



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item 10.1s

Meeting Date: October 18, 2018

Subject: Approve Board Policy (BP) 5145.7 Sexual Harassment Revisions

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Legal Services

Recommendation: Recommend for the Board to approve the revisions made to Board Policy (BP) 5145.7 Sexual Harassment.

Background/Rationale: The Governing Board is committed to maintaining a safe learning environment that is free from harassment and discrimination. Revisions to Board Policy (“BP”) 5145.7, Student Sexual Harassment, are designed to ensure the continuing compliance with state and federal law that will result in maintaining safe learning environments for all students of the District. In creating the proposed revised BP, District staff worked collaboratively with the community to make improvements. Improvements to the BP include clarification on what constitutes sexual harassment and the complaint investigation responsibilities of the District as well as improved trainings for staff and students on the subject.

Financial Considerations: None

LCAP Goal(s): Safe, Emotionally Healthy and Engaged Students

Documents Attached:

1. BP 5145.7 Red line version
2. BP 5145.7 Clean version

Estimated Time of Presentation: N/A

Submitted by: Raoul Bozio, In-House Counsel
Stephan Brown, Director II

Approved by: Jorge A. Aguilar, Superintendent

Sacramento City USD

Board Policy

Sexual Harassment

BP 5145.7

Students

The Governing Board is committed to maintaining a safe learning environment that is free of harassment and discrimination. The Board prohibits, at school or at school-sponsored or school-related activities, sexual harassment targeted at any student by any person. The Board also prohibits retaliatory behavior or action against any person who files a complaint or testifies about, or otherwise supports a complainant in alleging sexual harassment, the unlawful sexual harassment of any student by any employee, student, or other person at school or at any school-related activity.

The District strongly encourages any student who feels 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, including cyber harassment/on-line/social media activity and/or sexual violence, that has a continuing effect on campus, to immediately contact their teacher, the principal, or any other available school employee. Any district employee who receives a report or observes an incident of sexual harassment shall notify the principal, Site Designated Title IX Administrator or a District Title IX Compliance Officer. Once notified, the Site Designated Title IX Administrator or District Title IX Compliance Officer shall take the steps to promptly investigate and address the allegation, as specified in the accompanying administrative regulation. District and site personnel shall take immediate steps to intervene when safe to do so when she or he witnesses an act of discrimination, harassment, intimidation, retaliation, and/or bullying. While the district has promulgated a written complaint form, there is no requirement that the reporting student provide their complaint in writing in order for an investigation to occur.

(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)

Students shall be informed that they should immediately contact a staff member if they feel they are being harassed by a fellow student, or staff member, or other person. District and site staff shall promptly report complaints of sexual harassment to the Site Designated Title IX Administrator or the District Title IX Compliance Officer designated in AR 5145.7 and AR 1312.3. District and site staff shall similarly report any such incidents they may observe, even if

the harassed student has not complained.

The Superintendent through the District Title IX Compliance Officer shall take appropriate actions to reinforce the District's sexual harassment policy.

Prohibited sexual harassment includes, but is not limited to, sexual violence, unwelcome sexual advances, requests for sexual favors, and other 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 an individual's academic status or progress.
2. Submission to or rejection of the conduct by an individual is used as the basis for academic decisions affecting the individual.
3. The conduct has the purpose or effect of having a negative impact on the individual's academic performance, or of creating an intimidating, hostile or offensive educational environment. The conduct is sufficiently severe, persistent, pervasive or objectively offensive, so as to create a hostile or abusive educational or working environment or to limit the individual's ability to participate in or benefit from an education program or activity.
4. Submission to or rejection of the conduct by the individual 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)

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. 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 or 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 or gender identity or expression
10. Displaying sexually suggestive objects
11. Sexual assault, sexual battery, sexual violence, or sexual coercion
12. Electronic communications containing comments, words, or images described above

Any prohibited conduct that occurs off campus and 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.

Instruction/Information

The Superintendent ~~or designee~~ and District Title IX Compliance Officer shall ensure that students receive age-appropriate information related to sexual harassment. ~~Students shall be assured that they need not endure any form of sexual behavior or communication, including harassment because of sexual orientation. They shall further be assured that they need not endure, for any reason, any harassment which impairs the educational environment or a student's emotional well-being at school.~~ 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. That any and all students are encouraged to immediately report observed incidents of sexual harassment even where 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 of a uniform complaint, 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 a sexual harassment complaint is ongoing; and

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.

