

CUTTEN ELEMENTARY SCHOOL DISTRICT  
**BOARD OF TRUSTEES**  
**SPECIAL BOARD MEETING AGENDA**

**August 17, 2020 5:00 pm**

Join Zoom Meeting

<https://zoom.us/j/93605229830?pwd=S05RQ1ZjNnNhbGsrZGQvelo5dUVTdz09>

Meeting ID: 936 0522 9830

Passcode: 955028

Join by telephone: +1 669 900 6833

**1.0 CALL TO ORDER**

**2.0 PUBLIC COMMENT ON CLOSED SESSION ITEM**

The Board reserves the right to limit speakers to three minutes only. The Board may comment, but cannot take action at this time. The Board President may refer the matter to the Superintendent for review, if appropriate.

**3.0 CLOSED SESSION**

With respect to every item of business to be discussed in closed session:

- 3.1 *Conference with Legal Counsel – Pending Litigation (GC § 54956.9(b)(3)(A))*  
*Facts and circumstances that might result in litigation*

**4.0 RECONVENE TO OPEN SESSION**

**5.0 REPORT OUT FROM CLOSED SESSION**

**6.0 INFORMATION/POSSIBLE ACTION ITEMS**

- 6.1 Consider revision of Board Policy and Administrative Guide 5145.7 Sexual Harassment

**7.0 ADJOURNMENT**

NOTICE: Any writing, not exempt from public disclosure under Government Code Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22, which is distributed to all or a majority of the members of the governing board by any person in connection with a matter subject to discussion or consideration at an open meeting of the board is available for public inspection at Ridgewood School, 2060 Ridgewood Drive, Eureka.

**Students**

**AG 5145.7**

**SEXUAL HARASSMENT**

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 and California Education Code § 234.1, as well as to investigate and resolve sexual harassment complaints. The coordinator/compliance officer(s) may be contacted at:

Superintendent  
4182 Walnut Drive  
Eureka, CA 95503  
707-441-3930

Title IX of the Education Amendments Act of 1972 defines *sexual harassment* as conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual'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 recipient's education program or activity; or
- (3) Sexual assault, dating violence, domestic violence or stalking.

The term "sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. (20 U.S.C. 1092(f)(6)(A)(v))

The term "sex offense" means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

There are four types of sex offenses:

- 1. Rape: the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- 2. Fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- 3. Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- 4. Statutory Rape: sexual intercourse with a person who is under your state's statutory age of consent (18).

The term "dating violence" means violence committed by a person:

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1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - a. The length of the relationship.
  - b. The type of relationship.
  - c. The frequency of interaction between the persons involved in the relationship.  
(34 U.S.C. 12291(a)(10))

The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction. (34 U.S.C. 12291(a)(8))

The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for his or her safety or the safety of others; or
2. Suffer substantial emotional distress. (34 U.S.C. 12291(a)(30))

Pursuant to California Education Code, 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 educational setting, under any of the following conditions (Education Code § 212.5; 5 CCR 4916):

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

(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)

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Examples of types of conduct which are prohibited in the district and which may constitute sexual harassment include, but are not limited to:

1. Unwelcome leering, sexual flirtations, or propositions;
2. Unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments, or sexually degrading descriptions;
3. Graphic verbal comments about an individual's body or overly personal conversation;
4. Sexual jokes, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures, or computer-generated images of a sexual nature;
5. Spreading sexual rumors;
6. Teasing or sexual remarks about students enrolled in a predominantly single-sex class;
7. Massaging, grabbing, fondling, stroking, or brushing the body;
8. Touching an individual's body or clothes in a sexual way;
9. Impeding or blocking movements or any physical interference with school activities when directed at an individual on the basis of sex;
10. Displaying sexually suggestive objects;
11. Sexual assault, sexual battery, or sexual coercion; and
12. Electronic communications containing comments, words, or images described above.

Prohibited sexual harassment may also include any act of retaliation against an individual who reports a violation of the district's sexual harassment policy or who participates in the investigation of a sexual harassment complaint.

A school district with **actual knowledge** of sexual harassment in an **education program or activity** of the recipient must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

**Actual knowledge** means **notice** of sexual harassment or allegations of sexual harassment to any employee of an elementary and secondary school.

**Notice** results whenever any elementary and secondary school employee witnesses sexual harassment; hears about sexual harassment or sexual harassment allegations from a complainant (i.e., a person alleged to be the victim) or a third party (e.g., the AG 5145.7

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complainant's parent, friend, or peer); receives a written or verbal complaint about sexual harassment or sexual harassment allegations; or by any other means.

