



TITLE: Sexual Harassment Policy
(Employee-To-Employee)

NUMBER: BUL-1893.1

ISSUER: Kevin S. Reed, General Counsel
Office of the General Counsel

DATE: August 1, 2005

ROUTING
Principals
Administrators
All Employees

POLICY: The Los Angeles Unified School District is committed to maintaining a working and learning environment that is free from sexual harassment. Sexual harassment of or by employees, students, or persons doing business for the District, is a form of sex discrimination in that it constitutes differential treatment on the basis of sex, or actual or perceived sexual orientation or gender. As such, it is a violation of state and federal laws and a violation of this policy.

The District considers sexual harassment to be a major offense, which can result in disciplinary action to the offending employee including but not limited to termination.

Any employee of the District who believes that she or he has been a target of sexual harassment shall bring the problem to the attention of the site administrator or designee so that appropriate action may be taken to resolve the problem. Complaints will be promptly investigated in a way that respects the privacy of the parties concerned. The District prohibits retaliatory behavior against anyone who files a sexual harassment complaint or any participant in the complaint investigation process.

MAJOR CHANGES: This bulletin replaces BUL-1893.0. This revision contains updated information regarding the related resources listed. This revision also reflects current state and federal requirements and provides guidance and procedures for investigating employee to employee complaints of sexual harassment.

GUIDELINES: The following guidelines apply.

Definitions: California Education Code Section 212.5 and Title 5 of the California Code of Regulations, Section 4916, define sexual harassment as unwelcome sexual advances, requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature made by someone from or in the work or educational setting, whether it occurs between individuals of the same sex or individuals of opposite sexes, under any of the following conditions:



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- Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
- Submission to, or rejection of, the conduct by an individual is used as the basis of employment or academic decisions affecting the individual.
- The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment (also known as "hostile environment").
- Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

Pursuant to Title 5, California Code of Regulations, Section 4910(k) "Gender," Section 4910(v) "Sex," and Section 4910(w) "Sexual orientation," are defined as follows:

- Gender shall mean a person's actual sex or perceived sex and includes a person's perceived identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with a person's sex at birth.
- Sex shall mean the biological condition or quality of being a female or male human being.
- Sexual orientation shall mean actual or perceived heterosexuality, homosexuality, or bisexuality.

Examples of Conduct Which May Result in Sexual Harassment: Sexual harassment may include, but is not necessarily limited to, the following:

- Verbal—unwelcome conduct such as the use of suggestive, derogatory, or vulgar comments; the use of sexual innuendo or slurs; making unwanted sexual advances, invitations, or comments; pestering for dates; making threats; and/or spreading rumors about or rating others as to their sexual activity or performance.
- Visual—unwelcome conduct such as the display of sexually suggestive objects, pictures, posters, written material, cartoons, or drawings; the use of graffiti and/or computer-generated images of a sexual nature; and/or the use of obscene gestures or leering.



- **Physical**—unwelcome conduct such as unwanted touching, pinching, kissing, patting, or hugging; the blocking of normal movement; stalking; assault; and/or physical interference with work or study directed at an individual because of the individual's sex, sexual orientation, or gender.
- **Threats, demands, or pressure** to submit to sexual requests in order to keep a job or academic standing or to avoid other loss, and/or offers of benefits in return for sexual favors.

Notification—Dissemination:

- **Employees:** The “Sexual Harassment Policy” one-page summary which is attached to this Bulletin shall be provided to all District employees on an annual basis at the beginning of the school year.

Notification—Posting: A copy of the District's sexual harassment policy poster shall be displayed in a prominent location in the main administrative building or other area of the campus or school site. “Prominent location” means that location where notices regarding rules, regulations, procedures, and standards of conduct are posted. The “Title VII Complaint Manager” posters, in both English and Spanish, are attached to this Bulletin and are to be used to identify those school site administrators designated to handle sexual harassment (and sex discrimination) complaints.

