

## Administrative Regulation

### Harassment on the Basis of an Individual's Sex - Students

#### Intent:

The Garden Grove Unified School District is committed to a learning environment free of discrimination, harassment, intimidation, and bullying based on sex. Sexual harassment is a form of misconduct which fundamentally compromises the integrity of human relationships, affects morale and performance, and threatens an individual's sense of security and well-being.

The Garden Grove Unified School District will not tolerate any sexual relationship between an employee and a student. If a sexual relationship develops between an employee and a student, appropriate corrective measures will be initiated while an alleged violation is being investigated.

Disciplinary action, up to and including termination, will be taken against any employee engaged in sexual harassment or bullying based on sex of a student.

The Garden Grove Unified School District will not tolerate a student engaging in the sexual harassment or bullying based on sex of another student or a school employee. Upon investigation and validation that the district's policy on sexual harassment has been violated, that student shall incur appropriate disciplinary action. For students in kindergarten through grade 3, this disciplinary action shall depend on the maturity of the students and circumstances involved. For students in grades 4 through 12, the disciplinary action may include, but is not limited to, suspension and/or expulsion.

Definition: Sexual harassment has been defined by federal and state regulations as a form of sex discrimination. Prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct or conduct of a sexual nature, made against another person of the same or opposite sex, when:

- (a) Submission to such conduct is either explicitly or implicitly made a term or condition of an individual's academic status or progress;
- (b) Submission to or rejection of such conduct by an individual is used as the basis of an academic decision affecting such individual;
- (c) Such conduct has a negative impact upon the individual's work or academic performance, or creates an intimidating, hostile, or offensive work or educational environment;

- (d) 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 district.

In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

Examples: If sufficiently severe or pervasive, the following conduct, whether committed by an employee, a non-employee, or student, may constitute sexual harassment:

- (a) Unwelcome leering, sexual flirtations or propositions.
- (b) Unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments or sexually degrading descriptions.
- (c) Unwelcome graphic verbal comments about an individual's body, overly personal conversations, or pressure for sexual activity.
- (d) Unwelcome sexual jokes, notes, stories, drawings, pictures, gestures, graffiti, or sexually explicit e-mails.
- (e) Unwelcome sexual rumors.
- (f) Unwelcome touching of an individual's body or clothes in a sexual way, massaging, grabbing, fondling, stroking, or brushing the body.
- (g) Unwelcome cornering, blocking, leaning over, or impeding normal movements.
- (h) Unwelcome displays of sexually suggestive objects in the educational or work environment.
- (i) Any act of retaliation against an individual who reports a violation of the district's sexual harassment policy or who participates in the investigation of a sexual harassment complaint.

Notifications: The district's policy on sexual harassment shall:

- (a) Be included in the notifications that are sent to parents/guardians at the beginning of each school year.
- (b) Be included as part of any orientation program for new students.

- (c) Be displayed in a prominent location near each school principal's office.
- (d) Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct.

Responsibility:

Any employee having knowledge of conduct by another employee, volunteer, student, or individual in the school community which may constitute sexual harassment or bullying based on sex is required to immediately report such conduct to the principal or the Title IX/sexual harassment officer.

An employee who witnesses an act of discrimination, harassment, intimidation or bullying shall take immediate steps to intervene when safe to do so.

Employees are hereby placed on notice that if an employee engages in acts which the district determines to be acts of sexual harassment, such acts are outside of the scope and course of the employee's employment. Such conduct may result in the employee having to obtain his or her own legal counsel, and sexual harassment or unlawful discrimination may result in a money judgment against the employee personally.

Private, personal, consensual conduct may at some point become unwelcome. Any student advised that a fellow student now believes certain conduct to be unwelcome shall cease such conduct immediately. Any conduct of a sexual nature following such notice may be determined to be sexual harassment. Students who participate in a consensual relationship, and who at some point wish to discontinue the relationship, should tell the other participant, either verbally or in writing, that the conduct is no longer consensual or welcome and therefore all such conduct must cease.

All students and employees shall cooperate with any investigation of an alleged act of sexual discrimination/harassment conducted by the district or by an appropriate state or federal agency. No student or employee of the district shall take any action to discourage anyone from reporting any incident of sexual discrimination or harassment.

