

CSBA Sample

Board Policy

Sexual Harassment

BP 5145.7

Students

***Note: Education Code 231.5 and 34 CFR 106.9 mandate the district to have written policies on sexual harassment. The following policy addresses harassment by and/or of students; for policy addressing the sexual harassment by and/or of employees, see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment. ***

***Note: A district can be held liable for student-on-student or employee-on-student sexual harassment pursuant to Title IX (20 USC 1681-1688) and/or Education Code 220, if the district is found to have been "deliberately indifferent" in its response to known sexual harassment. In *Davis v. Monroe County Board of Education*, the Supreme Court held that a district would be deliberately indifferent if (1) the harasser and the context in which the sexual harassment occurred were within the district's control; (2) the harassment was so severe, pervasive, and objectively offensive that it deprived the victim of access to educational opportunities or benefits provided by the district; (3) the district had actual knowledge of the harassment; and (4) the district's conduct was unreasonable considering the surrounding circumstances. This standard was applied by an appellate court in *Donovan v. Poway Unified School District* based on Education Code 220. ***

***Note: In addition to filing a private civil lawsuit, a victim of sexual harassment may file a complaint with the California Department of Education and/or the U.S. Department of Education's Office for Civil Rights (OCR). In April 2011, OCR issued its Dear Colleague Letter: Sexual Violence to supplement its January 2001 Revised Sexual Harassment Guidance on federal Title IX requirements as they pertain to sexual harassment. In the letter, OCR clarifies that sexual violence, including rape, sexual assault, sexual battery, and sexual coercion, is a form of sexual harassment that must be addressed by districts in the same way as other forms of sexual harassment, such as unwelcome sexual advances. ***

The Governing Board is committed to maintaining a safe school environment that is free from harassment and discrimination. The Board prohibits sexual harassment of students at school or at school-sponsored or school-related activities. The Board also prohibits retaliatory behavior or action against any person who files a complaint, testifies, or otherwise participates in district complaint processes.

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

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)

(cf. 5137 - Positive School Climate)
(cf. 5145.3 - Nondiscrimination/Harassment)
(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)

Instruction/Information

***Note: In its April 2011 Dear Colleague Letter: Sexual Violence, OCR restates the requirement that a district's procedure for investigating sexual harassment complaints must be widely disseminated and be written in language appropriate to the age of the school's students so that students understand how it works. Examples include having copies of the procedure available throughout the school, publishing the procedure in the student handbook, and identifying individuals who can explain how the procedure works. The following optional section is based on OCR recommendations and may be revised to better accommodate student needs and district practice. ***

The Superintendent or designee shall ensure that all district students receive age-appropriate instruction and information on sexual harassment. Such instruction and information shall include:

1. What acts and behavior constitute sexual harassment, including the fact that sexual harassment could occur between people of the same sex and could involve sexual violence

***Note: In its April 2011 Dear Colleague Letter: Sexual Violence, OCR acknowledges that possible rule violations by victims or other students may affect their willingness to report sexual harassment or violence. For example, a victim who is sexually harassed while he/she is away from school without permission may be reluctant to file a complaint if he/she believes that he/she may be disciplined for the violation. Thus, OCR suggests that, in communicating items #2 and #3 below, districts should emphasize that student safety is the primary concern and that any other rule violation will be addressed separately from the sexual harassment or violence issue. ***

2. A clear message that students do not have to endure sexual harassment

3. Encouragement to report observed instances of sexual harassment, even where the victim of the harassment has not complained

4. Information about the district's procedure for investigating complaints and the person(s) to whom a report of sexual harassment should be made

5. Information about the rights of students and parents/guardians to file a criminal complaint, as applicable

Complaint Process

***Note: Pursuant to Education Code 231.5, the district's policy must contain information on where to obtain a specific procedure for reporting charges of sexual harassment and pursuing available remedies. In addition, 34 CFR 106.8 requires a district to adopt and publish a

grievance procedure providing for a prompt and equitable resolution of student complaints alleging sexual harassment. Because courts have held that a district may be liable for student-on-student harassment if an employee with authority to take corrective action has actual knowledge of the harassment, it is recommended that the district's instruction to its students include examples of employees who may have such authority (e.g., principals, teachers, and coaches). In addition, even if the matter has been referred to law enforcement for investigation, a district still has a responsibility to investigate the complaint as a matter of sex discrimination. ***

***Note: The accompanying administrative regulation details a site-level complaint procedure, including timelines, conduct of the investigation, and remedies. However, districts may instead consider using the uniform complaint procedures, pursuant to 5 CCR 4600-4687, to resolve such complaints; see BP/AR 1312.3 - Uniform Complaint Procedures. ***

Any student who feels that he/she is being or has been sexually harassed on school grounds or at a school-sponsored or school-related activity (e.g., by a visiting athlete or coach) shall immediately contact his/her teacher or any other employee. An employee who receives such a complaint shall report it in accordance with administrative regulation.

(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 5141.4 - Child Abuse Prevention and Reporting)

The Superintendent or designee shall ensure that any complaints regarding sexual harassment are immediately investigated in accordance with administrative regulation. When the Superintendent or designee has determined that harassment has occurred, he/she shall take prompt, appropriate action to end the harassment and to address its effects on the victim.

Disciplinary Actions

***Note: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment. However, districts should note that Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1 - Suspension and Expulsion/Due Process. ***

Any student who engages in sexual harassment or sexual violence at school or at a school-sponsored or school-related activity is in violation of this policy and shall be subject to disciplinary action. For students in grades 4-12, disciplinary action may include suspension and/or expulsion, provided that, in imposing such discipline, the entire circumstances of the incident(s) shall be taken into account.

(cf. 5144.1 - Suspension and Expulsion/Due Process)
(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

Confidentiality and Record-Keeping

***Note: Pursuant to 5 CCR 4964, districts are required to keep complaints and allegations of sexual harassment confidential, except when disclosure is necessary to further the investigation, other needed remedial action, or ongoing monitoring. In its April 2011 Dear Colleague Letter: Sexual Violence, OCR counsels districts to respond to sexual harassment that comes to their attention even when a victim requests anonymity. ***

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)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)
(cf. 5125 - Student Records)

The Superintendent or designee shall maintain a record of all reported cases of sexual harassment to enable the district to monitor, address, and prevent repetitive harassing behavior in the schools.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

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

GOVERNMENT CODE

12950.1 Sexual harassment training

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, discrimination

UNITED STATES CODE, TITLE 42

1983 Civil action for deprivation of rights

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

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

CODE OF FEDERAL REGULATIONS, TITLE 34

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

COURT DECISIONS

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

Reese v. Jefferson School District, (2001, 9th Cir.) 208 F.3d 736

Davis v. Monroe County Board of Education, (1999) 526 U.S. 629
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
Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447

Management Resources:

CSBA PUBLICATIONS

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

Providing a Safe, Nondiscriminatory School Environment for All Students, Policy Brief, April 2010

OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Dear Colleague Letter: Sexual Violence, April 4, 2011

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance, January 2001

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

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