

STUDENTS

Sexual Harassment

The San Joaquin County Office of Education (SJCOE) recognizes that sexual harassment can cause embarrassment, feeling of powerlessness, loss of self-confidence, reduced ability to perform schoolwork, and increased absenteeism or tardiness. SJCOE also recognizes that sexual harassment, like other disruptive or violent behavior, is conduct that disrupts a student's ability to learn and the ability of SJCOE to educate its students in a safe environment. This policy applies to the unlawful sexual harassment of any student by any employee, student, or other person at school or at any school-related activity or program.

This policy, and its accompanying administrative regulation, contains information about and procedures that will apply to sexual harassment complaints and retaliation resulting from a sexual harassment complaint in any activity or program filed by, or on behalf of, students at the site level. All complaints alleging discrimination and/or all other forms of harassment will be processed pursuant to 1312.3 - Uniform Complaint Procedure.

Definitions

Pursuant to definitions set forth in Education Code 252.5, the following categories of conduct are included within the scope of sexual harassment, which is a form of sexual discrimination.

Education Code 212.5 provides that prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature when:

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

Sexual Harassment includes, but is not limited to, the following actions:

1. Verbal Harassment: Such as repeated, unsolicited derogatory comments or slurs, or continued request for social or sexual contact after being advised such is unwelcome.
2. Physical Harassment: Such as physical interference or contact which is unwelcome or which impedes normal work movement when directed at an individual.
3. Visual Harassment: Such as derogatory posters, cartoons, or drawings, staring, or leering.
4. Sexual Favors: Such as sexual advances which condition an educational benefit in exchange for sexual favors or which may be perceived as such.

The Superintendent or designee shall ensure that students annually receive age-appropriate information related to sexual harassment and the appropriate complaint procedure. Students shall be assured that they need not endure any form of sexual behavior or communication, including harassment because of sexual orientation. They shall further be assured that they need not endure, for any reason, any harassment which impairs the educational environment or a student's emotional well-being at school. Students complaining of sexual harassment shall not be required to work out the problem directly with the individual alleged to be harassing him/her.

Any student who engages in the sexual harassment of anyone at school or a school-related activity shall be subject to disciplinary action, which may include suspension and/or expulsion.

Any employee who engages in, permits, or fails to report sexual harassment, shall be subject to disciplinary action up to, and including, dismissal. In addition, criminal or civil charges may be brought against the alleged harasser; sexual harassment also may be considered a violation of laws relating to child abuse.

Obligations of All Employees

1. All employees (administrators, certificated staff, and classified staff) are responsible for familiarizing themselves with all SJCOE sexual discrimination policies and complaint procedures (including sexual harassment complaint procedures). Employees are responsible to be familiar with their duties in reporting incidents of sexual harassment which they observe or of which they otherwise have knowledge.
2. Within 24 hours of knowing of a complaint, employees shall report to the Director of Human Resources any conduct on the part of other employees or non-employees, such as sales representatives or service vendors, who sexually harass any student.
3. All employees shall cooperate with any investigation of an alleged act of sexual discrimination/harassment conducted by SJCOE or by an appropriate state or federal agency.

4. No employee of SJCOE shall take any action to discourage a victim of harassment from reporting such an instance. In addition, SJCOE prohibits any retaliation against the complaining party or other involved parties. Any person who violates this prohibition is subject to disciplinary action.
5. Because different procedures apply after a formal governmental administrative charge or complaint is filed, any supervisor receiving such a charge or complaint is directed to report it immediately to the Director of Human Resources.
6. Although it is the goal of this policy to identify and prevent sexually harassing behavior, if the problems and/or concerns arise, the affected student is urged to make use of the process set forth with the administrative regulation – AR 5145.7. However, any student has an absolute right to file a complaint with the Office of Civil Rights at any time within 180 days of the alleged harassment. (Office of Civil Rights, U.S. Department of Education, 50 Beale Street, Suite 7200, San Francisco, CA 94105. Phone (415) 486-5555)

Information on the sexual harassment policy and complaint procedure shall be annually disseminated to students, staff, and parents/guardians. All publications containing a summary of the policy will identify where the full policy can be obtained.