Notification—Publishing: A copy of the District's “Sexual Harassment Policy” one-page summary, which is attached to this Bulletin, shall be included in any school or District publication (e.g., Local School Faculty or Handbook) that sets forth the school's or the District's comprehensive rules, regulations, procedures, and standards of conduct.

Responsibility for Implementation of Policy:

Administrators

Each Administrator should ensure that:

- Employees receive information on an annual basis related to sexual harassment. (See one-page summary attached to this bulletin.)

Employees shall:

- Cooperate with the District's efforts to eliminate and prevent sexual harassment.
- Encourage anyone alleging that he or she is a target of sexual harassment to



report such an incident.

- Cooperate in any investigation of a sexual harassment complaint.
- Guard against any actions that would be considered retaliatory against another employee or student who has filed or is participating in an investigation of a sexual harassment complaint.

Employees shall be informed that:

- They are expected to act with respect towards everyone, and should consider how others may perceive or be affected by their actions and words.
- In cases where they may witness sexual harassment or they themselves may be the target of sexual harassment, they have the responsibility to report such incidents to the designated site administrator or designee.
- If they are participating in a consensual peer relationship which they now want to terminate, they should inform the other person in the relationship either verbally or in writing that any conduct of a sexual nature is no longer consensual or welcome and must cease. Conduct of a sexual nature following such notice may constitute sexual harassment.

Confidentiality and Non-Retaliation: Sexual harassment complaints shall be handled in a confidential manner to respect the privacy of all parties to the fullest extent possible. Every effort shall be made to limit distribution of information to those persons who need to know within the confines of the District's reporting procedures and investigative process.

The District will not tolerate retaliation against anyone for filing a complaint or participating in the complaint investigation process. These confidentiality and non-retaliation requirements extend to all parties involved.

Responding to Sexual Harassment Complaints:

When a complaint or a report of sexual harassment is received, it shall be given immediate attention. Described below are informal and formal methods of responding to sexual harassment complaints.

- A. **Informal Process:** Informal resolutions of employee sexual harassment complaints should be addressed at the work site. The informal process shall be bypassed if the complainant names a principal as the accused person. In that case, the complainant may file directly with the Equal Opportunity Section (EOS) to initiate a formal complaint.

The following steps may be followed to achieve informal complaint resolutions:

- Assure the target of the sexual harassment that the District takes allegations of



sexual harassment seriously, will not tolerate such treatment, and has strong policies against sexual harassment.

- Obtain specific information relevant to the complaint such as where and when the incident(s) occurred, were there any witnesses, and did the incident(s) take place once, or, if more often, how often. If age appropriate, request that a written statement be made. However, any oral report of sexual harassment is to be considered a sexual harassment complaint, and must be addressed.
- Interview and counsel the employee and explain the options available to resolve the situation. Write down details concerning the grievance/complaint and notify school administration of the situation if sexual harassment is involved/suspected.
- Provide the target of the harassment with the assurances regarding confidentiality and non-retaliation mentioned earlier. Assure the target of the harassment that he/she will not be required to confront the accused person. In employee complaints, assist with an informal resolution if that is the complainant's wish. An employee/complainant shall never be made to confront the accused person unless the employee/complainant consents and reprisal or intimidations is unlikely.
- Assure the target of the harassment that steps will be taken to check that the alleged harassing behavior does not continue. Provide the individual with the names of school personnel who can help if the situation continues, escalates, or arises again.
- Interview any witnesses identified by the target of the harassment and provide the same assurances regarding confidentiality and non-retaliation.
- Interview the accused person and provide the same assurances as above. The alleged offender should be interviewed and informed of whatever actions or activities he/she was alleged to have committed that were offensive to the complainant.
- Interview any witnesses identified by the accused person and provide the same assurances as above.
- Provide all parties, including respondent, with copies of the District's "Sexual Harassment Policy." Employees may be provided the District's brochures regarding sexual harassment, as appropriate. (See "Notification—Dissemination" section of this Bulletin, for further information regarding these brochures.)
- To reach a decision about whether the conduct described in the complaint



violates the District's sexual harassment policy, the following questions should be asked:

1. Is the conduct of a sexual nature?
2. Is the conduct unwelcome? (Determine if any consensual conduct was nonetheless unwelcome based on the totality of the circumstances.)
3. Does the conduct create a hostile environment for the alleged target of the harassment?
4. Is the conduct severe or persistent or pervasive?
5. Does the conduct limit the individual's ability to participate in or benefit from an education program or activity?