Procedures for Reporting and Responding to Reports of Sexual Harassment

1. Reporting Sexual Harassment

Students should report sexual harassment to the principal or the Title IX/sexual harassment officer as soon as possible after the alleged conduct occurs, optimally within 30 days. Prompt reporting will enable the district to investigate the facts, determine the issues, and provide an appropriate remedy or

disciplinary action. The district shall respond to reports of discrimination and harassment to the greatest extent possible, taking into account the amount of time that has passed since the alleged conduct occurred. Unreasonable delay in reporting may impede the district's ability to conduct an investigation and/or effect appropriate action, as well as both parties' legal rights.

In any case of sexual harassment involving the individual to whom the complaint would ordinarily be made, the complaint shall be made to the superintendent or designee.

## 2. Options for Resolution

Individuals reporting sexual harassment will be informed about options for resolving potential violations of the sexual harassment policy. These options will include procedures for Early Resolution and procedures for Formal Investigation.

Individuals reporting harassment will be informed about the range of possible outcomes of the report, including interim protections, remedies for the individual harmed by the harassment, and disciplinary actions that might be taken against the accused as a result of the report, including information about the procedures leading to such outcomes.

An individual who is subjected to retaliation (e.g., threats, intimidation, reprisals, or adverse employment or educational actions) for having reported sexual harassment in good faith, who assisted someone with a report of sexual harassment, or who participated in any manner in an investigation or resolution of a report of sexual harassment, may make a report of retaliation under these procedures.

## 3. Procedures for Early Resolution

The goal of Early Resolution is to resolve concerns at the earliest stage possible. Parties are encouraged to utilize Early Resolution options when they desire to resolve the situation cooperatively and/or when a Formal Investigation is not likely to lead to a satisfactory outcome. Early Resolution may include an inquiry into the facts, but typically does not include a formal investigation. Means for Early Resolution will be flexible and encompass a full range of possible appropriate outcomes. Early Resolution includes options such as mediating an agreement between the parties, separating the parties, referring the parties to counseling programs, negotiating an agreement for disciplinary action, conducting targeted educational and training programs, or providing remedies for the individual harmed by the harassment. Early Resolution also includes

options such as discussions with the parties, making recommendations for resolution, and conducting a follow-up review after a period of time to assure that the resolution has been implemented effectively.

While the district encourages early resolution of a complaint, the district does not require that parties participate in Early Resolution. Some reports of discrimination or harassment may not be appropriate for Early Resolution. The Title IX/sexual harassment officer shall have the discretion to determine that Early Resolution is not appropriate.

#### 4. Procedures for Formal Investigation

In response to reports of sexual harassment in cases where Early Resolution is inappropriate (such as when the facts are in dispute in reports of serious misconduct, when reports involve employees or individuals with a pattern of inappropriate behavior or when there are allegations of criminal acts such as sexual assault) or in cases where the complainant wishes to end the Early Resolution process, the Title IX/sexual harassment officer or his/her designee may conduct a Formal Investigation. In such cases, the individual making the report will be encouraged to file a written request for Formal Investigation. In cases where there is no written request, the Title IX/sexual harassment officer may initiate a Formal Investigation after making a preliminary inquiry into the facts.

Formal Investigation of reports of sexual harassment includes the following:

- a. The individual(s) accused of conduct violating the district's sexual harassment policy are informed of the allegations.
- b. The investigation generally includes interviews with the parties if available, interviews with other witnesses as needed, and a review of relevant documents as appropriate. Disclosure of facts to parties and witnesses is limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation are advised that maintaining confidentiality is essential to protect the integrity of the investigation.
- c. Upon request, the complainant and the accused may each have a representative present when he or she is interviewed. Other witnesses may have a representative present at the discretion of the investigator.
- d. At any time during the investigation, the district may impose interim protections or remedies for the complainant or witnesses. These protections or remedies may include separating the parties, placing limitations on contact between parties, or making alternative working

arrangements. Failure to comply with the terms of interim protections may be considered a separate violation of the sexual harassment policy.