The District Title IX Compliance Officer shall receive training and shall oversee appropriate trainings for District staff, including management as well as certificated and non-certificated staff. Each Site Designated Title IX Administrator shall receive initial and on-going training, as appropriate, to carry out their duties.

- (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

Sexual harassment complaints by and against students shall be investigated and resolved in accordance with law, this policy, Administrative Regulation 5145.7, and the District's Uniform Complaint Procedures specified in BP and AR 1312.3. Principals and Site Designated Title IX Administrators are responsible for notifying students and parents/guardians that complaints of sexual harassment can be filed under BP/AR 1312.3, and where to obtain a copy of the procedures.

(cf. 1312.3 - Uniform Complaint Procedures)

The ~~principal or designee~~ Site Designated Title IX Administrator shall promptly investigate any report of the sexual harassment of a student pursuant to the processes outlined in AR 5145.7.

Upon verifying that sexual harassment occurred, they shall ensure that appropriate action is promptly taken to end the harassment, address its effects on the person subjected to the harassment, and prevent any further instances of the harassment. In addition, the student may file a formal complaint with the ~~Superintendent or designee~~District's Title IX Compliance Officer in accordance with the ~~district~~District's Uniform Complaint 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 appropriate disciplinary and/or other corrective action or interventions. For students in grades K-3, this disciplinary action shall depend on the maturity of the students and the circumstances involved. For students in grades 4 through 12, the 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. Students in grades K-3 may not be suspended or recommended for expulsion pursuant to Education Code 48900.2, however appropriate restorative discipline and/or other corrective actions will be provided based upon the totality of the circumstances involved.

(cf. 5144 – Discipline)

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

Upon investigation of a sexual harassment complaint, any employee who engages in, permits or fails to report sexual harassment or sexual violence toward any student shall be subject to appropriate disciplinary action up to and including dismissal in accordance with law and the applicable collective bargaining agreement. District personnel shall take immediate steps to intervene when safe to do so when she or he witnesses an act of discrimination, harassment, intimidation, retaliation, or bullying. In addition, criminal or civil charges may be brought against the alleged harasser; sexual harassment also may be considered a violation of laws relating to child abuse.

(cf. 4118 - Suspension/Disciplinary Action)

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

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

(cf. 5141.4 - Child Abuse Reporting Procedures)

(cf. 1312.3 - Uniform Complaint Procedures)

The ~~district~~District prohibits retaliatory behavior against any complainant or any participant in the complaint process. Information related to a complaint of sexual harassment shall be kept confidential to the extent possible, and individuals involved in the investigation of such a complaint shall not discuss related information outside the investigation process.

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

Record-Keeping

The District's Title IX Compliance Officer 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\

~~200-240 Prohibition of discrimination on the basis of sex, especially:~~

212.5 Sexual harassment

212.6 Sexual harassment policy

~~230 Particular practices prohibited~~

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

UNITED STATES CODE, TITLE 20

1681-1688 Title IX, 1972 Education Act Amendments

UNITED STATES CODE, TITLE 42

2000d & 2000e et seq. Title VI & Title VII, Civil Rights Act of 1964 as amended

Franklin v. Gwinnet County Schools—(1992) 112 S. Ct. 1028

Doe v. Petaluma City School ~~District~~District (1995, 9th Cir.) 54 F.3d 1447

Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567

Gebser v. Lago Vista Independent School District, (1998) 524 U.S. 274

~~Clyde K. v. Puyallup School District~~District #3 (1994) 35 F.3d 1396

Oona R.-S. etc. v. Santa Rosa City Schools et al (N.D. Cal. 1995) 890 F.Supp. 1452

Patricia H. v. Berkeley Unified School ~~District~~District (N.D. Cal. 1993) 830 F.Supp. 1288

~~Rosa H. v. San Elizario Ind. School District~~District, 887 F. Supp. 140, 143—(W.D. Tex. 1995)

Davis v. Monroe County Board of Education (1999) 526 U.S. 629(1996, 11th Cir.) 74 F.3d 1186

~~Kelson v. City of Springfield, Oregon (1985, 9th Cir.) 767 F.2d 651~~

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>

Policy SACRAMENTO CITY UNIFIED SCHOOL ~~DISTRICT~~DISTRICT

adopted: November 16, 1998 Sacramento, California

revised: April 15, 2002

revised: 2018

Sacramento City USD

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revised: April 15, 2002

revised: 2018