

**SEXUAL HARASSMENT**

It is the intent of the Board for this policy to supersede any and all other policies and procedures for dealing with employee or student complaints of sexual harassment and for this policy to be followed when an employee has a complaint alleging sexual harassment. This policy is consistent with the uniform complaint procedure. As such, all sexual harassment complaints will be handled by the procedure detailed in Administrative Regulation No. 4119.11.

It is the policy of the Governing Board of the Visalia Unified School District to provide an educational, employment, and business environment free of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct or communications constituting sexual harassment, as defined by Education Code section 212.5 and otherwise prohibited by state and federal statutes.

It is unlawful and a violation of this policy for anyone who is authorized to recommend or make personnel or educational decisions affecting an employee or student or who is otherwise authorized to transact business or perform other acts or services on behalf of the district to engage in sexual harassment.

Allegations of sexual harassment shall be thoroughly, promptly and equitably investigated in accordance with the district's sexual harassment complaint procedures.

It is a violation of this policy to retaliate against a sexual harassment complainant or witness. The initiation of a complaint or participation as a witness in a sexual harassment investigation shall not affect the complainant's or witness's future business dealings with the district, his or her employment, compensation, work assignments, or other matters pertaining to his or her status as an employee with the district.

A complaint and the results of the investigation shall be confidential to the extent maintenance of confidentiality is consistent with a thorough investigation and to the extent consistent with the district's obligation to remedy harassment and prevent future harassment.

Rules and procedures for reporting charges of sexual harassment and pursuing available remedies may be obtained from the Superintendent.

**1. Definition of Sexual Harassment**

Sexual harassment occurs when unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature is:

- a. Made either explicitly or implicitly a term or condition of an individual's employment, academic status, or progress;
- b. Used as a basis for employment or academic decisions affecting such individual;

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- c. Has the purpose or effect of having a negative impact upon an individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment; or
- d. 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. (Education Code section 212.5.)

**2. Specific Examples of Sexual Harassment**

Sexual Harassment includes but is not limited to:

- a. Suggestive or obscene letters, notes, invitations, derogatory comments, slurs, jokes, epithets, assaults, touching, impeding or blocking movement, leering, gestures, display of sexually suggestive objects, pictures, cartoons or posters.
- b. Continuing to express sexual interest after being informed that the interest is unwelcome. (Reciprocal attraction is not considered sexual harassment.)
- c. Coercive sexual behavior used to control, influence, or affect the career, salary, and/or work environment of another employee, such as threats of reprisal; implying or withholding support for an appointment, promotion, transfer, or change of assignment; suggesting a poor performance report will be prepared; or suggesting probation will be failed.
- d. Coercive sexual behavior used to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student, including promises or threats regarding grades, course admission, performance evaluations, or recommendations; enhancement or limitation of student benefits or services (e.g. scholarships, financial aid, work study job.)
- e. The deliberate or careless creation of an atmosphere of sexual harassment or intimidation, or a hostile or offensive working environment.
- f. Offering favors or benefits, such as a promotion, favorable performance evaluation, favorable grades, assignments, duties or shifts, recommendations or reclassification, in exchange for sexual favors.
- g. Any other conduct which, at the time of the conduct, constitutes sexual harassment under any state or federal law or implementing regulation.

## **SEXUAL HARASSMENT (continued)**

### **3. Responsible District Officer**

- a. Kay Van Andel, Assistant Superintendent, Human Resources Development, or designee, shall be the District Officer responsible for the overall implementation of all policies and regulations prohibiting sexual harassment. Copies of all documents related to sexual harassment complaints shall be forwarded to the Responsible District Officer to ensure uniform application of this policy and coordinated efforts to prevent and eliminate sexual harassment.
- b. The Responsible District Officer shall assist in the processing of all complaints, shall ensure that this policy and its implementing procedures are appropriately distributed to the students and employees.
- c. The Responsible District Officer, with the authorization of the Superintendent, may initiate training and education programs to enable all employees and students to better understand the problems and consequences of sexual harassment.

### **4. Duty to Report Known or Suspected Incidents of Sexual Harassment**

Any employee, who, within the scope of his or her employment, has knowledge of or observes a student whom he or she knows or reasonably suspects has been the victim of sexual harassment shall report the known or suspected incident of sexual harassment to the principal or vice principal immediately. If a site administrator is the alleged perpetrator of the incident, the employee shall report the incident to the district administrator.

The employee shall also report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within thirty-six (36) hours of receiving the information concerning the incident.

