

Book	BCSD Board Policies
Section	0500 Personnel
Title	SEXUAL HARASSMENT
Code	0500.38
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The Board of Education is committed to maintaining a safe workplace and learning environment that is free of sexual harassment and retaliation. Individuals who sexually harass may also be personally liable for their conduct. Sexual harassment may, in certain circumstances, be a violation of Title VII of the Civil Rights Act of 1964 as amended, and/or Title IX of the Education Amendments of 1972, as well as California law.

The Board considers sexual harassment to be a major offense. Under no circumstances will sexual harassment be tolerated. Sexual harassment includes but is not limited to, harassment that is based on the sex, gender, gender identity, gender expression, or sexual orientation of the victim and harassment based on pregnancy, childbirth, or related medical conditions.

The Board prohibits sexual harassment of District employees. The Board also prohibits retaliatory behavior or action against District employees or other persons who complain, testify, assist or otherwise participate in the complaint process established pursuant to this policy and accompanying administrative regulation. This policy shall apply to all District employees and, when applicable, to interns, volunteers, job applicants, and independent contractors.

(cf. BP 300.63 – Nondiscrimination in District Programs)

(cf. BP 500.49 – Nondiscrimination in Employment)

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

1. Providing training to employees in accordance with law and administrative regulation;
2. Publicizing and disseminating the District’s sexual harassment policy to whom the policy may apply;
3. Ensuring prompt, thorough, and fair investigation of complaints;
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments.

Sexual Harassment Reports and Complaints

All complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions (Title 2, California Code of Regulations, Section 11023).

Any District employee who feels they have been sexually harassed in the performance of their District responsibilities or who has knowledge of any incident of sexual harassment by or against another employee shall immediately report the incident to their direct supervisor, a District administrator, or the District’s Title IX Coordinator. Employees may bypass their supervisor in filing a complaint if the supervisor is the subject of the complaint. A supervisor or administrator who receives a harassment complaint shall promptly notify the District’s Title IX Coordinator.

Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through Administrative Regulation 500.57 - Title IX Sexual Harassment Complaint Procedures or Administrative Regulation 500.49 - Nondiscrimination in Employment, as applicable. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of Administrative Regulation 500.57 - Title IX Sexual Harassment Complaint

Procedures concurrently meets the requirements of Administrative Regulation 500.49 - Nondiscrimination in Employment.

(AR 500.57 – Title IX Sexual Harassment Complaint Procedures)

The Title IX Coordinator shall offer supportive measures to the complainant and respondent, as deemed appropriate under the circumstances.

Upon investigation of a sexual harassment complaint, any District employee found to have engaged or participated in sexual harassment, or to have aided, abetted, incited, compelled or coerced another to commit sexual harassment in violation of this policy shall be subject to disciplinary action up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

Legal Reference:

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

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

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 of the Education Amendments of 1972

UNITED STATES CODE, TITLE 42

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

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

2000h-2-2000h-6 Title IX, 1972 Education Act Amendments

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

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AR 500.38 Sexual Harassment

Administrative Regulation

All District employees have the right to, and the responsibility of, maintaining, a work and academic environment free of sexual harassment. This administrative regulation shall apply to all allegations of sexual harassment involving employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by or against a student.

(cf. BP 601.06 – Sexual Harassment Of Or By Students)

Definitions

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, regardless of whether or not the conduct is motivated by sexual desire. Conduct is considered to be sexual harassment when made against another person of the same or opposite sex in the work or educational setting under any of the following conditions (Education Code Section 212.5; Government Code Section 12940; Title 2, California Code of Regulations, Section 11034):

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 is used as the basis for an employment decision affecting the individual.
3. The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment.
4. Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the District.

(cf. BP 500.49 – Nondiscrimination in Employment)

For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, sexual harassment is defined as any of the following forms of conduct that occurs in an education program or activity in which a District school exercises substantial control over the context and respondent (Title 34, Code of Federal Regulations Sections 106.30 & 106.44):

1. A District 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 person equal access to the District's education program or activity.
3. Sexual assault, dating violence, domestic violence, or stalking as defined in Title 20, United States Code Section 1092 or Title 34, United States Code Section 12291.

(cf. AR 500.27 – Sexual Harassment Complaint Procedures)

Examples of Sexual Harassment

Examples of actions that might constitute sexual harassment under state or federal law in accordance with the definitions above, in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, 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 emails; displaying 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.