If the answer to questions one through five is "yes," the conduct may be considered sexual harassment. However, conduct that does not rise to the level of sexual harassment may still be considered inappropriate behavior and may require that corrective actions be taken.

- Appropriate administrative steps in response to sexual harassment might include action to end the harassment, ensure that it does not reoccur, and cure any hostile environment that may have been created for the employee who had been the target of the conduct. Response might also involve the initiation of disciplinary proceedings. If the situation merits it, determine what type of action will resolve the situation. The resolution may be educational rather than punitive.
- Inform the complainant in general terms that corrective actions have been or will be required to resolve the complaint. Specific corrective actions with regard to employees or students are to be kept confidential.
- Verify with the target of the harassment that the action taken did stop the harassment and did address the complaint.
- Follow up and verify with the complainant that the action taken did stop the harassment and did remedy the complaint. Document the steps taken to resolve the incident and any action taken in monitoring or following to assess the effectiveness of the remedies put in place. Keep the documentation in a separate sexual harassment file.
- Use the "Complaint/Investigation Record" form attached to this Bulletin to document the actions taken to address the complaint and to monitor or assess the effectiveness of those actions.
- The same "Complaint/Investigation Record" form may be used in instances where the conduct is determined to be inappropriate behavior which did not rise



to the level of sexual harassment, or when there are no findings of violations of the District's sexual harassment policy. In those cases, corrective actions may still be necessary and the form provides a vehicle for the documentation of the investigation and the actions taken.

- "Complaint/Investigation Record" forms must be safeguarded by keeping a separate school file for the retention of these records. Access to these records is to be restricted to those individuals who have a legitimate need for such access. These records must be kept for five years from the school year in which the complaint was filed.
- After monitoring to ensure that the harassment has stopped, forward a copy of the completed "Complaint/Investigation Record" (both sides) to the District's Equal Opportunity Section.

B. Formal Process: If a complaint cannot be resolved informally at the school site, the following appeal procedures are to be used. The formal investigation of such a complaint shall be completed within 60 days of receipt of the written complaint.

- A written statement (complaint) should be filed by the complainant internally with the Equal Opportunity Section within six months of the last occurrence of the reported incident or within six months of when knowledge of the incident was first obtained. This written statement may be filed using the "Title VII Employment Discrimination Complaint Form," "Internal Complaint System," or simply by filing a written complaint statement.
- The EOS will provide the complainant with a written acknowledgment of receipt of the complaint which:
 - Advises and assures the complainant that confidentiality of the facts will be observed to the fullest extent possible.
 - Advises and assures the complainant that the District prohibits retaliation against anyone for who files a complaint or participates in a complaint investigation.
 - Advises the complainant that he/she should feel free to call or send any additional information relevant to the complaint.
 - Advises the complainant if complaint does not have a basis in the categories pursuant to Title VII.
 - Informs the complainant that a written summary of findings will be provided to the complainant at the conclusion of the investigation. Specific corrective actions with regard to employees are to be kept confidential and or handled at the local district level.



- The role of the EOS Investigator is to determine violation(s) of District Policy only.
- The EOS will conduct an impartial investigation and work to resolve the matter by taking appropriate action, which may result in disciplinary or other remedial measures up to and including termination. A closure letter reporting findings should be provided which reiterates the confidentiality and non-retaliation provisions. The report should also advise the complainant of his or her right to appeal the EOS decision.

