Information Sheet – 7/28/2022 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.2

FR: Celli Coeville

DATE: July 23, 2022

RE: Revised Board Policy/Administrative Regulation, BP/AR 5145.7, Sexual Harassment, Consider for Adoption

Board Policy/Administrative Regulation, BP/AR 5145.7, Sexual Harassment have been updated to reflect current CSBA policies. The changes have been highlighted and indicated in red font.

Recommended Action: Approve the revised BP/AR 5145.7, Sexual Harassment

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.

~~*(cf. 0410 - Nondiscrimination in District Programs and Activities)*~~
~~*(cf. 5131 - Conduct)*~~
~~*(cf. 5131.2 - Bullying)*~~
~~*(cf. 5137 - Positive School Climate)*~~
~~*(cf. 5145.3 - Nondiscrimination/Harassment)*~~

The district strongly encourages students who feel that they are being or have been sexually harassed on school grounds or at a school-sponsored or school-related activity by another student or an adult, or who have experienced off-campus sexual harassment that has a continuing effect on campus, to immediately contact their teacher, the principal, the district's Title IX Coordinator, or any other available school employee. Any employee who receives a report or observes an incident of sexual harassment shall notify the Title IX Coordinator.

Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through AR 5145.71 – Title IX Sexual Harassment complaint procedures or BP/AR 1312.3 –or uniform complaint procedures, as applicable~~, and shall offer supportive measures to the complainant~~. 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 AR 5145.7 concurrently meets the requirements of BP/AR 1312.3

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

~~*(cf. 1312.1 - Complaints Concerning District Employees)*~~
~~*(cf. 1312.3 - Uniform Complaint Procedures)*~~
~~*(cf. 5141.4 - Child Abuse Prevention and Reporting)*~~
~~*(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)*~~

The Superintendent or designee shall inform students and parents/guardians of the district's sexual harassment policy by disseminating it through parent/guardian notifications, publishing it on the district's web site, and including it in student and staff handbooks. All district staff shall be trained regarding the 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~~ when the alleged victim 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, 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 action shall be taken to respond to harassment, prevent recurrence, and address any continuing effect on students

6. Information about the district's procedures 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 a sexual harassment complaint continues

8. A clear message that, when needed, the district will implement supportive 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

Disciplinary Actions

Upon completion of an investigation of a sexual harassment complaint, any student found to have engaged in sexual harassment or sexual violence 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 be subject to disciplinary action,

up to and including dismissal, 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. 4119.11/4219.11/4319.11 - Sexual Harassment)*~~
~~*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*~~

Record-Keeping

In accordance with law, 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 district schools.

~~*(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
48985 Notices, report, statements and records in primary language
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
1092 Definition of sexual assault
1221 Application of laws
1232g Family Educational Rights and Privacy Act
1681-1688 Title IX of the Education Amendments of 1972
UNITED STATES CODE, TITLE 34
12291 Definition of dating violence, domestic violence, and stalking
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
106.1-106.82 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, (2000, 9th Cir.) 208 F.3d 736
Davis v. Monroe County Board of Education, (1999) 526 U.S. 629

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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

Legal Reference (continued):

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

SEXUAL HARASSMENT

~~Title IX Coordinator~~

~~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, as well as to investigate and resolve sexual harassment complaints under AR 1312.3 - Uniform Complaint Procedures. The Title IX Coordinator may be contacted at:~~

~~Director of Human Resources~~
~~1219 Whispering Wind Drive~~
~~Tracy, CA 95377~~
~~(209) 836-3388~~
~~ncastro@jsdtracy.com~~

~~*(cf. 1312.3 - Uniform Complaint Procedures)*~~
~~*(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)*~~

~~The district shall notify students, parents/guardians, 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. (34 CFR 106.8)~~

~~**Prohibited Conduct**~~ **Definitions**

~~Prohibited~~ ~~sexual~~ 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.

