

TO: BOARD OF EDUCATION

DISCUSSION

06/26/08

FROM: DIANNE TALARICO / MICHAEL D. MATTHEWS

RE: REVISE POLICY 5145.7 - SEXUAL HARASSMENT AND  
MISCONDUCT (STUDENTS)

DISCUSSION ITEM NO. D.03

It is recommended that the Board of Education review policy 5145.7 - Sexual Harassment and Misconduct (Students).

COMMENT: The Board of Education approved changes to this policy at its meeting on February 21, 2008. As part of the district's steps to ensure student safety, the board has requested that this policy and its administrative regulation return for review.

Attachment:

- Board Policy 5145.7 - Sexual Harassment and Misconduct (Students)
- Administrative Regulation 5145.7 - Sexual Harassment and Misconduct (Students)

**THIS IS EXISTING BOARD POLICY**

| <u>NUMBER</u> | <u>ARTICLE</u> | <u>TITLE</u>                            |
|---------------|----------------|---|
| 5145.7        | STUDENTS       | Sexual Harassment <u>and Misconduct</u> |

| <u>SUBTOPIC</u> | <u>POLICY</u> | <u>REGULATION</u> | <u>EXHIBIT</u> |
|-----------------|---------------|-------------------|----------------|
| Welfare         | X             |                   |                |

**DETAIL**

The Governing Board is committed to maintaining an educational environment that is free from harassment. The Board prohibits sexual harassment of students by other students, employees or other persons, at school or at school-sponsored or school-related activities. The Board also prohibits retaliatory behavior or action against persons who complain, testify, assist or otherwise participate in the complaint process established pursuant to this policy and the administrative regulation.

Instruction/Information

The Superintendent or designee shall ensure that all district students receive age-appropriate instruction and 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 gender
2. A clear message that students do not have to endure sexual harassment
3. Encouragement to report observed instances of sexual harassment, even where the victim of the harassment has not complained
4. Information about the person(s) to whom a report of sexual harassment should be made

Complaint Process

Any student who feels that he/she is being or has been subjected to sexual harassment shall immediately contact his/her teacher or any other employee. A school employee to whom a complaint is made shall, within 24 hours of receiving the complaint, report it to the principal or designee.

Any school employee who observes any incident of sexual harassment involving a student shall report this observation to the principal or designee, whether or not the victim files a complaint.

In any case of sexual harassment involving the principal or any other district employee to whom the complaint would ordinarily be made, the employee who receives the student's report or who observes the incident shall report to the nondiscrimination coordinator or the Superintendent or designee.

The principal or designee to whom a complaint of sexual harassment is reported shall immediately file a report to the Superintendent with the Confidential Incident Report Form. The Superintendent will determine who will investigate the complaint in accordance with administrative regulation. Where the Assistant Superintendent of Human Resources or designee and/or independent investigator ~~principal or designee~~ finds that sexual harassment occurred, he/she shall take prompt, appropriate action to end the harassment and address its effects on the victim. The principal or designee shall also advise the victim of any other remedies that may be available. The principal or designee shall ~~file a report with the Superintendent or designee and~~ refer the matter to law enforcement authorities, where required.

#### Disciplinary Measures

Any student who engages in sexual harassment of anyone 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 through 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.

Any employee who engages in sexual harassment or misconduct is in violation of this policy and shall be subject to disciplinary measures and shall be reported to law enforcement agencies.

#### 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 its schools.

All complaints and allegations of sexual harassment shall be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR 4964)

By no later than October 31<sup>st</sup> of each year, the Superintendent shall inform the public via an Information Item in the Board of Education agenda regarding the number of reported student and

employee sexual harassment complaints for the previous school year.