- e. The investigation shall be completed as promptly as possible and in most cases within 30 working days of the date the request for Formal Investigation was filed. This timeline may be extended for good cause.
- f. The investigator shall prepare a written report of his/her findings. The report shall include the decision and the reasons for the decision and shall summarize all the steps taken during the investigation. The report shall be presented to the superintendent or designee. A summary of the report shall be presented to the complainant and the person accused. If a determination has been made that sexual harassment occurred, the parties shall be informed as to the corrective action(s) that have been taken or will be taken to the extent such notice is consistent with the "privacy" provisions of this regulation.
- g. The complainant or the person accused may appeal any findings to the superintendent within 10 working days of receiving the summary of the Investigator's findings. Upon receiving an appeal, the superintendent shall schedule a meeting with the person who filed the appeal as soon as practicable. The superintendent shall render his/her decision within 10 working days of the meeting.
- h. The Title IX/sexual harassment officer shall ensure that the harassed student and his/her parent or guardian are informed of the procedures for reporting any subsequent problems. The Title IX/sexual harassment officer or designee shall make follow-up inquiries to see if there have been any new incidents or retaliation.

#### Privacy

The district shall protect the privacy of individuals involved in a report of sexual harassment or retaliation to the extent required by law and district policy. A report of sexual harassment may result in the gathering of extremely sensitive information about individuals. While such information is considered confidential, laws regarding access to public records may require disclosure of certain information concerning a report of sexual harassment. In such cases, every effort will be made to redact the records to protect the privacy of individuals. An individual who has made a report of sexual harassment may be advised of sanctions imposed against the accused when the individual needs to be aware of the sanction in order for it to be fully effective (such as restrictions on communication or contact with the individual who made the report).

However, information regarding disciplinary action taken against the accused will not be disclosed without the accused's consent, unless such disclosure is permitted by law.

#### Confidentiality of Reports

District employees, such as the Title IX/sexual harassment officer, managers, and supervisors have an obligation to respond to reports of harassment and retaliation, even if the individual making the report requests that no action be taken. An individual's requests regarding confidentiality of reports of harassment or retaliation will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of the district's legal obligation to ensure a working and learning environment free from sexual harassment and retaliation and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation, although the district will comply with requests for confidentiality to the extent possible.

#### Other Remedies

Anyone who believes that an education institution that receives federal funds has discriminated against someone on the basis of sex may file a complaint with the U.S. Department of Education, Office for Civil Rights (OCR). The person or organization need not be a victim of the alleged discrimination/harassment but may complain on behalf of another person or group. A complaint must be filed within 180 calendar days of the date of the alleged discrimination, unless the time for filing is extended by OCR for good cause. If a complainant uses the district's complaint process and also chooses to file with OCR, the complaint must be filed with OCR within 60 days after the completion of the district's complaint resolution process. Contact information for OCR is:

Office for Civil Rights,  
San Francisco Office  
U.S. Department of Education  
50 Beale Street, Suite 7200  
San Francisco, CA 94105-1813  
Telephone: (415) 486-5555  
Fax: (415) 486-5570  
E-mail: [OCR.SanFrancisco@ed.gov](mailto:OCR.SanFrancisco@ed.gov)

Civil law remedies, including but not limited to, injunctions, restraining orders, or other remedies or orders may also be available to complainants.

Ref: EC Sections 200-231.5, 234.1, 48900.2  
Government Code Sections 12900-12940, et seq.  
34 CFR 106.9  
Title VII (Civil Rights Act of 1964 as amended, 42 USC §2000(d) (e), et. seq.)  
Title IX (Educational Amendments Act of 1972, 42 USC §1681, et seq.)

*Meritor Savings Bank v. Vinson, 447 U.S. 57 (1986)*  
*Franklin v. Gwinett County Schools, 503 U.S. 60 (1992)*  
*Harris v. Forklift Systems, 510 U.S. 17 (1993)*  
*Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998)*  
*Faragher v. City of Boca Raton, 524 U.S. 775 (1998)*  
*Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)*  
*Clark County v. Breeden, 121 S.Ct. 1508 (2001)*  
*Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998)*  
*Davis v. Monroe County Board of Education, 526 U.S. 629 (1999)*

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