

REGULATION 4119.11, 4219.11, 4319.11: Sexual Harassment Comparison Chart

Section: Personnel

SUMMARY OF UPDATE

Regulation updated to add section on "Definitions," including the federal definition of sexual harassment for purposes of applying the Title IX complaint procedures. Section identifying the Title IX Coordinator(s) moved and revised to reference CSBA's AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Section on "Notifications" adds federal requirement to disseminate the district's sexual harassment policy and procedures, along with the name and contact information of the Title IX Coordinator, by posting them in a prominent location on the district's web site and including them in any handbook provided to employees or employee organizations. New section on "Complaint Procedures" references the applicable procedures and the responsibility of the district to take prompt action to stop the sexual harassment, prevent recurrence, and address any continuing effects.

CSBA NOTE: The following administrative regulation is mandated pursuant to Education Code 231.5 and includes reasonable steps for preventing the occurrence of discrimination and harassment as required pursuant to Government Code 12940 (California Fair Employment and Housing Act). The focus of this administrative regulation is on sexual harassment by and of employees. Pursuant to Government Code 12940 and 2 CCR 11009, interns, volunteers, and job applicants are entitled to the same protection against sexual harassment as applicable to employees.

For information related to sexual harassment involving students, see BP/AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

PARA	Section	Sub-Section	November 10, 2020 CURRENT VERSION	October 2020 REVISED VERSION	CSBA MODIFICATIONS and/or NOTES
1			Districts are also cautioned that the federal regulations preempt any conflicting state law or regulations, but the interaction between federal and state law is not always clear. Districts should consult legal counsel if questions arise.	Delete	
2			The following 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.	The following 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.	

			<u>Definitions</u>	New section added
			<p>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:</p>	<p>New paragraph and sub-sections</p> <p>CSBA NOTE: Alleged conduct that meets the federal definition of sexual harassment in 34 CFR 106.30, as added by 85 Fed. Reg. 30026, requires investigation and resolution through Title IX regulations; see AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Pursuant to 34 CFR 106.30, sexual harassment includes (1) a district employee conditioning the provision of a district aid, benefit, or service 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 district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291.</p> <p>Education Code 212.5 defines sexual harassment as any unwelcome sexual advance, request for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone in the educational setting. Conduct that does not meet the definition of sexual harassment in 34 CFR 106.30 shall be investigated and resolved in accordance with AR 4030 - Nondiscrimination in Employment.</p> <p>In <i>Oncale v. Sundowner Offshore Services, Inc.</i>, the U.S. Supreme Court held that same-</p>

					sex sexual harassment could be actionable under Title VII of the Civil Rights Act of 1964.
				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.	
				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:	New paragraph and sub-sections
				1. A district employee conditioning the provision of a district aid, benefit, or service on the person'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 20 USC 1092 or 34 USC 12291	
			Examples of Sexual Harassment	New section added
			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:	New paragraph and sub-sections CSBA NOTE: Pursuant to Government Code 12940, the district may be held liable for sexual harassment committed against employees by clients, customers, or other third parties if the district knew, or should have known, of the harassment and failed to take immediate and appropriate corrective action to stop the harassment. The following paragraph clarifies that sexual harassment may include acts by supervisors, co-workers, or other parties and should be modified to reflect district practice.
			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	
		<u>Title IX Coordinator</u>	<u>Title IX Coordinator/Compliance Officer</u>	
1		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 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:	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 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures, as well as to oversee, investigate, and resolve sexual harassment complaints processed under AR 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:	CSBA NOTE: Pursuant to 34 CFR 106.8, districts that receive federal financial assistance are mandated to designate an employee to ensure district compliance with Title IX of the Education Amendments of 1972 and its implementing regulations. The following paragraph specifies that the Title IX Coordinator will be the same person(s) designated to serve as the coordinator for nondiscrimination in employment pursuant to AR 4030 - Nondiscrimination in Employment. Districts may modify this policy to designate separate district employees to serve these functions.
2		Asst. Supt, Administrative Services Silver Valley Unified School District P.O. Box 847 Yermo, CA 92398 760-254-2916	Jeff Youskievicz, Asst. Supt., Education Services Marc Lacey, Asst. Supt., Administrative Services P.O. Box 847 Yermo, CA 92398 760-254-2916	
3		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.	Delete	
		<u>Prohibited Conduct</u>	Delete	
1		Prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances,	Delete	