## **REFERENCE**

### EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex  
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

### CODE OF REGULATIONS, TITLE 5

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

### UNITED STATES CODE, TITLE 20

1681-1688 Title IX, Discrimination

### UNITED STATES CODE, TITLE 42

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

### UNITED STATES CODE, TITLE 42

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

### CODE OF FEDERAL REGULATIONS, TITLE 34

106.1-106.71 Nondiscrimination on the basis of sex in education programs

### COURT DECISIONS

Reese v. Jefferson School District, (2001) 208 F.3d 736

Davis v. Monroe County Board of Education, (1999) 526 U.S. 629

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

Nabozny v. Podlesny, (1996, 7th Cir.) 92 F.3d 446

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

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

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

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

Patricia H. v. Berkeley Unified School District, (1993) 830 F.Supp. 1288

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

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

## **MANAGEMENT RESOURCES**

OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL  
Protecting Students from Harassment and Hate Crime: A Guide for Schools,  
January 1999

### OFFICE OF CIVIL RIGHTS' PUBLICATIONS

Revised Sexual Harassment Guidance, January 2001

Sexual Harassment Guidance, March 1997

### WEB SITES

OCR: <http://www.ed.gov/offices/OCR>

| <u>ADOPTED</u> | <u>REVISED</u>    | <u>CSBA DATE</u> |
|----------------|-------------------|------------------|
| March 28, 1993 | February 21, 2008 | November 2001    |

**THIS IS EXISTING ADMINISTRATIVE REGULATION**

| <u>NUMBER</u>   | <u>ARTICLE</u> | <u>TITLE</u>                            |                |
|-----------------|----------------|---|----------------|
| 5145.7          | STUDENTS       | Sexual Harassment <u>and Misconduct</u> |                |
| <u>SUBTOPIC</u> | <u>POLICY</u>  | <u>REGULATION</u>                       | <u>EXHIBIT</u> |
| Welfare         |                | X                                       |                |

**DETAIL**

Prohibited sexual harassment and misconduct 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 gender, in the educational setting, when:  
(Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student
3. The conduct has the purpose or effect of having a negative impact on the student's academic performance, or of creating an intimidating, hostile or offensive educational environment
4. Submission to or rejection of the conduct by the student 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
5. The conduct involves any consensual sexual relationship between any employee or volunteer and students, including students who have reached the age of consent.
6. The conduct includes excessive or repeated touching of a student that is without a clear educational purpose.

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, notes, stories, drawings, pictures or gestures

5. Spreading sexual rumors
6. Teasing or sexual remarks about students enrolled in a predominantly single-gender class
7. Massaging, grabbing, fondling, stroking or brushing the body
8. Touching an individual's body or clothes in a sexual way
9. Purposefully cornering or blocking normal movements
10. Displaying sexually suggestive objects

#### Preventing Sexual Harassment and Misconduct

In an effort to prevent the occurrence or perception of sexual misconduct, the following precautions shall be taken by all employees:

1. Employees shall, whenever possible, avoid closed door meetings and before/after school hours activities with only one student.
2. On any student trip away from school, there shall be a minimum of two chaperones, preferably a man and a woman.

#### Notifications

A copy of the district's sexual harassment policy shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code 48980; 5 CCR 4917)
2. Be displayed in a prominent location in the main administrative building or other area where notices of district rules, regulations, procedures and standards of conduct are posted (Education Code 231.5)
3. Be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester or summer session (Education Code 231.5)
4. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures and standards of conduct (Education Code 231.5)
5. Be provided to employees and employee organizations

#### Investigation of Complaints at School (Site-Level Grievance Procedure)

1. The principal shall report a complaint to the Superintendent using the Confidential Incident Report form. Even if no

complaint is filed, the principal has a duty to investigate suspected sexual harassment or misconduct.

2. The principal and Superintendent shall determine whether the principal, a designee, or an independent investigator will investigate the complaint. That person ~~The principal or designee~~ shall promptly investigate all complaints of sexual harassment. In so doing, he/she shall talk individually with:
  - a. The student who is complaining
  - b. The person accused of harassment
  - c. Anyone who witnessed the conduct complained of
  - d. Anyone mentioned as having related information
  
32. The student who is complaining shall have an opportunity to describe the incident, present witnesses and other evidence of the harassment, and put his/her complaint in writing.
  