Students shall be informed that they should immediately contact a staff member if they feel they are being harassed. Within 24 hours, staff shall report complaints of sexual harassment to the Director of Human Resources. Staff shall similarly report any such incidents they may observe, even if the harassed student has not complained.

The Director of Human Resources shall immediately investigate, or designate an individual to investigate, any report of the sexual harassment of a student. Upon verifying that sexual harassment occurred, he/she shall ensure that appropriate action is promptly taken to end the harassment, address its effects on the person subjected to the harassment and on others in the campus community, and prevent any further instances of the harassment.

SJCOE prohibits retaliatory behavior against any complainant or any participant in the complaint process. All allegations of retaliation resulting from a sexual harassment complaint will be processed pursuant 5145.7 – Sexual Harassment. Information related to a complaint of sexual harassment shall be confidential to the extent possible, and individuals involved in the investigation of such a complaint shall not discuss related information outside the investigation process.

- cf:*
- 0410 Nondiscrimination in Programs and Activities
 - 1312 Uniform Complaint Procedures
 - 1312.1 Complaints Concerning Personnel
 - 1312.3 Uniform Complaint Procedures
 - 4031 Complaints Concerning Discrimination in Employment
 - 4118 Suspension/Disciplinary Action
 - 4119.11/4219.11/4319.11 Sexual Harassment
 - 4119.23/4219.23/4319.23 Unauthorized Release of Confidential/Privileged Information)
 - 4218 Dismissal/Suspension/Disciplinary Action
 - 5125 Student Records
 - 5131 Conduct
 - 5131.2 Bullying
 - 5131.5 Vandalism
 - 5141.4 Child Abuse Reporting Procedures
 - 5141.41 Child Abuse Prevention
 - 5144.1 Suspension and Expulsion/Due Process
 - 5144.2 Suspension and Expulsion/Due Process (Students with Disabilities)
 - 5145.3 Nondiscrimination/Harassment
 - 5145.7 Sexual Harassment

Legal Reference:

EDUCATION CODE

200-240 Prohibition of discrimination on the basis of sex, especially:

212.5 Sexual harassment

212.6 Sexual harassment policy

230 Particular practices prohibited

48900 Grounds for suspension or expulsion

48900.2 Additional grounds for suspension or expulsion, sexual harassment

48904 Liability of parent/guardian for willful student misconduct

48980 Notice at beginning of term

CIVIL CODE

51.9 Liability for sexual harassment; business, service and professional relationships

1714.1 Liability of parents/guardians for willful misconduct of minor

CODE OF REGULATIONS, TITLE 5

4600-4687 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1681-1688 Title IX, 1972 Education Act Amendments

UNITED STATES CODE, TITLE 42

2000d & 2000e et seq. Title VI & Title VII, Civil Rights Act of 1964 as amended

Franklin v. Gwinnet County Schools (1992) 112 S. Ct. 1028

Doe v. Petaluma City School District (1995, 9th Cir.) 54 F.3d 1447

Clyde K. v. Puyallup School District #3 (1994) 35 F.3d 1396

Oona R.-S. etc. v. Santa Rosa City Schools et al (1995) 890 F.Supp. 1452

Patricia H. v. Berkeley Unified School District (1993) 830 F.Supp. 1288

Rosa H. v. San Elizario Ind. School District, 887 F. Supp. 140, 143 (W.D. Tex. 1995)

Davis v. Monroe County Board of Education (1996, 11th Cir.) 74 F.3d 1186

Kelson v. City of Springfield, Oregon (1985, 9th Cir.) 767 F.2d 651

CODE OF FEDERAL REGULATIONS, TITLE 34

106.1-106.71 Nondiscrimination on the basis of sex in education programs

(3/12)