***Education program or activity*** includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

### Reporting Process

Any student who believes that he/she has been subjected to sexual harassment by another student, an employee, or a third party or who has witnessed sexual harassment is strongly encouraged to report the incident to his/her teacher, the principal, or any other available school employee. Within one school day of receiving such a report, the school employee shall forward the report to the principal or the district's Title IX Coordinator. In addition, any school employee who observes an incident of sexual harassment involving a student shall, within one school day, report his/her observation to the principal or Title IX Coordinator. The employee shall take these actions, whether or not the alleged victim files a complaint. If the employee submits a report of sexual harassment to the principal, the principal shall forward the report to the Title IX Coordinator within two school days.

Any person may trigger a recipient's response obligations by reporting sexual harassment to the Title IX Coordinator using contact information provided by the district, which must be available on the district's website. The person who reports does not need to be the complainant; a report may be made by "any person" who believes that sexual harassment may have occurred and requires a recipient's response.

### Supportive Measures

When the Title IX Coordinator receives a verbal or informal report of sexual harassment, the Title IX Coordinator must promptly do the following:

1. Contact the complainant to discuss the availability of supportive measures;
2. Consider the complainant's wishes with respect to supportive measures;
3. Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
4. Explain to the complainant the process for filing a formal complaint.

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and

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other similar measures. The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

### Filing a Formal Complaint

Any student who believes that he/she has been subjected to sexual harassment/sex discrimination by another student, an employee, or a third party may file a written formal complaint with the Title IX Coordinator in person, by mail, or by electronic mail.

The complaint shall be initiated no later than six months from the date that the alleged unlawful sexual harassment/sex discrimination occurred, or six months from the date that the complainant first obtained knowledge of the facts of the alleged unlawful sex harassment/sex discrimination. The time for filing may be extended for up to 90 days by the Superintendent or designee for good cause upon written request by the complainant setting forth the reasons for the extension. (5 CCR 4630)

A formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

If a complaint of sexual harassment is initially submitted to the principal, he/she shall, within two (2) school days, forward the report to the compliance officer to initiate investigation of the complaint.

In any case of sexual harassment involving the compliance officer, the complaint may instead be submitted to the Superintendent or designee who shall determine who will investigate the complaint.

(cf. 5141.4 - Child Abuse Prevention and Reporting)

### Consolidation of Formal Complaints

The district may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

### Dismissal of a Formal Complaint

The district must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this regulation even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; AG 5145.7

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such a dismissal does not preclude action under another provision of the district's code of conduct.

The district may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Upon dismissal of a formal complaint, the district must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

### Notice of Allegations

Upon receipt of a formal complaint, a recipient must provide the following information through written notice to the parties who are known:

1. Notice of the district's grievance process that complies with this section, including any informal resolution process.
2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.

The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence obtained during the investigation.

The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice, the recipient must provide notice of the additional allegations to the parties whose identities are known.

### Informal Resolution Process

The district may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment. Similarly, the district may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.

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However, at any time prior to reaching a determination regarding responsibility the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient :

1. Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
2. Obtains the parties' voluntary, written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

### Emergency removal

The district may remove a respondent from the district's education program or activity on an emergency basis, provided that the district undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

### Administrative leave

The district may place a non-student employee respondent on administrative leave during the pendency of the grievance process. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

### Grievance Process: Investigation of a Formal Complaint

Within 10 business days after the Title IX Coordinator receives the complaint, the Title IX Coordinator shall begin an investigation into the formal complaint. As necessary, additional staff or legal counsel may conduct or support the investigation.

Any individual designated by the district as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

Within five (5) business days of initiating the investigation, the Title IX Coordinator shall provide the complainant and respondent with the opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence any  
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evidence, or information leading to evidence. Such evidence or information may be presented at any time during the investigation.

In conducting the investigation, the Title IX Coordinator shall collect all available documents and review all available records, notes, or statements related to the complaint, including any additional evidence or information received from the parties during the course of the investigation. The Title IX Coordinator shall individually interview all available witnesses with information pertinent to the complaint, and may visit any reasonably accessible location where the relevant actions are alleged to have taken place. At appropriate intervals, the Title IX Coordinator shall inform both parties of the status of the investigation.

The district will conduct an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness.

The district shall have the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility. Furthermore, the district cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the district obtains that party’s voluntary, written consent to do so for a grievance process under this section (if a party is not an “eligible student,” as defined in 34 CFR § 99.3, then the recipient must obtain the voluntary, written consent of a “parent,” as defined in 34 CFR § 99.3).

