

All Personnel

BP 4119.11(a)

4219.11

ADULT SEXUAL HARASSMENT

4319.11

Purpose

It is the position of this Governing Board that sexual harassment is unlawful and will not be tolerated. It is a violation of this policy for any employee, agent, student, or party with which the district has a cooperative agreement, to engage in sexual harassment.

It is the policy of the Board of the Bennett Valley Union School District to provide an employment environment free of sexual harassment. To accomplish this, the policy is designed to secure, at the earliest level possible, an appropriate resolution to incidents and allegations of harassment.

This policy is intended to supplement, and not replace, any applicable state or federal laws and regulations. Complaints under these laws and regulations shall be processed through the procedures established by the appropriate state and/or federal agencies.

Definition

For the purposes of this policy, sexual harassment is defined by Education Code 212.5, "Sexual harassment means unwelcome sexual conduct including, advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

1. Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress.
2. Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
3. 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.
4. 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."

Specifically, sexual harassment may occur as a pattern of degrading sexual speech or actions ranging from verbal or physical annoyances or distractions to deliberate intimidations and frank threats or sexual demands. Examples of conduct which may constitute sexual harassment include, but are not limited to:

1. Suggestive or obscene letters, notes, invitations, derogatory comments, slurs, jokes, epithets, assault, touching, impeding or blocking movement, leering, gesture, display of sexually suggestive objects or pictures, or cartoons.

ADULT SEXUAL HARASSMENT (continued)

2. Among peers, continuing to express sexual interest after being informed that the interest is unwelcome.
3. Within the employment environment, implying or actually withholding satisfactory evaluations or suggesting that promotion or favorable evaluations will be denied as a condition of receiving sexual favors.
4. Offering favors or employment benefits, such as promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.

Reporting Procedure

Any employee who believes he or she has been sexually harassed by an employee, agent or student of the district should report the facts of the incident(s) to the site administrator or supervisor. If the site administrator or supervisor is the alleged harasser, the employee should report to the Superintendent. A written report of the alleged incident will be filed and forwarded to the Superintendent. A copy of Board policy will be provided to the employee who makes the complaint.

Employees who feel aggrieved because of unwelcome conduct that may constitute sexual harassment are not required to inform the person that the conduct is unwanted, offensive, and must stop, but are encouraged to do so. An aggrieved individual is not required to complain to his or her supervisor if that supervisor is the individual who is harassing them.

Complaints of sexual harassment shall be filed in accordance with AR 4030 - Nondiscrimination in Employment. An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.

Filing Complaints with State and Federal Agencies

Aggrieved parties may wish to file complaints with other appropriate state and federal agencies, including:

U.S. Office for Civil Rights
50 United Nations Plaza, Room 239
San Francisco, CA 94102
(415) 556-7000

The State Fair Employment and Housing Commission
30 Van Ness Avenue
San Francisco, CA 94102
(415) 557-2005.

ADULT SEXUAL HARASSMENT (continued)

Confidentiality

An allegation of sexual harassment and the results of the investigation shall be kept confidential to the extent reasonably possible under the investigation process. The site administrator will inform the employee making the report that the allegation and the results of the investigation shall be kept confidential to the extent reasonably possible under the investigation process. In addition, witnesses and those interviewed shall be informed of the confidential nature of the issue and the investigation, as well as the reason for confidentiality. The alleged harasser will also be informed as to the confidential nature of the procedure. Anyone violating confidentiality by disclosing the nature of the allegation or the investigation to others shall be subject to disciplinary action.

Retaliation is Prohibited

The initiation of an allegation of sexual harassment will not cause any reflection on the individual reporting the incident or witnesses nor will it affect such persons' future business dealings with the district, his or her employment, compensation or work assignments, or other matters pertaining to his or her status in any district programs or activities. It shall be a violation of this policy to engage in such retaliation. An allegation of retaliation shall be considered as a separate incident, shall be investigated, and shall be subject to disciplinary action as defined in this policy.

Time Limits

Allegations of sexual harassment shall be reported as soon as reasonably possible after the conduct in question has taken place.

Disciplinary Action

Employees who violate this policy shall be subject to disciplinary action up to and including dismissal. Such disciplinary action will be in accordance with applicable policies, laws, and/or collective bargaining agreements.

When disciplinary action is necessary the Superintendent will be consulted to determine what course of action is appropriate.

Investigation

The Superintendent is authorized to develop regulations by which reports of sexual harassment shall be addressed. Such process shall include an informal resolution process, an investigation, and issuance of a summary report.

ADULT SEXUAL HARASSMENT (continued)

Appeal Procedure

Either the complaining party or the accused may appeal the summary report to the Board. Appeals should be made within 10 business days from the date of the issuance of the summary report. Procedures shall be set forth in the Administrative Regulations.

Administrative Regulations

The Superintendent shall adopt, and from time to time may revise, further procedures as may be necessary to implement this policy and provide for a means of enforcing this policy.

Training and Curriculum

To implement this policy, Bennett Valley Union School District will provide appropriate training programs for staff and students. Employees in a supervisory capacity will be trained, as required by law, at least every two (2) years beginning January 1, 2006. Teachers are not considered to be supervisory.

