

Mt. Diablo USD

Board Policy

Sexual Harassment

BP 5145.7

Students

The Governing Board is committed to maintaining ~~an educational~~ a safe school environment that is free from harassment and discrimination. The Board prohibits, at school or at school-sponsored or school-related activities, sexual harassment of targeted at any student ~~other students, employees or other persons, at school or at school-sponsored or school-related activities~~ by anyone. The Board also prohibits retaliatory behavior or action against persons who complain, testify, assist any person who reports, files a complaint or testifies about, or otherwise participate in the complaint process established pursuant to this policy and the administrative regulation supports a complainant in alleging sexual harassment.

The district strongly encourages 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 by another student or an adult who has experienced off-campus sexual harassment that has a continuing effect on campus to immediately contact his/her teacher, the principal, or any other available school employee. Any employee who receives a report or observes an incident of sexual harassment shall notify the principal or a district compliance officer. Once notified, the principal or compliance officer shall take the steps to investigate and address the allegation, as specified in the accompanying administrative regulation.

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

(cf. 1312.1 – Complaints Concerning District Employees)

(cf. 5131 – Conduct)

(cf. 5131.2 – Bullying)

(cf. 5137 – Positive School Climate)

(cf. 5141.4 – Child Abuse Prevention and Reporting)

(cf. 5145.3 – Nondiscrimination/Harassment)

(cf. 5142.1 – Sexual Health and HIV/AIDS Prevention Instruction)

The Superintendent or designee shall take appropriate actions to reinforce the district's sexual harassment policy.

Instruction/Information

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 gender and could involve sexual violence
2. A clear message that students do not have to endure sexual harassment under any circumstance
3. Encouragement to report observed instances of sexual harassment, even where the victim of the harassment has not complained
4. ~~Information about the person(s) to whom a report of sexual harassment should be made~~
A clear message that student safety is the district's primary concern, and that any separate rule violation involving an alleged victim or any other person reporting a sexual harassment incident will be addressed separately and will not affect the manner in which the sexual harassment complaint will be received, investigated, or resolved
5. A clear message that, regardless of a complainant's noncompliance with the writing, timeline, or other formal filing requirements, every sexual harassment allegation that involves a student, whether as the complainant, respondent, or victim of the harassment, shall be investigated and prompt action shall be taken to stop any harassment, prevent recurrence, and address any continuing effect on students.
6. Information about the district's procedure for investigating complaints and the person(s) to whom a report of sexual harassment should be made.
7. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable, including the right to file a civil or criminal complaint while the district investigation of sexual harassment complaint continues.
8. A clear message that, when needed, the district will take interim measures to ensure a safe school environment for a student who is the complainant or victim of sexual harassment and/or other students during an investigation and that, to the extent possible, when such interim measures are taken, they shall not disadvantage the complainant or victim of the alleged harassment.

(~~cf. 5131.5 – Vandalism, Theft and Graffiti~~)
 (~~cf. 5137 – Positive School Climate~~)
 (~~cf. 5141.41 – Child Abuse Prevention~~)
 (~~cf. 5145.3 – Nondiscrimination/Harassment~~)
 (~~cf. 6142.1 – Family Life/Sex Education~~)

Complaint Process and Disciplinary Actions

~~Any student who feels that he/she is being or has been subjected to sexual harassment shall immediately contact his/her teacher or any other employee. A school employee to whom a~~

~~complaint is made shall, within 24 hours of receiving the complaint, report it to the principal or designee.~~

~~Any school employee who observes any incident of sexual harassment involving a student shall report this observation to the principal or designee, whether or not the victim files a complaint.~~

~~In any case of sexual harassment involving the principal or any other district employee to whom the complaint would ordinarily be made, the employee who receives the student's report or who observes the incident shall report to the nondiscrimination coordinator or the Superintendent or designee.~~

Sexual harassment complaints by and against students shall be investigated and resolved in accordance with law and district procedures specified in AR 1312.3 – Uniform Complaint Procedures. Principals are responsible for notifying students and parents/guardians that complaints of sexual harassment can be filed under AR 1312.3 and where to obtain a copy of the procedures.

(cf. 1312.3 – Uniform Complaint Procedures)

Upon investigation of a sexual harassment complaint, any student found to have engaged in sexual harassment or sexual violence in violation of this policy 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 circumstance of the incident(s) shall be taken into account.

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

(cf. 5141.4 – Child Abuse Reporting Procedures)

(cf. 5145.3 – Nondiscrimination/Harassment)

(cf. 5144 – Discipline)

(cf. 5144.1 - Suspension and Expulsion/Due Process)

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

Upon investigation of a sexual harassment complaint, any employee found to have engaged in sexual harassment or sexual violence toward any student shall have his/her employment terminated in accordance with the law and the applicable collective bargaining agreement.

(cf. 4117.7/4317.7 – Employment Status Report)

(cf. 4118 – Dismissal/Suspension/Disciplinary Action)

(cf. 4218 – Dismissal/Suspension/Disciplinary Action)

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

~~The principal or designee to whom a complaint of sexual harassment is reported shall immediately investigate the complaint in accordance with administrative regulation. Where the principal or designee finds that sexual harassment occurred, he/she shall take prompt, appropriate action to end the harassment and address its effects on the victim. The principal or designee shall also advise the victim of any other remedies that may be available. The principal or designee shall file a report with the Superintendent or designee and refer the matter to law enforcement authorities, where required.~~

~~(cf. 1312.1 – Complaints Concerning District Employees)~~

Disciplinary Measures

~~Any student who engages in sexual harassment of anyone at school or at a school-sponsored school-related activity is in violation of this policy and shall be subject to disciplinary action. For students in grades 4 through 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.~~

Record-Keeping

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 its schools.

(cf. 3580 – District Records)

~~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 CCR4964)~~

~~(cf. 4119.23/4219.23/4319.23 – Unauthorized Release of Confidential/Privileged Information)~~

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

1221 Application of Laws

1232g Family Educational Rights and Privacy Act.

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

99.1 – 99.67 Family Educational Rights and Privacy

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

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

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~~

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016

Dear Colleague Letter: Title IX Coordinators, April 2015

Questions and Answers on Title IX and Sexual Violence, April 2014

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>

Policy MT. DIABLO UNIFIED SCHOOL DISTRICT

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