The Title IX Coordinator shall interview the complainant, respondent, and other relevant witnesses privately, separately, and in a confidential manner. The district shall provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. The complainant and respondent shall be entitled to have an advisor of their choice, who may be, but is not required to be, an attorney to accompany them to any related meeting or interview. However, the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

The district will presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

A complainant's refusal to provide the district's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or engagement in any other obstruction of the investigation may result in the dismissal of the complaint because of a lack of evidence to support the allegation. Similarly, a respondent's refusal to provide the district's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or engagement in any other obstruction of the investigation may result in

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a finding, based on evidence collected, that a violation has occurred and in the imposition of a remedy in favor of the complainant. (5 CCR 4631)

In accordance with law, the district shall provide the investigator with access to records and other information related to the allegation in the complaint and shall not in any way obstruct the investigation. Failure or refusal of the district to cooperate in the investigation may result in a finding based on evidence collected that a violation has occurred and in the imposition of a remedy in favor of the complainant. (5 CCR 4631)

The district shall provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

Prior to completion of the investigative report, the district shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties shall have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

The district shall create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

### Grievance Process: Determination Regarding Responsibility

After the recipient has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the district must apply the standard of evidence that it applies to all formal complaints of sexual harassment – clear and convincing evidence.

The written determination must include the following elements:

1. Identification of the allegations potentially constituting sexual harassment;

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2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination. In reaching a factual determination, the following factors may be taken into account:
  - a. Statements made by any witnesses
  - b. The relative credibility of the individuals involved
  - c. How the complaining individual reacted to the incident
  - d. Any documentary or other evidence relating to the alleged conduct
  - e. Past instances of similar conduct by any alleged offenders
  - f. Past false allegations made by the complainant
4. Conclusions regarding the application of the recipient's code of conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and permissible bases for the complainant and respondent to appeal.

The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The determination of whether a hostile environment exists may involve consideration of the following:

1. The manner in which the misconduct affected one or more students' education
2. The type, frequency, and duration of the misconduct
3. The relationship between the alleged victim(s) and offender(s)
4. The number of persons engaged in the conduct and at whom the conduct was directed
5. The size of the school, location of the incidents, and context in which they occurred
6. Other incidents at the school involving different individuals

### Timeline for Determination Regarding Responsibility

Unless extended by written agreement with the complainant, the compliance officer shall prepare and send to the complainant a written Determination Regarding Responsibility, as described in the section above entitled "Determination Regarding Responsibility," within 60 calendar days of the district's receipt of the complaint. (5 CCR 4631)

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The respondent shall be informed of any extension of the timeline agreed to by the complainant.

### Corrective Actions

The district will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Remedies must be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

The Title IX Coordinator is responsible for effective implementation of any remedies.

After a Determination Regarding Responsibility has been made, the Title IX Coordinator shall adopt any appropriate corrective action permitted by law. Appropriate corrective actions that focus on the larger school or district environment may include, but are not limited to, actions to reinforce district policies; training for faculty, staff, and students; updates to school policies; or school climate surveys.

Appropriate remedies that may be offered to the Complainant but not communicated to the respondent may include, but are not limited to, the following:

1. Counseling  
(cf. 6164.2 - Guidance/Counseling Services)
2. Academic support
3. Health services
4. Assignment of an escort to allow the victim to move safely about campus
5. Information regarding available resources and how to report similar incidents or retaliation
6. Separation of the victim from any other individuals involved, provided the separation does not penalize the victim
7. Restorative justice
8. Follow-up inquiries to ensure that the conduct has stopped and there has been no retaliation

Appropriate corrective actions that focus on a respondent may include, but are not limited to, the following:

1. Transfer from a class or school as permitted by law
2. Parent/guardian conference
3. Education regarding the impact of the conduct on others
4. Positive behavior support
5. Referral to a student success team

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- (cf. 6164.5 - Student Success Teams)
6. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law  
(cf. 6145 - Extracurricular and Cocurricular Activities)
  7. Disciplinary action, such as suspension or expulsion, as permitted by law  
(cf. 5144 - Discipline)  
(cf. 5144.1 - Suspension and Expulsion/Due Process)

In consultation with district legal counsel, the district may notify the complainant of any sanction imposed upon the respondent that directly relates to the complainant.

When an employee is found to have committed retaliation or sexual harassment/sex discrimination, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

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

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

The district may also consider training and other interventions for the larger school community to ensure that students, staff, and parents/guardians understand the types of behavior that constitute unlawful sexual harassment/sex discrimination, that the district does not tolerate it, and how to report and respond to it.

