sexual harassment involving the principal, compliance officer, or any other person to whom the incident would ordinarily be reported or filed, the report may instead be submitted to the Superintendent or designee who shall determine who will investigate the complaint.

Confidentiality

All complaints and allegations of sexual harassment shall be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR 4964)

However, when a complainant or victim of sexual harassment notifies the district of the harassment but requests confidentiality, the compliance officer shall inform him/her that the request may limit the district's ability to investigate the harassment or take other necessary action. When honoring a request for confidentiality, the district will nevertheless take all reasonable steps to investigate and respond to the complaint consistent with the request.

When a complainant or victim of sexual harassment notifies the district of the harassment but requests that the district not pursue an investigation, the district will determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students.

Response Pending Investigation

When an incident of sexual harassment is reported, the principal or designee, in consultation with the compliance officer, shall determine whether interim measures are necessary pending the results of the investigation. The principal/designee or compliance officer shall take immediate measures necessary to stop the harassment and protect students and/or ensure their access to the educational program. To the extent possible, such interim measures shall not disadvantage the complainant or victim of the alleged harassment. Interim measures may include placing the individuals involved in separate classes or transferring a student to a class taught by a different teacher, in accordance with law and Board policy. The school should notify the individual who was harassed of his/her options to avoid contact with the alleged harasser and allow the complainant to change academic and extracurricular arrangements as appropriate. The school should also ensure that the complainant is aware of the resources and assistance, such as counseling, that are available to him/her. As appropriate, such actions shall be considered even when a student chooses to not file a formal complaint or the sexual harassment occurs off school grounds or outside

school-sponsored or school-related programs or activities.

Notifications

A copy of the district's sexual harassment policy and regulation shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code 48980; 5 CCR 4917)
2. Be displayed in a prominent location in the main administrative building or other area where notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code 231.5)

A copy of the district's sexual harassment policy and regulation shall be posted on district and school web sites and, when available, on district-supported social media.

3. Be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session (Education Code 231.5)
4. 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)

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

5 CCR 4600-4670

Description

Uniform complaint procedures

5 CCR 4900-4965

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

Civ. Code 1714.1

Liability of parent or guardian for act of willful misconduct by a minor - <https://simbli.eboardsolutions.com/SU/NSknepeFduiYWusJFnU3r9Q==>

Civ. Code 51.9

Liability for sexual harassment; business, service and professional relationships - <https://simbli.eboardsolutions.com/SU/RFwiKgYI364luH8a6QAqdg==>

Ed. Code 200-262.4

Prohibition of discrimination - <https://simbli.eboardsolutions.com/SU/ytTLslshoozWGUAAbNL6kKkgxQ==>

Ed. Code 48900

Grounds for suspension or expulsion

Ed. Code 48900.2

Additional grounds for suspension or expulsion; sexual harassment

Ed. Code 48904

Liability of parent/guardian for willful student misconduct

Ed. Code 48980

Parent/Guardian notifications

Ed. Code 48985

Notices to parents in language other than English

Gov. Code 12950.1

Sexual harassment training

Federal References

20 USC 1092

Definition of sexual assault

20 USC 1221

Application of laws

20 USC 1232g

Family Educational Rights and Privacy Act (FERPA) of 1974

20 USC 1681-1688

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

34 CFR 106.1-106.82

Nondiscrimination on the basis of sex in education programs

34 CFR 99.1-99.67

Family Educational Rights and Privacy

34 USC 12291

Definition of dating violence, domestic violence, and stalking

42 USC 1983

Civil action for deprivation of rights

42 USC 2000d-2000d-7
42 USC 2000e-2000e-17

Title VI, Civil Rights Act of 1964
Title VII, Civil Rights Act of 1964, as amended

Management Resources References

Court Decision
Court Decision
Court Decision
Court Decision
Court Decision
Court Decision
CSBA Publication
CSBA Publication
U.S. DOE, Office For Civil Rights Publication
U.S. DOE, Office for Civil Rights Publication
U.S. DOE, Office for Civil Rights Publication
U.S. DOE, Office for Civil Rights Publication
U.S. DOE, Office for Civil Rights Publication
Website
Website
Website

Description

Gebser v. Lago Vista Independent School District, (1998) 524 U.S. 274
Oona by Kate S. v. McCaffrey, (1998, 9th Cir.) 143 F.3d 473
Reese v. Jefferson School District, (2001, 9th Cir.) 208 F.3d 736
Davis v. Monroe County Board of Education, (1999) 526 U.S. 629
Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447
Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567
Flores v. Morgan Hill Unified School District, (2003, 9th Cir.) 324 F.3d 1130
Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011
Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014
Dear Colleague Letter: Title IX Coordinators, April 2015
Q&A on Campus Sexual Misconduct, September 2017
Sexual Harassment: It's Not Academic, September 2008
Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001
Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016
California Department of Education - <https://simbli.eboardsolutions.com/SU/os2jq5DcA2RawmY2VZ5FZQ==>
CSBA - <https://simbli.eboardsolutions.com/SU/W3QxkK2FPsDsQBnMIENxGg==>
U.S. Department of Education, Office for Civil Rights - <https://simbli.eboardsolutions.com/SU/xmCPrTcoZle111WmbX10Vg==>

