

# LODI UNIFIED SCHOOL DISTRICT

Rule 4119.11

4219.11

4319.11

## REVISION

### Personnel

### ~~Sexual Harassment~~ Sex Discrimination and Sex-Based Harassment

The district does not discriminate on the basis of sex in any of its programs or activities and complies with Title IX of the Education Amendments of 1972 and its implementing regulations. Sex discrimination, including sex-based harassment, is prohibited in district education programs and activities.

The following rule 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

*Sex discrimination* includes treating an employee differently based on the employee's sex, which includes differential treatment based on sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery; parental, family, or marital status; or association with a person or group with one or more of these actual or perceived characteristics.

*Sex discrimination*, including sex-based harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct and occurs when prohibited conduct is so severe, persistent, or pervasive that it creates an intimidating, threatening, hostile, or offensive work environment; has the effect of substantially or unreasonably interfering with an employee's term or condition of employment; or otherwise adversely affects an employee's employment opportunities.

*Sex-based harassment* is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, sex stereotypes, sex characteristics, or other bases specified above. Conduct will constitute sex-based harassment when it takes the form of:

1. **Quid pro quo harassment:** A district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service in the district's education program or activity conditioning the provision of district aid, benefit, or service on a student's participation in unwelcome sexual conduct
2. **Hostile environment harassment:** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the district's education program or activity

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sex-based harassment in violation of district policy if it has a continuing effect on a student's ability to participate in or benefit from district educational programs or activities.

3. **Sexual assault, dating violence, domestic violence, or stalking, as defined in 34 CFR 106.2**

~~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, **regardless of whether or not the conduct is motivated by sexual desire.** ~~made by someone from or in the work or educational setting when:~~ 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:

1. Submission to the conduct is made ~~expressly~~ **explicitly** or implicitly a term or condition of any individual's employment.
2. Submission to or rejection of such conduct by an individual 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 or has the purpose or effect of creating an intimidating, hostile, or offensive work environment. ~~Regardless of whether or not the alleged harasser was motivated by sexual desire, the conduct is sufficiently severe, persistent, pervasive, or objectively offensive as to create a hostile or abusive working environment or to limit the individual's ability to participate in or benefit from an education program or activity.~~

3. Submission to or rejection of the conduct by an individual is used as the basis for any decision affecting ~~him/her~~ **the individual** regarding benefits, services, honors, programs, or activities available at or through the district.

### **Examples of Sex Discrimination and Sex-Based Harassment**

~~Other~~ **Examples** of actions that might constitute ~~sexual harassment~~ **sex-based harassment under state and/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, ~~in the work or educational setting~~ 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, or gestures, sexually explicit emails; 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
4. ~~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.~~

### **Title IX Coordinator/Compliance Officer**

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX in accordance with Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, and oversee the district's response to discrimination complaints processed under Administrative Regulation 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:

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(title or position)

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(address)

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(telephone number)

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(email)

## TRAINING

The Superintendent or designee shall ensure that all employees receive training regarding **sex discrimination and sex-based harassment in accordance with state and federal law.**

~~the districts sexual harassment policies when hired and periodically thereafter. Such training shall include the procedures for reporting and/or filing complaints involving an employee, employees' duty to use the district's complaint procedures, and employee obligations when a sexual harassment report involving a student is made to the employee.~~

Every two years, the 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 **as specified in Government Code 12950.1.** All such newly hired or promoted employees **to a supervisory position** shall receive training within six months of their assumption of the new position.

A supervisory employee is any employee with the authority **in the interest of the district** to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, ~~or to effectively recommend such action.~~ **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.**

~~Every two years, the 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.~~

~~A supervisory employee is any employee having the authority, in the interest of the district, 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.~~

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.

The district's sexual harassment training and education program ~~for supervisory employees shall include~~ **but is not limited to, the following:** ~~the provision of:~~

1. Information and practical guidance regarding federal and state laws **concerning** ~~on~~ the prohibition, ~~against and the~~ prevention, and correction of sexual harassment, ~~and the remedies available to the victims of sexual harassment in employment~~
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 aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation~~ **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 district'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 district's anti-harassment policy, and how to use the policy if a harassment complaint is filed

Employees shall receive a copy of the district'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. ~~A component on the prevention of abusive conduct that addresses the use of derogatory remarks, insults, or epithets, other verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, and the gratuitous sabotage or undermining of a person's work performance~~

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

Additionally, the Superintendent or designee shall ensure that all employees receive annual training related to their duties under Title IX in accordance with 34 CFR 106.8, and that a newly hired employee receive training promptly upon hire or change of position that alters the employee's duties under Title IX. (34 CFR 106.8)

The district's Title IX sex discrimination and sex-based harassment training shall include:

1. The district's obligation to address sex-based discrimination, including sex-based harassment, in its education program or activity
2. The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment
3. The notification and information requirements specified in 34 CFR 106.40 and 106.44

The district's Title IX sex-based harassment training and education program shall also include additional training required of supervisors; investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; facilitators of an informal resolution process; and Title IX Coordinators and designees. (34 CFR 106.8)

The 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, type of training, and name of the training provider. (2 CCR 11024)

Additionally, the Superintendent or designee shall retain for at least seven years the materials used to provide training as specified in 34 CFR 106.8, and to make these materials available, upon request, to members of the public.

14. ~~A copy of the district's sexual harassment policy and administrative regulation, which each participant shall acknowledge in writing that he/she~~ **they** ~~has~~ **have** received

5. ~~15. All other contents of mandated training specified in 2 CCR 11023~~

~~The 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.~~

## NOTIFICATIONS

To prevent unlawful sex discrimination and sex-based harassment, including retaliation, in district programs and activities, the Superintendent or designee shall provide notifications and implement measures to prevent discrimination and harassment as specified in Rule 4030 - Nondiscrimination in Employment.

In addition to the measures to prevent discrimination as specified in Rule 4030 - Nondiscrimination in Employment, the Superintendent or designee shall ensure that a copy of the Board policy and this administrative regulation:

~~A copy of the Board policy and rule on harassment in employment shall:~~

1. Be displayed in a prominent location in the main administrative building, district office, or other area of the school where notices of district rules, regulations, procedures, and standards of conduct are posted
2. Be provided to every district 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 district publication that sets forth the school's or district's comprehensive rules, regulations, procedures and standards of conduct.

All employees shall receive either a copy of information sheets prepared by the ~~California Department of Fair Employment and Housing (DFEH)~~ **California Civil Rights Department (CRD)** or the district information sheets that contain, at a minimum, components on:

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

In addition, the district shall post, in a prominent and accessible location, ~~DFEH's~~ **the CRD** poster on discrimination in employment and the illegality of sexual harassment ~~and the CRD poster regarding transgender rights.~~

### **Complaint Procedures**

**All complaints and allegations of sex discrimination and sex-based harassment by and**



against employees shall be investigated and resolved as specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

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

Rule

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