

## **FRESB Board Policy** **Sexual Harassment, Students**

**BP 5145.7(a)**

**\*\*\*Note:** Title IX of the Education Amendments of 1972 (20 USC 1681-1688) prohibits discrimination based on sex by recipients of federal financial assistance. School districts are responsible under Title IX and the regulations for the issuance of a policy against sex discrimination (34 CFR 106.8). Sexual harassment is a form of sex discrimination under Title IX and can deny or limit a student's ability to participate in or receive education benefits, services, or opportunities on the basis of that student's sex. \*\*\*

**\*\*\*Note:** A district can be held liable for civil damages for the sexual harassment of students pursuant to Title IX and/or Education Code 220, if the district is found to have been "deliberately indifferent" in its response to known sexual harassment.

**\*\*\*Note:** In addition to filing a private civil lawsuit, an alleged victim of sexual harassment may file a complaint with the California Department of Education (CDE) and/or the U.S. Department of Education's Office for Civil Rights (OCR), the federal agency responsible for administrative enforcement of federal laws and regulations that prohibit discrimination in programs and activities that receive federal financial assistance from the U.S. Department of Education. OCR applies a different standard than the "deliberate indifference" standard when addressing complaints against a district. Under OCR's enforcement standards, a district may be held to be in violation when a student is subjected to harassing conduct by another student, an employee, or a third party, and (1) the district knows or should know about the harassment, (2) the harassment is sufficiently serious as to create a hostile educational environment for the student, and (3) the district failed to take appropriate responsive actions. In other words, while a district is not responsible for the conduct of the other student or the third party, it may be liable for failing to respond adequately once it has notice. However, if a student is sexually harassed by an employee who was acting in the context of his/her job responsibilities, the district may be in violation of Title IX whether or not it has notice. See BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment. \*\*\*

**\*\*\*Note:** In April 2011, OCR...clarifies that sexual violence, including rape, sexual assault, sexual battery, and sexual coercion, is a form of sexual harassment that must be addressed by districts using the same procedures used to address other forms of sexual harassment, such as unwelcome sexual advances. \*\*\*

**The Governing Board** is committed to maintaining a safe school environment that is free from harassment and discrimination. The Board prohibits sexual harassment of students at school or at school-sponsored or school-related activities. 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.

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**\*\*\*Note:** a referral to law enforcement does not relieve a school district of its responsibility to investigate the complaint as a matter of sex discrimination. \*\*\*

**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 a district compliance officer.

(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)  
(cf. 1312.3 - Uniform Complaint Procedures)

**\*\*\*Note:** Govt Code 12950.1 requires districts with 50 or more employees to provide two hours of sexual harassment training to supervisory employees once every two years.

**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 victim of the harassment has not complained

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4. A message that student safety is the district's primary concern, and a

separate rule violation involving an alleged victim or person reporting a sexual harassment incident will be addressed separately and not affect the manner in which the sexual harassment complaint will be received, investigated, or resolved

5. Information about the district's procedure for investigating complaints and the person(s) to whom a report of sexual harassment should be made, and that every sexual harassment allegation involving a student shall be investigated
6. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable
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 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

Sexual harassment complaints by and against students shall be investigated and resolved in accordance with law and district procedures specified in AR 1312.3 - Uniform Complaint Procedures. Principals are responsible for notifying students and parents/guardians that complaints of sexual harassment can be filed under AR 1312.3 and where to obtain a copy of the procedures.

### **Disciplinary Actions**

Any student who engages in sexual harassment or sexual violence at school or at a school-sponsored or school-related activity is in violation of this policy and 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))

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Any staff member found to have engaged in sexual harassment or sexual violence toward any student shall be subject to discipline up to and including dismissal in accordance with applicable policies, laws, and/or collective bargaining agreements. (cf. 4117.4 - Dismissal), (cf. 4117.7 - Employment Status Report), (cf. 4118 - Suspension/Disciplinary Action), (cf. 4218 - Dismissal,

Suspension, Disciplinary Action), (cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

## **Record-Keeping**

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

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### CIVIL CODE

51.9 Liability-sexual harassment; business, service, 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

4600-4687 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

## **FRESHD Board Policy**

**BP 5145.7(e)**

### 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

Questions and Answers on Title IX and Sexual Violence, April 2014

Dear Colleague Letter: Sexual Violence, April 4, 2011

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>

CDE: <http://www.cde.ca.gov>; US DOE, OCR:

<http://www.ed.gov/about/offices/list/ocr>

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