		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:		
	1	Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment.	Delete	
	2	Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual.	Delete	
	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.	Delete	
	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.	Delete	
2		Examples of actions that might constitute sexual harassment in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, include, but are not limited to:	Delete	
	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;	Delete	

		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 e-mails; displaying sexually suggestive objects.	Delete	
	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.	Delete	
		Training	No changes	
1		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 employees and employees promoted to a supervisory position shall receive training within six months of their assumption of the new position.	No changes	<p>CSBA NOTE: Government Code 12950.1, as amended by SB 778 (Ch. 215, Statutes of 2019), requires districts with five or more employees to provide sexual harassment training and education to supervisory and nonsupervisory employees by January 1, 2021 (or two years after a training provided in 2019) and once every two years thereafter. As amended, Government Code 12950.1 requires that new nonsupervisory employees be provided the training within six months of hire, consistent with the requirement for all newly hired supervisors or employees promoted to a supervisory position. Compliance with this law does not insulate the district from any liability for harassment.</p> <p>Governing Board members, as elected officials, are not usually considered "supervisors"; however, since Board members</p>

				have the authority to hire, reward, or discipline the Superintendent and other employees, Board members may also be required to receive sexual harassment training. Districts should consult with legal counsel to ensure that the appropriate individuals receive training.
2		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 to 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.	No changes	
3		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.	No changes	
4		The district's sexual harassment training and education program shall include, but is not limited to, the following:	No changes	
	1	Information and practical guidance regarding federal and state laws concerning the prohibition, prevention, and correction of sexual harassment	No changes	

2	The types of conduct that constitute sexual harassment	No changes	
3	Remedies available for victims in civil actions, and potential employer/individual exposure/liability	No changes	
4	Strategies to prevent harassment in the workplace	No changes	
5	Supervisors' obligation to report sexual harassment, discrimination, and retaliation of which they become aware	No changes	
6	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	No changes	
7	The limited confidentiality of the complaint process	No changes	
8	Resources for victims of unlawful harassment, such as to whom they should report any alleged harassment	No changes	
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	No changes	
10	What to do if the supervisor is personally accused of harassment	No changes	
11 (1)	The essential elements of the district's anti-harassment policy, and how to use the policy if a harassment complaint is filed	No changes	

11 (2)	Employees shall receive a copy of the district's sexual harassment policy and administrative regulations, which they shall read and acknowledge that they have received.	No changes	
12	Information, including practical examples, of harassment based on gender identity, gender expression, and sexual orientation	No changes	
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	No changes	
5	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.	No changes	
	<u>Notifications</u>	No changes	
1	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	No changes	

		Secretary for Civil Rights, U.S. Department of Education.		
			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.	New paragraph
2		A copy of the Board policy and this administrative regulation shall:	No changes	
	1	Be displayed in a prominent location in the main administrative building, district office, or other area of the school where notices of district rules, regulations, procedures, and standards of conduct are posted	No changes	
	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	No changes	
	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	No changes	
			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	New sub-section 4 and 5
			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	
3		All employees shall receive a copy of an information sheet prepared by the California	No changes	CSBA NOTE: Government Code 12950 requires the Department of Fair Employment and

		Department of Fair Employment and Housing (DFEH) or the district that contains, at a minimum, components on:		Housing (DFEH) to develop an information sheet on employment discrimination and the illegality of sexual harassment and a poster regarding the rights of transgender employees. These documents are available on DFEH's web site.
	1	The illegality of sexual harassment	No changes	
	2	The definition of sexual harassment under applicable state and federal law	No changes	
	3	A description of sexual harassment, with examples	No changes	
	4	The district's complaint process available to the employee	No changes	
	5	The legal remedies and complaint process available through DFEH and the Equal Employment Opportunity Commission (EEOC)	No changes	
	6	Directions on how to contact DFEH and the EEOC	No changes	
	7	The protection against retaliation provided by 2 CCR 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	No changes	
4		In addition, the district shall post, in a prominent and accessible location, DFEH poster on discrimination in employment and the illegality of sexual harassment and the DFEH poster regarding transgender rights.	No changes	
			<u>Complaint Procedures</u>	New section added

			<p>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 AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to AR 4030 - Nondiscrimination in Employment.</p>	
			<p>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.</p>	