Cross References

0410
0450
0450
1114
1114
1312.1
1312.1
1312.3
1312.3

Description

Nondiscrimination In District Programs And Activities - <https://simbli.eboardsolutions.com/SU/AcYrmrHJD3AWeDbZREfibQ==>
Comprehensive Safety Plan - <https://simbli.eboardsolutions.com/SU/otXWxpl2g4p4VoQpYBAQCQ==>
Comprehensive Safety Plan - <https://simbli.eboardsolutions.com/SU/pgApP4MnbiUirPPDA1sAMA==>
District-Sponsored Social Media - <https://simbli.eboardsolutions.com/SU/rV0plbV2eGnqVMa6ARfVA==>
District-Sponsored Social Media - <https://simbli.eboardsolutions.com/SU/CP12pjhm0LLBqgEB87slsh2AQ==>
Complaints Concerning District Employees - <https://simbli.eboardsolutions.com/SU/ilPQZPDBVAN4xK5FGkmpplusQ==>
Complaints Concerning District Employees - <https://simbli.eboardsolutions.com/SU/T3y5jplus5ZLd5StywHyWslshg6A==>
Uniform Complaint Procedures - <https://simbli.eboardsolutions.com/SU/xvpBX2UxTWgdAdD7Y3bocQ==>
Uniform Complaint Procedures - <https://simbli.eboardsolutions.com/SU/slshxk2Ltnb6EKoBC1k21THw==>

1313 Civility - <https://simbli.eboardsolutions.com/SU/pDGFtISslshZ8WunrVMYpluseslshDA==>

1313 Civility - <https://simbli.eboardsolutions.com/SU/TrzXkPsrxCAYMFcAXBeWAw==>

3580 District Records - <https://simbli.eboardsolutions.com/SU/zFslshDayvPBs31TUVGoegXRw==>

3580 District Records - <https://simbli.eboardsolutions.com/SU/zAhvalkplus5sr18TZ0tfxtbA==>

4117.7 Employment Status Reports - <https://simbli.eboardsolutions.com/SU/s2GtTMVVM0CT9kUt2vFeug==>

4118 Dismissal/Suspension/Disciplinary Action - <https://simbli.eboardsolutions.com/SU/ewcqRb7z9apbplusOBL3cQkOg==>

4118 Dismissal/Suspension/Disciplinary Action - <https://simbli.eboardsolutions.com/SU/loNSa3hwn1L3aayslshrlplg==>

4119.11 Sexual Harassment - <https://simbli.eboardsolutions.com/SU/v5qkNUEm79LR8leAYVxQslshA==>

4119.11 Sexual Harassment - <https://simbli.eboardsolutions.com/SU/guZDitDg4EdrXt4ZY0eslshRg==>

4131 Staff Development - <https://simbli.eboardsolutions.com/SU/ofCiZ4JP5OFCbQsJHwByUw==>

4218 Dismissal/Suspension/Disciplinary Action - <https://simbli.eboardsolutions.com/SU/ZaJQYvc3sEXlcJ6WslshzslshQ4A==>

4219.11 Sexual Harassment - <https://simbli.eboardsolutions.com/SU/eVmJeaRQORzzGhlxW67poA==>

4219.11 Sexual Harassment - <https://simbli.eboardsolutions.com/SU/w5JsfTAhkHRgWOVMOTSSoA==>

4219.21 Professional Standards - <https://simbli.eboardsolutions.com/SU/upzuE4hslshVJdNRL3jn0pDRA==>

4219.21-E PDF(1) Professional Standards - <https://simbli.eboardsolutions.com/SU/NHWxR176D0PX00K7MpnTJg==>

4231 Staff Development - <https://simbli.eboardsolutions.com/SU/OgljplusUEH6duZgau5tuM32g==>

4317.7 Employment Status Reports - <https://simbli.eboardsolutions.com/SU/C5gp57ys28QN06bUktYKdw==>

4319.11 Sexual Harassment - <https://simbli.eboardsolutions.com/SU/n6whZ0OBy8ckgcCJ8KTplusPw==>

4319.11 Sexual Harassment - <https://simbli.eboardsolutions.com/SU/vp26bpzQMjGsuDwWXyypDA==>

4319.21 Professional Standards - <https://simbli.eboardsolutions.com/SU/uMJHhZWY2Y5BzmECNGUCg==>

4319.21-E PDF(1) Professional Standards - <https://simbli.eboardsolutions.com/SU/ECCzslshJT8GJP7umqslshhn4Q8A==>