### Appeal

Any complainant or respondent who is dissatisfied with the district's written Determination Regarding Responsibility or with the district's dismissal of a formal complaint or any allegations therein may file an appeal in writing with the Governing Board within 15 calendar days of receiving the district's decision on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

As to all appeals, the district must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

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3. Ensure that the decision-maker(s) for the appeal is unbiased and meets the training requirements under Title IX;
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

### Appeals to the California Department of Education

Any complainant or respondent who is dissatisfied with the district's written Determination Regarding Responsibility may file an appeal in writing with CDE within 15 calendar days of receiving the district's decision. (5 CCR [4632](#))

The party shall specify the basis for the appeal of the decision and how the facts of the district's decision are incorrect and/or the law has been misapplied. The appeal shall be sent to CDE with a copy of the original locally filed complaint and a copy of the district's decision in that complaint. (5 CCR [4632](#))

Upon notification by CDE that the district's decision has been appealed, the Superintendent or designee shall forward the following documents to CDE (5 CCR [4633](#)):

1. A copy of the original complaint;
2. A copy of the written decision;
3. A summary of the nature and extent of the investigation conducted by the district, if not covered by the decision;
4. A copy of the investigation file including, but not limited to, all notes, interviews, and documents submitted by the parties and gathered by the investigator;
5. A report of any action taken to resolve the complaint;
6. A copy of the district's UCP; and
7. Other relevant information requested by CDE.

### Confidentiality

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)

However, a complainant may not file a formal complaint with the Title IX Coordinator anonymously. If a complainant chooses not to ultimately file a formal complaint under the grievance process, the Title IX Coordinator will take into account the wishes of a complainant and will only initiate a grievance process against the complainant's wishes if doing so is not clearly unreasonable in light of the known circumstances.

However, each party may discuss the allegations under investigation with other individuals in order to gather and present relevant evidence.

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However, when a complainant or victim of sexual harassment notifies the district of the harassment but requests confidentiality, the compliance officer shall inform him/her that the request may limit the district's ability to investigate the harassment or take other necessary action. When honoring a request for confidentiality, the district will nevertheless take all reasonable steps to investigate and respond to the complaint consistent with the request.

When a complainant of sexual harassment notifies the district of the harassment but requests that the district not pursue an investigation, the district will determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students.

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

(cf. 5125 - Student Records)

### Notifications

A copy of the district's sexual harassment policy and regulation shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code § 48980; 5 CCR 4917)

(cf. 5145.6 - Parental Notifications)

2. Be displayed in a prominent location in the main administrative building or other area where notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code § 231.5)

A copy of the district's sexual harassment policy and regulation shall be posted on district and school web sites and, when available, on district-supported social media.

(cf. 1113 - District and School Web Sites)

(cf. 1114 - District-Sponsored Social Media)

3. Be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session (Education Code § 231.5)
4. 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 § 231.5)
5. Be included in the student handbook
6. Be provided to employees and employee organizations

[DATE OF REVISION]

**SEXUAL HARASSMENT**

The Governing Board is committed to maintaining 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 targeted at any student by anyone. The Board also prohibits retaliatory behavior or action against any person who reports, files a complaint or testifies about, or otherwise 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 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 the district Title IX Coordinator. Once notified, the principal or Title IX Coordinator 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. 6142.1 - 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 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;
2. A clear message that students do not have to endure sexual harassment under any circumstance;
3. Encouragement to report observed incidents of sexual harassment even where the alleged complainant of the harassment has not complained;
4. 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 every report of sexual harassment that involves a student shall trigger the district's response obligations, which involves discussing with the complainant the availability of supportive measures and the process for filing a formal complaint;
6. Information about the district's grievance process for investigating complaints and the person(s) to whom a report of sexual harassment should be made;



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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 a sexual harassment complaint continues; and
8. A clear message that, when needed, the district will provide supportive measures, which are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment.

### Complaint Process and Disciplinary Actions

Sexual harassment complaints by and against students shall be investigated and resolved in accordance with law and district procedures specified in AR 5145.7 Sexual Harassment. Principals are responsible for notifying students and parents/guardians that complaints of sexual harassment can be filed under AR 5145.7 and where to obtain a copy of the 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 circumstances of the incident(s) shall be taken into account.

(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 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)

### Record-Keeping

The District shall maintain for a period of seven (7) years records of –

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under Title IX, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The District must make these training materials publicly available on its website, or if the District does not maintain a website, the District must make these materials available upon request for inspection by members of the public.
- 5.

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(cf. 3580 - District Records)

### 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

4600-4670 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

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

Q&A on Campus Sexual Misconduct, September 2017

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

Dear Colleague Letter: Title IX Coordinators, April 2015

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 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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