

KERN COUNTY SUPERINTENDENT OF SCHOOLS**PERSONNEL****SEXUAL HARASSMENT POLICY AND COMPLAINT PROCEDURE**

The Office of the Kern County Superintendent of Schools (“Office”) strictly prohibits any form of sexual harassment by or against any Office employee, job applicant, or other person in the work environment, and also prohibits retaliatory behavior or action against any Office employee, job applicant, or other person who complains, testifies, or otherwise participates in the complaint process established pursuant to this policy. In addition, the Office prohibits inappropriate behavior that if repeated could constitute sexual harassment or retaliation as described in this policy, even if the inappropriate behavior may not, in and of itself, rise to that level.

This policy applies to all work environments and work-related activities of the Office with the exception of employment-related complaints of sexual harassment under Title IX, which should be addressed pursuant to the procedure described in SP 4119.12. The term "work environment" means any location where Office employees perform their job duties including, but not limited to, worksites of the Office, jails, hospitals, juvenile halls, private schools, homes where employees deliver home instruction, charter schools, and the sites of other school districts. As used in this policy, the term "employee" includes an independent contractor, volunteer, and unpaid intern as provided in Government Code section 12940(j)(1)(5).

Any Office employee who engages or participates in sexual harassment or retaliation, or who aids, abets, incites, compels, or coerces another to commit sexual harassment or retaliation against another Office employee, job applicant, or other person in the work environment, is in violation of this policy and may be subject to disciplinary action, up to and including dismissal.

Any non-employee who engages in or participates in sexual harassment or retaliation, or who aids, abets, incites, compels, or coerces another to commit sexual harassment or retaliation against an Office employee, job applicant, or other person in the work environment, is in violation of this policy and subject to exclusion from any and all property under the authority of the Kern County Superintendent of Schools and such other corrective action as may be appropriate.

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

1. Providing training to employees in accordance with law and this policy.
2. Publicizing and disseminating this policy to employees and others to whom this policy may apply.
3. Ensuring prompt, thorough, and fair investigation of complaints.

4. Taking timely and appropriate corrective/remedial action(s). This may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments.

DEFINITIONS

Sexual harassment in the workplace is prohibited by state and federal law. 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:

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 the conduct by the individual is used as the basis for an employment decision affecting the individual.
3. Submission to or rejection of the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the Office.

Prohibited sexual harassment also includes conduct which, regardless of whether or not it is motivated by sexual desire, is so severe or pervasive as to unreasonably interfere with the victim's work performance or create an intimidating, hostile, or offensive work environment.

(Educ. Code § 212.5; 5 C.C.R. § 4916; Gov't Code § 12940; 2 C.C.R. § 11034)

Sexual harassment is defined under Title IX as:

1. An Office employee conditioning the provision of a district aid, benefit, or service on the student's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the district's education; or
3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 U.S.C. § 1092 or 34 U.S.C. § 12291.

(34 C.F.R. § 106.30)

EXAMPLES

Sexual harassment can occur in a variety of circumstances including, but not limited to, the following:

1. The victim, as well as the harasser, can be a female or a male. The victim does not have to be of the opposite sex.
2. The harasser can be the victim's supervisor or administrator, a supervisor or administrator in another area, another employee, a consultant or contractor working for the Office, or a non-employee such as a parent, volunteer, vendor, or citizen who is in an Office work environment.
3. Sexual harassment can occur without economic injury to or termination of the victim.
4. Sexual harassment does not have to be about sexual desire or sexual conduct; it may consist of any unwelcome sexually harassing conduct based on the victim's actual or perceived gender, gender identity, gender expression, sex, or sexual orientation.
5. Sexual harassment includes harassment based on pregnancy and pregnancy-related conditions such as breastfeeding.
6. Sexual harassment may also include any act of retaliation against an individual who reports a violation of this sexual harassment policy or who participates in an investigation, hearing, or proceeding of a sexual harassment complaint.

Examples of actions that might constitute sexual harassment, whether committed by a supervisor, administrator, co-worker, or 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 e-mails or text messages; or the display of 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.

COMPLAINTS

The following position is designated as the Employment Nondiscrimination Compliance Officer/Title IX Coordinator (Personnel):

Assistant Superintendent-Human Resources & Special Services
Kern County Superintendent of Schools Office
1300 17th Street - CITY CENTRE
Bakersfield, CA 93301
(661) 636-4673
E-mail: tosmith@kern.org

Title IX complaints involving a student may be reported to the Title IX Coordinator (Student) identified in Superintendent's Policy 5147.7.

Any Office employee who feels that he or she has been sexually harassed in the performance of his or her Office responsibilities or who has knowledge of an incident of sexual harassment by or against another employee shall immediately report the incident to his or her supervisor, another supervisor, the Employment Nondiscrimination Compliance Officer, or the Superintendent. A supervisor or administrator who receives a harassment complaint shall promptly notify the Employment Nondiscrimination Compliance Officer. Failure of an Office employee to report sexual harassment or retaliation may result in disciplinary action.