Failure to report an incident of known or suspected sexual harassment shall be considered a violation of a district regulation and may result in disciplinary action.

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*Legal Reference:*

EDUCATION CODE

*200-240 Prohibition of discrimination on the basis of sex, especially:*

*212.5 Sexual harassment, defined*

*212.6 Sexual harassment policy*

*230 Particular practices prohibited*

GOVERNMENT CODE

*12900-12996 Fair Employment and Housing Act*

LABOR CODE

*1101 Political activities of employees*

*1102.1 Discrimination: sexual orientation*

UNITED STATES CODE, TITLE 42

*2000d & 2000e et seq. Title VI & Title VII, Civil Rights Act of 1964 as amended*

*2000h-2 et seq. Title IX, 1972 Education Act Amendments*

MISCELLANEOUS

*EEOC Guidelines: 29 CFR 1604.11*

Policy  
adopted: June 24, 1997  
Revised: June 22, 1999  
Revised: April 24, 2001

**VISALIA UNIFIED SCHOOL DISTRICT**  
Visalia, California

**All Personnel**

AR 4119.11(a)

4219.11

**SEXUAL HARASSMENT**

4319.11

**Employee Complaints**

1. Informal Resolution

- a. Employees are encouraged, but not required, to inform the offending person directly that his/her conduct is unwelcome or offensive and must stop.
- b. If an employee is unwilling or unable to tell the offending person that his/her conduct is unwelcome or offensive and must stop or if such communication(s) from the employee has not brought a stop to the offensive conduct, the employee should prepare a written complaint and give it to his or her immediate supervisor. If the immediate supervisor is the subject of the complaint, the employee should give the complaint to the Superintendent or designee.

2. Written Complaints

- a. The complaint must be initiated no later than six (6) months from the date when the alleged sexual harassment occurred or the employee knew or reasonably should have known of the facts giving rise to the complaint.
- b. The complaint should include the employee=s name, witnesses= names, the name of the person(s) who engaged in offensive conduct, and a description of the offensive conduct (i.e., when and where the conduct occurred, the number of times it occurred, and a description of any informal attempts at resolution).

**Administrative Review and Procedures.**

1. Receipt of Complaints

- a. An immediate supervisor or administrator who receives a verbal complaint of sexual harassment shall provide the employee with a copy of the district=s sexual harassment policy and procedures and direct the employee to prepare a written complaint and return it to him or her.

- 2. If the employee is unable to prepare a written complaint without assistance, the administrator shall assist the employee with preparation of a written complaint.

2. Following the receipt of a written complaint, the supervisor or administrator shall:

- a. Meet with the employee if necessary to obtain clarification of the employee=s written complaint of sexual harassment.

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- b. Inform the alleged offender of the nature of the employee's complaint. If the alleged offender is a student, notify the alleged offender's parent(s) of the complaint unless it is apparent from the complaint that notification may be harmful to the alleged offender.
  - c. Provide a copy of the district's sexual harassment policy and these procedures to the alleged offender, and
  - d. Individually advise the employee and the alleged offender that the complaint and the results of the investigation shall be confidential to the extent appropriate.
3. Mediation (Optional)
- a. Upon receiving the complaint, the Responsible District Officer may discuss with the employee the possibility of using mediation. If all parties agree to mediation, the Officer shall make all arrangements for this process.
  - b. If the mediation process does not resolve the problem, the Responsible District Officer shall proceed with his/her investigation of the complaint.
  - c. The use of mediation shall not extend the district's time lines for investigating and resolving the complaint unless the employee agrees in writing to such an extension of time.
4. Investigation
- a. The district shall promptly commence a thorough, objective and equitable investigation upon receipt of the written complaint. The investigation shall be coordinated through the Responsible District Officer. The investigation may be assigned to district staff or to outside persons or organizations. The investigation shall be so assigned whenever the complaint implicates the Superintendent, Associate or Assistant Superintendent, or the Responsible District Officer.
  - b. The person conducting the investigation shall speak to all individuals reasonably believed to have relevant information, including, but not limited to, the employee and the alleged offender, any witnesses to the conduct, and other victims of similar conduct whom the investigator reasonably believes may exist.

