

TULARE COUNTY OFFICE OF EDUCATION

Administrative Regulation

Personnel - All Personnel
AR 4119.11, 4219.11, 4319.11
Sexual Harassment

Sexual Harassment

The following administrative regulation shall apply to all allegations of sexual harassment involving employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by or against a student.

Definitions

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, regardless of whether or not the conduct is motivated by sexual desire. Conduct is considered to be sexual harassment when made against another person of the same or opposite sex in the work or educational setting under any of the following conditions: (Education Code 212.5, Government Code 12940; 2 CCR 11034)

1. Submission to the conduct is made either expressly or implicitly a term or condition of the individual's employment.
2. Submission to or rejection of such conduct is used as the basis for an employment decision affecting the individual.
3. The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment.
4. Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs or activities available at or through the county office.

For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, sexual harassment is defined as any of the following forms of conduct that occurs in an education program or activity in which a county office school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)

1. A county office employee conditioning the provision of a county office aid, benefit, or service on the person's participation in unwelcome sexual conduct
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and

objectively offensive that it effectively denies a person equal access to the county office's education program or activity

3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

Examples of Sexual Harassment

Examples of actions that might constitute sexual harassment, under state or federal law in accordance with the definitions above, in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, 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, gestures or sexually explicit e-mails; 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.

Title IX Coordinator/Compliance Officer

The county office designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures, as well as to oversee, investigate, and resolve sexual harassment complaints processed under AR 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:

Assistant Superintendent, Human Resources

(position or title)

6200 S. Mooney Blvd., Visalia CA 93277

(physical address)

P.O. Box 5091, Visalia CA 93278-5091

(mailing address)

(559) 733-6306

(telephone number)

dedi.somavia@tcoe.org

(email)

Training

By January 1, 2006, and every two years thereafter, the County Superintendent or designee shall ensure that supervisory employees receive at least two hours, and nonsupervisory employees receive at least one hour, of classroom or other effective interactive training and education regarding sexual harassment. All newly hired employees and employees promoted to a supervisory position shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

A supervisory employee is any employee having the authority, in the interest of the county office, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, adjust their grievances, or effectively recommend such action, when the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (Government Code 12926)

Such training may be completed by employees individually or as part of a group presentation, may be completed in shorter segments as long as the applicable hourly requirement is met, and may be provided in conjunction with other training provided to the employees. The training shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. (Government Code 12950.1)

The county office's sexual harassment training and education program shall include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

1. Information and practical guidance regarding federal and state laws concerning the prohibition, prevention, and correction of sexual harassment
2. The types of conduct that constitute sexual harassment
3. Remedies available for victims in civil actions, and potential employer/individual exposure/liability
4. Strategies to prevent harassment in the workplace
5. Supervisors' obligation to report sexual harassment, discrimination, and retaliation of which they become aware
6. Practical examples which illustrate sexual harassment, discrimination, and retaliation using training modalities such as role plays, case studies, and group discussions, based on factual scenarios taken from case law, news and media accounts, and hypotheticals based on workplace situations and other sources
7. The limited confidentiality of the complaint process
8. Resources for victims of unlawful harassment, such as to whom they should report any alleged harassment
9. Steps necessary to take appropriate remedial measures to correct harassing behavior, which includes the county office's obligation to conduct an effective workplace investigation of a harassment complaint
10. What to do if the supervisor is personally accused of harassment
11. The essential elements of the county office's anti-harassment policy, and how to use the policy if a harassment complaint is filed
Employees shall receive a copy of the county office's sexual harassment policy and

administrative regulations, which they shall read and acknowledge that they have received.

12. Information, including practical examples, of harassment based on gender identity, gender expression, and sexual orientation
13. Prevention of abusive conduct, including a review of the definition and elements of abusive conduct pursuant to Government Code 12950.1, the negative effects that abusive conduct has on the victim and other in the workplace, the detrimental consequences of this conduct on employee productivity and morale, and that a single act does not constitute abusive conduct unless the act is severe or egregious

The County 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 11024)

Notifications

The County Superintendent or designee shall notify employees that the county office does not discriminate on the basis of sex as required by Title IX, that the Title IX nondiscrimination requirement extends to employment, and that inquiries about the application of Title IX to the county office may be referred to the county office's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education. (34 CFR 106.8)

The county office shall notify employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the county office's Title IX Coordinator. (34 CFR 106.8)

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

1. Be displayed in a prominent location in the main administrative building or other area of the county office where notices of county office rules, regulations, procedures and standards of conduct are posted.
2. Be provided to every county office employee at the beginning of the first quarter or semester of the school year or whenever a new employee is hired.
3. Appear in any school or county office publication that sets forth the school's or county office's comprehensive rules, regulations, procedures and standards of conduct.
4. Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the county office's web site (34 CFR 106.8)
5. Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to employees or employee organizations (34 CFR 106.8)

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 county office 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 office's complaint process available to the employee.
5. The legal remedies and complaint process available through DFEH and Equal Employment Opportunity Commission (EEOC).
6. Directions on how to contact DFEH and 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.

In addition, the county office shall post, in a prominent and accessible location, the DFEH poster on discrimination in employment and the illegality of sexual harassment and the DFEH poster regarding transgender rights. (Government Code 12950)

Complaint Procedures

All complaints and allegations of sexual harassment by and against employees shall be investigated and resolved in accordance with law and county office procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to AR 4030 – Nondiscrimination in Employment.

If sexual harassment is found following an investigation, the Title IX Coordinator, or designee in consultation with the Coordinator, shall take prompt action to stop the sexual harassment, prevent recurrence, and address any continuing effects.

Legal Reference:

GOVERNMENT CODE

12940 Prohibited discrimination

12950 Sexual harassment

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

CALIFORNIA CODE OF REGULATIONS, TITLE 2

11006-11086 Discrimination in employment

11021 Discrimination in employment - retaliation

11023 Harassment and discrimination prevention and correction

11024 Required training and education on harassment based on sex, gender identity and expression, and sexual orientation

11034 Terms, conditions, and privileges of employment

U.S. CODE OF REGULATIONS, TITLE 34

106.1-106.9 Nondiscrimination on the basis of sex in education programs or activities

106.51-106.61 Nondiscrimination on the basis of sex in employment in education program or activities

UNITED STATES CODE, TITLE 42

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

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) 477 US 57

Management Resources:

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATION

Promising Practices for Preventing Harassment, November 2017

WEB SITES

California Civil Rights Department (CRD): <https://calcivilrights.ca.gov/>

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

Regulation

Approved: 12/20/2006

Revised: 3/15/2011, 7/31/2024



Tulare County Superintendent of Schools
Visalia, CA