Title IX regulations require a prompt response in a manner that is not unreasonable in light of the known circumstances when there is actual knowledge of sexual harassment as defined in Title IX. Actual knowledge includes notice of sexual harassment or allegations of sexual harassment being submitted to the school's Title IX Coordinator, any official of the Office who has authority to institute corrective measures, or any employee of an elementary or secondary school. Any employee having knowledge of sexual harassment, as federally defined, shall inform the Title IX Coordinator.

A non-employee who feels that he or she has been or is being sexually harassed or retaliated against in violation of this policy may file a complaint pursuant to SP 4109 - Complaints Against Employees.

Complaints of sexual harassment or retaliation made by an employee or job applicant shall be filed in accordance with SP 4030 – Nondiscrimination in Employment, unless the action described in the complaint meets the federal definition of sexual harassment. If the action contained in the complaint meets the definition of sexual harassment under Title IX, an employee or job applicant may make a report or file a complaint in accordance with SP 4119.12. An employee may bypass his or her supervisor in filing a complaint where the employee's supervisor is the subject of the complaint.

All complaints and allegations of sexual harassment or retaliation shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions. (2 C.C.R. § 11023; 5 C.C.R. § 4964)

TRAININGS

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours of classroom or other effective interactive trainings and education regarding sexual harassment. All newly hired or promoted supervisory employees shall receive training within six months of their assumption of the supervisory position. (Gov't Code §12950.1; 2 C.C.R. § 11024)

A supervisory employee is any employee having the authority, in the interest of the Office, 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. (Gov't Code § 12926)

The Office's training and education program for supervisory employees shall be aimed at assisting supervisory employees in preventing and effectively responding to incidents of sexual harassment, as well as implementing mechanisms to promptly address and correct wrongful behavior. The training shall include information and practical guidance regarding federal and state laws on the prohibition, prevention, and correction of sexual harassment, the remedies available to the victims of sexual harassment in civil actions, and potential Office and/or individual exposure or liability. The training shall also include all of the content specified in Title 2, California Code of Regulations, section 11024, and practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation. (Gov't Code § 12950.1; 2 C.C.R. § 11024)

The Office 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 C.C.R. § 11024)

In addition, the Superintendent or designee shall ensure that all employees receive training regarding this sexual harassment policy when hired and periodically thereafter. This training shall include how to recognize prohibited or harassing conduct, the procedures for reporting and/or filing complaints involving an employee, an employee's duty to use the Office's complaint procedures, and employee obligations when a sexual harassment report involving a student is made to the employee.

NOTIFICATIONS

A copy of this policy shall:

1. Be displayed in a prominent location in the main administrative building, individual worksites, or other area of a school where notices of Office rules, regulations, procedures, and standards of conduct are posted.

2. Be provided to every Office employee at the beginning of the first quarter or semester of the school year or whenever a new employee is hired.
3. Appear in any Office, school, or worksite publication that sets forth the Superintendent's, school's, or worksite's comprehensive rules, regulations, procedures, and standards of conduct. (Educ. Code § 231.5)

All employees shall receive either a copy of information sheets prepared by the Department of Fair Employment and Housing (“DFEH”) or a copy of this policy or other Office information sheets that contain, at a minimum, components on:

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 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 EEOC.
7. The protection against retaliation provided by Title 2, California Code of Regulations, section 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 EEOC. (Gov’t Code § 12950)

In addition, the Office shall post, in a prominent and accessible location, the DFEH poster on discrimination in employment and the illegality of sexual harassment and the DFEH poster regarding transgender rights. (Gov’t Code § 12950)

Legal References:

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 Sexual harassment; distribution of information

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees
1102.1 Discrimination: sexual orientation

CALIFORNIA CODE OF REGULATIONS, TITLE 2

11009 Employment discrimination
11021 Retaliation
11023 Harassment and discrimination prevention and correction
11024 Sexual harassment training and education
11034 Terms, conditions, and privileges of employment

CODE OF REGULATIONS, TITLE 5

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

UNITED STATES CODE, TITLE 20

1681-1688 Title IX prohibition against discrimination

UNITED STATES CODE, TITLE 42

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

CODE OF FEDERAL REGULATIONS, TITLE 34

106.1-106.9 Nondiscrimination on the basis of sex in education programs or activities
106.51-106.61 Nondiscrimination on the basis of sex in employment in education program or activities

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
Oncala v. Sundowner Offshore Serv., Inc. (1998) 118 S.Ct. 998
Meritor Savings Bank, FSB v. Vinson, et al. (1986) 447 U.S. 57

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