Title IX Coordinator/Compliance Officer

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 in accordance with Administrative Regulation 500.27 Title IX Sexual Harassment Complaint Procedures, as well as to oversee, investigate, and resolve sexual harassment complaints processed under Administrative Regulation 500.49 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:

Director I, Human Resources

1300 Baker Street

Bakersfield, CA 93305

661-631-4663

johnstone@bcasd.com

Training

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours, and nonsupervisory employees receive at least one hour, of classroom or other effective interactive training and education regarding sexual harassment. All newly hired and employees promoted to a supervisory position shall receive training within six months of their assumption of the new position (Government Code Section 12950.1).

A supervisory employee is any employee having the authority, in the interest of the District, 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 (Government Code Section 12926).

Such training may be completed by employees individually or as part of a group presentation, may be completed in shorter segments as long as the applicable hourly requirement is met, and may be provided in conjunction with other training provided to the employees. The training shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation (Government Code Section 12950.1).

The District's sexual harassment training and education program shall include, but is not limited to, the following (Government Code Section 12950.1; Title 2, California Code of Regulations, Section 11024):

1. Information and practical guidance regarding federal and state laws on the prohibition, prevention, and correction of sexual harassment.
2. Remedies available to sexual harassment victims in civil actions, and potential District and/or individual exposure and/or liability.
3. The types of conduct that constitute sexual harassment.
4. Practical examples which illustrate sexual harassment, discrimination, and retaliation using training modalities such as role plays, case studies, and group discussions, based on factual scenarios taken from case law, news and media accounts, and hypotheticals based on workplace situations and other sources.
5. A supervisor's obligation to report sexual harassment, discrimination, and retaliation of which they become aware.
6. What to do if the supervisor is personally accused of harassment.
7. Resources for victims of harassment, such as to whom they should report any alleged harassment.
8. Strategies for preventing harassment, discrimination, and retaliation in the workplace.
9. Steps necessary to take appropriate remedial measures to correct harassing behavior, which includes the District's obligation to conduct an effective workplace investigation of a harassment complaint.

10. The essential elements of the District's anti-harassment policies and how to use the policy if a harassment complaint is filed.
11. The limited confidentiality of the complaint process.
12. A copy of the District's sexual harassment policy and administrative regulation, which each participant shall acknowledge in writing that they have received.
13. Prevention of abusive conduct, including a review of the definition and elements of abusive conduct pursuant to Government Code 12950.1, the negative effects that abusive conduct has on the victim and other in the workplace, the detrimental consequences of this conduct on employee productivity and morale, and that a single act does not constitute abusive conduct unless the act is severe or egregious.
14. Practical examples of harassment based on gender identity, gender expression, and sexual orientation.

The Superintendent or designee 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 (Title 2, California Code of Regulations, Section 11024).

Notifications

The Superintendent or designee shall notify employees that the District does not discriminate on the basis of sex as required by Title IX, that the Title IX nondiscrimination requirement extends to employment, and that inquiries about the application of Title IX to the District may be referred to the District's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education (Title 34, Code of Federal Regulations Section 106.8).

The District shall notify employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the District's Title IX Coordinator (Title 34, Code of Federal Regulations, Section 106.8).

A copy of the Board policy and this Administrative regulation shall:

1. Be displayed in a prominent location in the main administrative building, District office, or other area of the school, or District facilities, where notices of District rules, regulations, procedures and standards of conduct are posted (Education Code Section 231.5);
2. Be provided to every District employee at the beginning of the first quarter or semester of the school year, or whenever a new employee is hired (Education Code Section 231.5);
3. 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 Section 231.5);
4. Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the District's web site (Title 34, Code of Federal Regulations Section 106.8);
5. Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to employees or employee organizations (Title 34, Code of Federal Regulations Section 106.8).

All employees shall receive either a copy of information sheets prepared by the California Department of Fair Employment and Housing (DFEH) or a copy of District information sheets that contain, at a minimum, components on (Government Code Section 12950):

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 District's 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 the EEOC; and
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 the EEOC.

In addition, the District 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 (Government Code Section 12950).

Complaint Procedures

All complaints and allegations of sexual harassment by and against employees shall be investigated and resolved in accordance with law and District procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with Administrative Regulation 500.27 – Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to Administrative Regulation 500.49 – Nondiscrimination in Employment.

If sexual harassment is found following an investigation, the Title IX Coordinator, or designee in consultation with the Coordinator, shall take prompt action to stop the sexual harassment, prevent recurrence, and address any continuing effects.

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