

Buena Park School District
Administrative Regulation

AR 5145.7

Students

Sexual Harassment

General

This procedure provides a means through which complaints concerning sexual harassment including bullying based on gender, gender identity and gender expression, may be promptly addressed to ensure that the educational and employment environments of the District are free of sexual harassment.

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 gender, in the educational setting, when made on the basis of sex and under any of the following conditions: (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.

Examples 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. Unwelcome 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, derogatory posters, notes, stories, cartoons, drawings, pictures or obscene gestures, or computer-generated images of a sexual nature

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. Impeding or blocking movements or any physical interference with school activities when directed at an individual on the basis of sex
10. Displaying sexually suggestive objects
11. Sexual assault, sexual battery, or sexual coercion

Any student who believes he/she has been subjected to sexual harassment or who has witnessed sexual harassment may use this procedure to file a complaint. This complaint procedure includes both an informal and a formal procedure. The informal procedure allows an individual who believes he/she has been sexually harassed to resolve the issue through an internal mediation process rather than the formal procedure.

For a complaint to be processed, it must be filed within 120 days of the alleged harassment. At any time a complainant may file a complaint with a State or Federal enforcement agency such as the Department of Fair Employment and Housing.

The Administrator of Human Resources shall serve as the compliance officer and is designated to receive and process all complaints under this procedure. Complaints filed may be forwarded directly to the Superintendent.

For the purpose of this policy, the conduct described in Education Code 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive education environment. This section shall not apply to students enrolled in kindergarten and grades one to three, inclusive.

Notifications

A copy of the district's sexual harassment policy and regulation 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)

(cf. 5145.6 - Parental Notifications)

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)

A copy of the district's sexual harassment policy and retaliation shall be posted on district and school web sites and, when available, on district-supported social media.

(cf. 1113 - District and School Web Sites)

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
6. Be included in the student handbook

Provide information about the rights of students and parents/guardians to file a criminal complaint of sexual harassment

Complaint Procedure

While the nature and extent of the district's investigation may be limited if the student wishes to remain anonymous or decides not to file a complaint, the district shall still take all feasible steps to respond to harassment of which it has notice.

a. Informal Resolution Process - To accommodate the unique nature of sexual harassment complaints, an informal process is provided for the primary resolution of a complaint at the earliest possible date. This process shall, at a minimum, include the following elements:

(1) The Principal or Assistant Principal will be available to receive sexual harassment complaints made by students. If the Principal or Assistant Principal is the alleged harasser, the student may present his or her complaint to the Administrator of Human Resources. Upon receiving a sexual harassment complaint, the Principal or Assistant Principal shall:

- (a) Counsel the alleged victim and outline the options available.
- (b) Obtain a factual written statement of the complaint.
- (c) Assist in follow-up investigation, interviewing the accused, witnesses, and supervisor, as appropriate, and recommending the disposition of the complaint.

(2) The Principal or Assistant Principal will review the factual information collected to determine whether the alleged conduct constitutes sexual harassment, giving consideration to the record as a whole and the totality of the circumstances, including the nature of the sexual advances and the context in which the alleged incidents occurred, and will take and/or authorize appropriate action.

(a) Consider student-on-student sexual harassment which occurs off school grounds or outside school-sponsored or school-related programs or activities, since the sexual

harassment may still create a hostile environment for the victim at school.

(3) The principal or designee shall discuss the complaint only with the people described above. 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
- 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
(cf. 5141.4 - Child Abuse Reporting Procedures)
- f. Legal counsel for the district

(4) In reaching a decision about the complaint, the 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

(5) To judge the severity of the harassment, the 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

(6) Interim Measures: the principal or designee shall determine whether interim measures are necessary during and pending the results of the investigation, such as placing students in separate classes or transferring a student to a class taught by a different teacher

(7) The 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.

(8) The principal or designee shall give the Superintendent 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.

(9) 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.

(10) 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.

Formal Resolution Process

a. If the complaint is not resolved by the informal process to the satisfaction of the alleged victim, the following formal procedures are available:

(1) The complaint shall be reduced to writing and sent to the Administrator of Human Resources within ten (10) working days of the completion of the informal process.

(2) The Administrator of Human Resources shall investigate the complaint and respond within (10) working days after receiving the complaint. This timeline may be extended if necessary.

(3) If the complaint is not satisfactorily resolved at the level of the Administrator of Human Resources the student may, within ten (10) days of receipt of the response of the Administrator of Human Resources, request that the complaint be reviewed by the Superintendent.

(4) The Superintendent shall then take action deemed appropriate to resolve the situation including but not limited to, discipline, training, or other remedial measures.

(5) An effort will be made to protect the privacy of the parties involved in a complaint. Files which pertain to complaints handled under the informal process shall be kept

confidential and will not be made available to the general public.

(6) The principal or designee shall discuss the complaint only with the people described above. 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
- 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
(cf. 5141.4 - Child Abuse Reporting Procedures)
- f. Legal counsel for the district

(7) No retaliation of any kind will occur because a student made a sexual harassment complaint.

(8) False allegations may result in disciplinary actions.

Communicating Results of Investigation

The District shall inform the complainant of the results of the investigation to the extent permitted by law.

Should the complainant disagree with the resolution of the complaint, the complainant may appeal to the Governing Board within 10 working days of being informed of the results of the formal investigation. The Superintendent shall provide the Governing Board with all information presented during the investigation. Upon receiving an appeal, the Governing Board shall schedule a hearing as soon as practicable. Any complaint against a district employee shall be addressed in closed session in accordance with law. The Governing Board shall render its decision within 10 working days.

Enforcement of District Policy

The Superintendent 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

(cf. 5131.5 - Vandalism, theft, and Graffiti)

2. Providing training to students, staff, and parents/guardians about how to recognize harassment and how to respond

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

3. Disseminating and/or summarizing the district's policy and regulation regarding sexual harassment

4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating the school's response to parents/guardians and the community

(cf. 4119.23/4219.23/43319.23 - Unauthorized Release of Confidential/Privileged Information)

(cf. 5125 - Student Records)

5. Taking appropriate disciplinary action

In addition, disciplinary measures may be taken against any person who is found to have made a complaint of sexual harassment which he/she knew was not true.

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4218 - dismissal/Suspension/Disciplinary Action)

(cf. 5144.1 - Suspension and Expulsion/Due Process)

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with disabilities))

5. Obligations of All Employees

a. All employees shall report to their immediate supervisor any sexual harassment of students by other student(s), officers or other employees of the District, or non-employees, such as sales representatives or service vendors. Employees shall take appropriate action to stop any sexual harassment of students, including discipline of students involved and notification of the incident(s) to the appropriate site administrator.

b. All 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.

c. No employee of the District shall take any action to discourage a victim of harassment from reporting such an instance.

d. Because different procedures apply after a formal governmental administrative charge or complaint is filed, any officer or employee receiving such a charge or complaint is directed to deliver it to the Superintendent immediately.

Regulation
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BUENA PARK SCHOOL DISTRICT
Buena Park, California