5125 Student Records - <https://simbli.eboardsolutions.com/SU/eAgs6nHselg3pnPPMIF1KA==>

5125 Student Records - <https://simbli.eboardsolutions.com/SU/PkAXD91TjbsGjZplusomIAYQ==>

5131 Conduct - <https://simbli.eboardsolutions.com/SU/3aoy3fWcJ6hXacpe8fdSEw==>

5131.2 Bullying - <https://simbli.eboardsolutions.com/SU/aD34OAipLut4ZQ4emsSlshEh1g==>

5131.5	Vandalism And Graffiti - https://simbli.eboardsolutions.com/SU/dlXplusPi8iJVdY3WSpfRNkXg==
5132	Dress And Grooming - https://simbli.eboardsolutions.com/SU/h2fPJdHe9K6tSDRjf9g2hA==
5132	Dress And Grooming - https://simbli.eboardsolutions.com/SU/vXkh5Doslshk0iWhslshJiTvplusz5Q==
5137	Positive School Climate - https://simbli.eboardsolutions.com/SU/LuslshF1DslshHbw8xyk79JHvmw==
5141.4	Child Abuse Prevention And Reporting - https://simbli.eboardsolutions.com/SU/WJVWxJIV36QETrbwB2By0g==
5141.4	Child Abuse Prevention And Reporting - https://simbli.eboardsolutions.com/SU/Os8kVLmt5I9DYIURhkCPNA==
5141.52	Suicide Prevention - https://simbli.eboardsolutions.com/SU/eo28RF4eXPn7O7Y1evVslshRA==
5141.52	Suicide Prevention - https://simbli.eboardsolutions.com/SU/7mTILnM6esju2tWID46LbQ==
5144	Discipline - https://simbli.eboardsolutions.com/SU/onCVss00PSplusr2wHLHnwfya==
5144	Discipline - https://simbli.eboardsolutions.com/SU/43QDskhnRDrcO6Sly67fcg==
5144.1	Suspension And Expulsion/Due Process - https://simbli.eboardsolutions.com/SU/rJfbXtbBA33rrDOSslshjRtjQ==
5144.1	Suspension And Expulsion/Due Process - https://simbli.eboardsolutions.com/SU/zlYpBy0gH0xs5gR1C7suDw==
5144.2	Suspension And Expulsion/Due Process (Students With Disabilities) - https://simbli.eboardsolutions.com/SU/jr0HXoY1NwCAUVuQaslshx6CA==
5145.2	Freedom Of Speech/Expression - https://simbli.eboardsolutions.com/SU/qbhZRplusiM5PFNB1d3lHOs9Q==
5145.2	Freedom Of Speech/Expression - https://simbli.eboardsolutions.com/SU/oE5JplusfyuBx97Alplus5qdPTGg==
5145.3	Nondiscrimination/Harassment - https://simbli.eboardsolutions.com/SU/B14sKH0N3XrP9LplumTbkkpQ==
5145.3	Nondiscrimination/Harassment - https://simbli.eboardsolutions.com/SU/raW97X8t2C0gFUplusslshPAyjww==
5145.6	Parental Notifications - https://simbli.eboardsolutions.com/SU/C6Xk8slshLVEk9ct7Gj9vfn1A==
5145.6-E PDF(1)	Parental Notifications - https://simbli.eboardsolutions.com/SU/W68skjoKudPplusEPmtOdYFeQ==
5145.9	Hate-Motivated Behavior - https://simbli.eboardsolutions.com/SU/RF6ObpCc2RaYvVYplusWwD8uA==
6142.1	Sexual Health And HIV/AIDS Prevention Instruction - https://simbli.eboardsolutions.com/SU/4BE3I7kdwonrFC2evCB22w==
6142.1	Sexual Health And HIV/AIDS Prevention Instruction - https://simbli.eboardsolutions.com/SU/6iXVjlnwWlpFunHDOplunKqA==
6142.8	Comprehensive Health Education - https://simbli.eboardsolutions.com/SU/plusl0BhXEOyXnplusA79o0gilmw==
6142.8	Comprehensive Health Education - https://simbli.eboardsolutions.com/SU/mPRfyGatmikHSwHHVxYAWA==
6145	Extracurricular And Cocurricular Activities - https://simbli.eboardsolutions.com/SU/7alZIToFbruzrBDslshYRULug==

- 6145 Extracurricular And Cocurricular Activities -
<https://simbli.eboardsolutions.com/SU/QtkslshutaeR1D5noaNeNHrhw==>
- 6145.2 Athletic Competition -
<https://simbli.eboardsolutions.com/SU/rJWtkusO2IIEkTmfySslshyzQ==>
- 6145.2 Athletic Competition -
<https://simbli.eboardsolutions.com/SU/ypBJH97frzbgLASowvITNQ==>
- 6163.4 Student Use Of Technology -
<https://simbli.eboardsolutions.com/SU/ujlhJz6c1hejVit2CwyZVQ==>
- 6163.4-E PDF(1) Student Use Of Technology -
<https://simbli.eboardsolutions.com/SU/dlkToplusLYiBAz6uQplusJslshCKBQ==>