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- c. The investigation shall be conducted discreetly, maintaining confidentiality of the employee and the alleged offender insofar as confidentiality is appropriate and consistent with a thorough investigation and disposition of the matter. The person conducting the investigation shall advise all individuals whom he/she contacts in connection with the investigation of the confidential nature of the complaint and the investigation.
  - d. The investigation shall be free of stereotypical assumptions about either party.
5. Investigative Report and Decision
- a. The person conducting the investigation shall endeavor to complete the investigation and prepare a written report (AReport®) summarizing the results of the investigation within thirty (30) days. The Report shall reflect the record as a whole and the totality of the circumstances (e.g., the nature of the alleged harassment and the context in which the alleged incidents occurred). The Report shall be considered a confidential document that shall be given only to the Superintendent or designee, the Responsible District Officer, and, if the matter is appealed under Section II.E. below, to the Governing Board.
  - b. Based on that Report, the Superintendent, or designee, shall prepare a written decision (ADecision®) containing the findings and disposition, the rationale for the disposition, and notice of the employee's right to appeal. If the Report determines that there is reasonable cause to believe that sexual harassment occurred, the disposition shall include appropriate corrective action to ensure that it will not recur.
  - c. A finding of sexual harassment shall be deemed to constitute just and reasonable cause for discipline. Corrective action taken as a result of the investigation may include reassignment, transfer, termination, or other disciplinary action and shall be in accordance with the district's policies and regulations and any applicable laws and collective bargaining agreements.
  - d. The district shall provide a copy of the Decision to the employee (with appropriate portions of the Decision redacted to protect the alleged offender's right to privacy) and alleged offender.

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6. Appeal Procedures

- a. If the employee or alleged offender is dissatisfied with the Decision, he or she may file a written appeal to the Board within five (5) days after receipt of the Decision. The other party shall be given a copy of the appeal and shall have five (5) days after receipt of the appeal to submit a written response. The Board shall review the employee's written complaint, the Report, the Decision, the appeal and any response to the appeal to determine whether the alleged offender has engaged in sexual harassment and whether the Decision contains an appropriate disposition of the matter.
- b. The Board, in its discretion, may request additional information and the personal appearance of any or all parties and witnesses.
- c. The Board shall issue a written decision following the written appeal to the employee within sixty (60) days of the date the district initially received the complaint or within an extended time period that has been specified in a written agreement with the complainant.
- d. The Superintendent shall inform the employee and alleged offender of the Board's decision.

7. Appeals to the California Department of Education

- a. If an employee is dissatisfied with the district's decision, he/she may appeal in writing to the California Department of Education within fifteen (15) days of receiving the district's decision. For good cause, the Superintendent of Public Instruction may grant an extension for filing appeals.
- b. If the employee does not timely appeal to the California Department of Education, the decision of the Board shall be final. If the employee does appeal, the final decision shall be rendered by the Superintendent of Public Instruction.
- c. When appealing to the California Department of Education, the employee must specify the reason(s) for appealing the district's decision and must include a copy of the locally filed complaint and the district's decision.
- d. If dissatisfied with the California Department of Education's resolution of a complaint regarding a Chapter I program, the employee may request its review by the U.S. Secretary of Education.

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- e. Upon request, the Responsible District Officer shall provide the employee with a copy of Title 5, section 4652, et seq., of the regulations concerning appeal to the California Department of Education.
8. Investigation and Review by Other Agencies

The district's policies and procedures are intended to supplement any applicable state and federal laws and regulations on sexual harassment. An employee has the option of filing a complaint and requesting direct intervention by the Department of Education. If an employee files a complaint with an administrative agency under any state or federal law, the district may elect to discontinue its investigation and complaint process in favor of the complaint procedure of the respective state or federal agency.

In addition to the district's investigation and review procedures, employees may file a complaint with:

Office for Civil Rights  
50 United Nations Plaza, Rm. 322  
1330 Broadway, Suite 1326  
San Francisco, CA 94102  
(415) 556-8586

California Dept. of Fair  
Employment and Housing  
Oakland, CA 94612  
(510) 464-4095

Equal Employment Opportunity Commission  
San Francisco District Office  
901 Market Street, Suite 500  
San Francisco, CA 94103  
(415) 556-9461

The district shall inform the complainant that injunctions, restraining orders and other civil law remedies also may be available to complainants.

*Legal Reference: (see next page)*

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*Legal Reference:*

*Federal Employment and Housing Act  
(Gov. Code, 12900-12996)  
DFEH Administrative Regulations, 2 C.C.R. 7287.6  
703 of Title 7: 42 U.S.C. 2000e, et seq.  
Title IX, Education Amendments of 1972  
EEOC Guidelines: 29 C.F.R. 1604.11  
Education Code, 2.5, et seq.*

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**VISALIA UNIFIED SCHOOL DISTRICT**  
Visalia, California