1. Investigation:

Investigation consist of an official inquiry and systematic and timely examination of the allegation(s), pattern and practices, pertinent documents, witness interviews, and an assessment of credibility in order to make a determination as to the merits. The EOS has the role of fact finder and is not the representative of any of the individuals involved in the complaint.

2. Scope and Timeliness

The scope of the investigation shall be limited to the allegations cited in the complaint, which shall be construed to effectuate the purposes of the District's anti-discrimination policy. Unless of a continuing nature, all formal complaints must be received by the EOS in writing, within six months of the alleged instance of employment discrimination.

3. Intake – Screening

Upon receipt of the Employment Discrimination Complaint Form, or a like document, the EOS shall review the complaint to determine the initial timeliness, validity and thoroughness of the information submitted in the complaint. Untimely complaints shall be closed. The EOS shall inform the complainant in writing of the acceptance of the complaint for investigation within ten (10) working days of its receipt. The complainant shall be promptly notified if further information or documentation is required to support the complaint.

4. Settlement During Investigation

If, during the investigation of the complaint, a settlement is reached between District management and the complainant, a Settlement Agreement shall be reduced to writing and approved by the EOS Director, before the complaint shall be considered closed. The Settlement Agreement must be signed by



both the complainant and the appropriate District management official.

5. Withdrawal of Complaint

The complaint, or any part thereof, may be withdrawn by the complainant at any time during the investigation. The request for withdrawal must be submitted in writing to the EOS by the complainant.

Please note, regardless of the withdrawal of the complaint, if the District believes the conduct is ongoing, the District will assume the complaint and continue the investigation, as otherwise required by law.

6. Closure of Investigation

In the event that the complainant files a formal charge of discrimination with the Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC), the District shall close the internal investigation.

The parties and appropriate supervisory officials shall be notified of the closure of the internal investigation following receipt of an external agency complaint.

The complaint and the investigation may also be closed by the EOS on the basis of an uncooperative complainant. "Uncooperative" in this context includes, but is not limited to, failure to respond, to keep appointments, to cooperate with the EOS investigator, or to provide requested documentation (if available).

7. Collective Bargaining Agreement Jurisdiction

This complaint procedure shall not apply if the allegations of the complaint fall within the purview of matters covered by a collective bargaining agreement or if the complainant has filed a grievance regarding the same issue with his/her bargaining unit.

8. Representation

The complainant and/or the respondent may at any point in the procedure be accompanied and represented by another individual. This normally included representation by the relevant union. The complainant or respondent shall not have an attorney as his/her representative during the internal investigation process.



9. Non-Retaliation

It is unlawful to discipline, retaliate, harass, or otherwise discriminate against an employee because (s)he has opposed unlawful employment practices or because (s)he has filed an internal employment discrimination complaint, testified or assisted in an investigation pursuant to this complaint.

10. Release Time for Employees

Parties involved in the complaint, as well as any witness, may be allowed release time (without loss of pay) to attend meetings or interviews held during assigned duty time with EOS personnel investigating the complaint.

11. Investigative Findings

- a) “Unfounded Finding” Means that the EOS has determined that the allegations in the complaint are false or, inherently improbable; or that no evidence was provided through witnesses to support the claim; or that the allegations do not constitute a violation of the District’s policy on employment discrimination or “sexual harassment.” An “Unfounded Finding” shall be issued in writing to the complainant, respondent and the appropriate site administrator, district superintendent, or unit division head.
- b) “Substantiated Finding” Means that the EOS has determined that the allegations in the complaint are based upon credible evidence to constitute a violation of the District’s policy on sexual harassment or other form of employment discrimination. A “Substantiated Finding” shall be issued in writing to the complainant, the respondent and the appropriate site administrator, district superintendent, branch or division head, office of Staff Relations, Employee Services section, and shall result in discipline including but not limited to termination.