Notification

There will be adequate notification of the policy to include public posting. The policy will be published in site handbooks and/or the district Summer Mailing.

Special Assistance

It is expected that questions may arise concerning this policy. For assistance in these matters, individuals may contact the Superintendent.

Legal Reference: (see next page)

ADULT SEXUAL HARASSMENT (continued)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act, especially:

12940 Prohibited discrimination

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

CODE OF REGULATIONS, TITLE 2

7287.8 Retaliation

7288.0 Sexual harassment training and education

CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs receiving state financial assistance

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act of 1964

2000e-2000e-17 Title VII, Civil Rights Act of 1964, as amended

2000h-2-2000h-6 Title IX, 1972 Education Act Amendments

CODE OF FEDERAL REGULATIONS, TITLE 34

106.9 Dissemination of policy

COURT DECISIONS

Department of Health Services v. Superior Court of California, (2003) 31 Cal.4th 1026

Faragher v. City of Boca Raton, (1998) 118 S.Ct. 2275

Burlington Industries v. Ellreth, (1998) 118 S.Ct. 2257

Gebser v. Lago Vista Independent School District, (1998) 118 S.Ct. 1989

Oncale v. Sundowner Offshore Serv. Inc., (1998) 118 S.Ct. 998

Meritor Savings Bank, FSB v. Vinson et al., (1986) 447 U.S. 57

Management Resources:

OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Protecting Students from Harassment and Hate Crime, January, 1999

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

Equal Employment Opportunity Commission: <http://www.eeoc.gov>

U.S. Department of Education, Office for Civil Rights:

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

All Personnel

AR 4119.11(a)

4219.11

SEXUAL HARASSMENT

4319.11

Definitions

Prohibited 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 work or educational setting when: (Education Code 212.5; Government Code 12940; 5 CCR 4916)

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 such conduct by the individual is used as the basis for an employment decision affecting him/her.
3. The conduct has the purpose or effect of having a negative impact upon the individual's work or has the purpose or effect of creating an intimidating, hostile, or offensive work environment. Regardless of whether or not the alleged harasser was motivated by sexual desire, the conduct is sufficiently severe, persistent, pervasive, or objectively offensive as to create a hostile or abusive 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 other individual is used as the basis for any decision affecting him/her regarding benefits, services, honors, programs, or activities available at or through the district.

Other examples of actions that might constitute sexual harassment, whether committed by a supervisor, a co-worker, or a non-employee, in the work or educational setting include, but are not limited to:

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

SEXUAL HARASSMENT (continued)

Training

The Superintendent or designee shall ensure that all employees receive training regarding the district's sexual harassment policies when hired and periodically thereafter. Such training shall include the procedures for reporting and/or filing complaints involving an employee, employees' duty to use the district's complaint procedures, and employee obligations when a sexual harassment report involving a student is made to the employee.

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

(cf. 5145.7 - Sexual Harassment)

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment. All such newly hired or promoted employees shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

A *supervisory employee* is any employee with the authority to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend such action.

The district's sexual harassment training and education program for supervisory employees shall include the provision of: (Government Code 12950.1; 2 CCR 11023)

1. Information and practical guidance regarding federal and state laws on the prohibition against and the prevention and correction of sexual harassment, and the remedies available to the victims of sexual harassment in employment
2. Practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation
3. A component on the prevention of abusive conduct that addresses the use of derogatory remarks, insults, or epithets, other verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, and the gratuitous sabotage or undermining of a person's work performance
4. A copy of the district's sexual harassment policy and administrative regulation, which each participant shall acknowledge in writing that he/she has received
5. All other contents of mandated training specified in 2 CCR 11023

SEXUAL HARASSMENT (continued)

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. (2 CCR 11023)

Notifications

A copy of the Board policy and this administrative regulation shall: (Education Code 231.5)

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
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

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

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

All employees shall receive either a copy of information sheets prepared by the California Department of Fair Employment and Housing (DFEH) or a copy of district information sheets that contain, at a minimum, components on: (Government Code 12950)

1. The illegality of sexual harassment
2. The definition of sexual harassment under applicable state and federal law
3. A description of sexual harassment, with examples
4. The district's complaint process available to the employee
5. The legal remedies and complaint process available through DFEH and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact DFEH and the EEOC
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

AR 4119.11(d)
4219.11
4319.11

SEXUAL HARASSMENT (continued)

In addition, the district shall post, in a prominent and accessible location, DFEH's poster on discrimination in employment and the illegality of sexual harassment. (Government Code 12950)

All Personnel

E 4119.11
4219.11
4319.11

CONFIDENTIAL

SEXUAL HARASSMENT

TO: _____

FROM: _____ School Department

1. Identify the offending person or persons

2. Give specific examples of offensive conduct. (If more space is required, please attach additional pages)

3. What remedy are you seeking? _____

4. Describe the informal efforts you made to correct the situation described above (Item #2)

Your Signature _____ Date _____

TO BE COMPLETED BY DISTRICT

Date Received: _____ By: _____

Sexual Harassment Complaint Form # _____

Reference Code: _____

Date Resolved: _____ By: _____