43. The principal or designee shall discuss the complaint only with the people described above. If the complaint regards occurrences for which the principal or designee has a reasonable suspicion of child abuse, the principal or designee is mandated to report to law enforcement and/or child protective agencies as per SMMUSD Board Policy and Administrative Regulation 5144.4. When necessary to carry out his/her investigation or for other good reasons that apply to the particular situation, the principal or designee also may discuss the complaint with the following persons:
  - a. The Superintendent or designee
  - b. The parent/guardian of the student who complained
  - c. If the alleged harasser is a student, his/her parent/guardian
  - d. A teacher or staff member whose knowledge of the students involved may help in determining who is telling the truth
  - e. Child protective agencies responsible for investigating child abuse reports
  - f. Legal counsel for the district
  
54. The complainant shall not be required or asked to meet with the alleged harasser or person suspected of sexual misconduct. If the alleged harasser or person suspected of sexual misconduct is a district employee or volunteer, then during the course of the investigation, he/she shall discontinue contact with students. ~~When the student who complained and the alleged harasser so agree, the principal or designee may arrange for them to resolve the complaint informally with the help of a counselor, teacher, administrator or trained mediator. The student who complained shall never be asked to work out the problem directly with the accused person unless such help is provided and both~~

~~parties agree.~~

65. In reaching a decision about the complaint, the Assistant Superintendent of Human Resources or designee and/or independent investigator ~~principal or designee~~ may take into account:
- a. Statements made by the persons identified above
  - b. The details and consistency of each person's account
  - c. Evidence of how the complaining student reacted to the incident
  - d. Evidence of any past instances of harassment by the alleged harasser
  - e. Evidence of any past harassment complaints that were found to be untrue
76. To judge the severity of the harassment, the Assistant Superintendent of Human Resources or designee and/or independent investigator ~~principal or designee~~ may take into consideration:
- a. How the misconduct affected one or more students' education
  - b. The type, frequency and duration of the misconduct
  - c. The number of persons involved
  - d. The age and gender of the person accused of harassment
  - e. The subject(s) of harassment
  - f. The place and situation where the incident occurred
  - g. Other incidents at the school, including incidents of harassment that were not related to gender
87. The Assistant Superintendent of Human Resources or designee and/or independent investigator ~~principal or designee~~ shall write a report of his/her findings, decision, and reasons for the decision and shall present this report to the student who complained and the person accused.
98. The Assistant Superintendent of Human Resources or designee and/or independent investigator ~~principal or designee~~ shall give the Superintendent or designee a written report of the complaint and investigation. If the principal or designee verifies that sexual harassment occurred, this report shall describe the actions taken to end the harassment, address the effects of the harassment on the student harassed, and prevent retaliation or further harassment.
109. Within two weeks after receiving the complaint, the principal or designee shall determine whether or not the student who complained has been further harassed. The principal or designee shall keep a record of this information and shall continue this follow-up.

## Enforcement

The Superintendent or designee shall take appropriate actions to reinforce the district's sexual harassment policy. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti.
2. Providing staff inservice and student instruction or counseling.
3. Notifying parents/guardians of the actions taken.
4. Notifying child protective services.
5. Taking appropriate disciplinary action. In addition, the principal or designee may take disciplinary measures against any person who is found to have made a complaint of sexual harassment which he/she knew was not true.
6. If an employee is found to be in violation of this policy, disciplinary action shall include, at a minimum, a letter of reprimand, which shall be placed in the employee's personnel file. That letter shall not be expunged under any circumstances.

## Support for Students

The Superintendent or designee shall take appropriate actions to provide support for students who have been subjected to sexual harassment and/or misconduct by a district employee or volunteer.

1. The principal or designee will make it clear to the affected student(s) and the parents or guardians that any form of retaliation or mistreatment of a student who complained will not be tolerated.
2. In instances where there were substantiated findings that a student was subjected to sexual harassment/misconduct by a District employee or volunteer, the District will offer, and upon the request of the parent or guardian, will assist the student in receiving therapeutic intervention.

| <u>ADOPTED</u> | <u>REVISED</u>    | <u>CSBA DATE</u> |
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| March 28, 1993 | February 26, 2008 | November 2001    |