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sexual harassment in violation of district policy if it has a continuing effect on or creates a hostile school environment for the complainant or victim of the conduct.

SEXUAL HARASSMENT (continued)

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: (34 CFR 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 student equal access to the district's education program or activity

3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

~~*(cf. 5131 - Conduct)*~~
~~*(cf. 5131.2 - Bullying)*~~
~~*(cf. 5145.3 - Nondiscrimination/Harassment)*~~
~~*(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)*~~

Examples of Sexual Harassment

Examples of types of conduct which are prohibited in the district and which may constitute sexual harassment under state and/or federal law, in accordance with the definitions above, 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

SEXUAL HARASSMENT (continued)

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

12. Electronic communications containing comments, words, or images described above

~~Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sexual harassment in violation of district policy if it has a continuing effect on or creates a hostile school environment for the complainant or victim of the conduct.~~

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 AR 5145.71 - Title IX Sexual Harassment Complaint Procedures, as well as to oversee investigate, and/or resolve sexual harassment complaints processed under AR 1312.3 - Uniform Complaint Procedures. The Title IX Coordinator(s) may be contacted at:

Director of Human Resources
1219 Whispering Wind Drive
Tracy, CA 95377
(209) 836-3388
estroup@jsdtracy.com

Notifications

The Superintendent or designee shall notify students and parents/guardians that the district does not discriminate on the basis of sex as required by Title IX 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. (34 CFR 106.8)

The district shall notify students and parents/guardians of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

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

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notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code 231.5)

3. Be summarized on a poster which shall be prominently and conspicuously displayed in each bathroom and locker room at each school. The poster may be displayed in public areas that are accessible to and frequented by students, including, but not limited to, classrooms, hallways, gymnasiums, auditoriums, and cafeterias. The poster shall display the rules and procedures for reporting a charge of sexual harassment; the name, phone number, and email address of an appropriate school employee to contact to report a charge of sexual harassment; the rights of the reporting student, the complainant, and the respondent; and the responsibilities of the school. (Education Code 231.6)

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 in a manner that is easily accessible to parents/guardians and students. ~~This shall include the name or title, office address, email address, and telephone number of the employee(s) designated as the district's Title IX Coordinator.~~ (Education Code 234.6; 34 CFR 106.8)

~~*(cf. 1113 - District and School Web Sites)*~~
~~*(cf. 1114 - District Sponsored Social Media)*~~

5. Be provided as part of any orientation program conducted for new and continuing students at the beginning of each quarter, semester, or summer session (Education Code 231.5)

6. 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)

7. Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to students, parents/guardians~~, employees, or employee organizations~~ (34 CFR 106.8)

The Superintendent or designee shall also post the definition of sex discrimination and harassment as described in Education Code 230, including the rights set forth in Education Code 221.8, in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6)

Reporting Complaints

A student or parent/guardian who believes that the student 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 a teacher, the principal, the district's Title IX Coordinator, or any other available school employee. Within one school day of receiving such a report, the principal or other school employee shall forward the report to the district's Title IX Coordinator. Any school employee who observes an incident of sexual

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harassment involving a student shall, within one school day, report the observation to the principal or Title IX Coordinator~~,~~ . The report shall be made regardless of whether the alleged victim files a formal complaint or requests confidentiality.

~~*(cf.5141.4 – Child Abuse Prevention and Reporting)*~~

When a report or complaint of sexual harassment involves off-campus conduct, the Title IX Coordinator shall assess whether the conduct may create or contribute to the creation of a hostile school environment. If the Title IX Coordinator determines that a hostile environment may be created, the complaint shall be investigated and resolved in the same manner as if the prohibited conduct occurred at school.

When a verbal or informal report of sexual harassment is submitted, Title IX Coordinator shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with applicable district complaint procedures.

Complaint Procedures

All complaints and allegations of sexual harassment by and against students 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 AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to BP/AR 1312.3 – Uniform Complaint Procedures.

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, implement remedies, and address any continuing effects.