12. Employee Discipline

In cases where “Substantiated Finding,” item (b), above, is the final determination, appropriate administrative and/or disciplinary action(s) shall be taken and a copy of the finding shall be placed in the personnel folder of the respondent, as and when appropriate.

C. Appeals



Either the complainant or the respondent has the right to appeal the decision of the Equal Opportunity Section by filing an appeal with the local superintendent or division administrator. The appeal must be in writing and received by the local superintendent, or division administrator or such other office that may be designated by the by the Superintendent, within fifteen (15) working days of the complainant's and/or respondent's receipt of the findings issued by the EOS.

The acceptable issues for appeal are: bias, new evidence that was not previously considered; or failure to follow procedures. The appeal need not be an evidentiary hearing. The parties have no right to legal or other representation for appeals.

The designee shall review the matter and issue a written decision to the parties concerned. The decision of the reviewer shall be the final response of the District.

D. Further Options

1. Civil Law Remedies: Pursuant to the state law, persons who have filed a complaint should also be advised that civil law remedies may also be available to them.
2. State and Federal Agencies: You have the right to file your complaint with the federal or state equal employment enforcement agencies:

Federal – Equal Employment Opportunity Commission (EEOC)
255 East Temple Street, Fourth Floor
Los Angeles, CA 90012
(213) 894-1000 or (800) 669-4000

State - Department of Fair Employment & Housing (DFEH)
611 West Sixth Street, Suite 1500
Los Angeles, CA 90017
(213) 439-6799

AUTHORITY: This is a policy of the Superintendent of Schools. The following legal standards are applied in this policy:

Title VII Equal Employment Opportunity Sec. 701.

Title IX Regulations, Title 34, Code of Federal Regulations, Part 106



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California Education Code, §212.5 Sexual Harassment, and §48900.2 Additional Grounds for Suspension or Expulsion; Sexual Harassment

Title 5, California Code of Regulations, §4910 General Definitions, §4910(k) Gender; §4910(v) Sex; §4910(w) Sexual Orientation, and §4916 Sexual Harassment Definitions

Pursuant to the California Education Code, Sections 48980(h) and 231.5, a copy of the District's sexual harassment policy shall:

- Be included in the notifications that are sent to parents/guardians at the beginning of each school year. (The "Parent-Student Handbook" may be used to provide these notifications).
- Be displayed in a prominent location in the main administrative building, staff lounge, or other area of the campus or school site. "Prominent location" means that location where notices regarding rules, regulations, procedures, and standards of conduct are posted.

**RELATED
RESOURCES:**

- Bulletin No. L-4, Subject, "Title IX Policy/Grievance Procedure," issued by the Office of the General Counsel, dated August 15, 2001, provides the substantive provisions of Title IX and the California Education Code for the equal treatment of students in District education programs and activities, as well as a grievance/complaint process to be used in complaints of unlawful discrimination based on sex, sexual orientation, or gender.
- Bulletin No. 1347, Subject, "Child Abuse—Reporting," issued by Student Health and Human Services, dated November 15, 2004, provides complete information on child abuse reporting procedures in conformance with California state law and District policy.
- Sexual Harassment Policy (Student -To-Student, Adult-To-Student, and Student-To-Adult) Bulletin – 1041, dated June 10, 2004
- Additional related information/communications regarding sexual harassment and Title IX (as well as copies of the District's policy bulletins on these subjects and copies of the above-referenced student brochures) may be found at both of the following web sites: <http://www/lausd.k12.ca.us/lausd/offices/eec> (public), and <http://notebook.lausd.net> (only available to District employees)



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ASSISTANCE: For assistance or further information concerning sexual harassment and employee/employment discrimination please contact:
Cheryl Broussard, Supervising EO Investigator, Equal Opportunity Section
at (213) 241-7685

For assistance with issues relating to employee discipline, call your respective Local District Staff Relations Coordinator.

For assistance with student related sexual harassment complaint, call Educational Equity Compliance at (213) 241-7682.