

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

Personnel**PROHIBITION OF PUPIL DISCRIMINATION, HARASSMENT, RETALIATION AND/OR SEXUAL HARASSMENT**Policy Statement:

The Fresno County Superintendent of Schools ("FCSS") is committed to maintaining a learning environment that is free from any form of discrimination, harassment and retaliation. The FCSS prohibits the unlawful harassment of, or discrimination and retaliation against, any pupil by any employee, pupil, or other person at school or at any school related activity.

Except for student complaints that constitute unlawful sexual harassment within the definitions set forth under Title IX of the Educational Amendments of 1972 that will be processed under Superintendent Administration Regulation 5145.71 and Superintendent Policy SP HR-1315, the following will be the procedure to ensure that pupils are free from all other forms of discrimination, harassment and retaliation. The procedures further provide a mechanism for the reporting and resolution of unlawful discrimination, harassment, and retaliation complaints.

QUICK LINKS[Supervisor Report of Pupil Incident/Complaint](#)[Pupil Complaint Form](#)[Pupil Appeal Form](#)

The FCSS designates the following position as the Compliance Coordinator for nondiscrimination in FCSS educational programs and activities:

Assistant Superintendent, Human Resources
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PROHIBITION OF PUPIL DISCRIMINATION AND HARASSMENT

The FCSS recognizes the right of every pupil to be free from discrimination, harassment, retaliation, violence, intimidation, and bullying based on actual or perceived ancestry, age, color, disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sex, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. The FCSS further declares its intent to act promptly, visibly and vigorously to eliminate such activity from the school environment.

EDUCATION EQUITY

The FCSS shall:

- Apply no rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.
- Not exclude or deny any student from any educational program or activity solely on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, but may require a student to obtain the certification of a physician or nurse

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practitioner that the student is physically and emotionally able to continue participation in the regular program or activity.

- Ensure that pregnant students and parenting male or female students are not excluded from participation in their regular school programs or required to participate in pregnant-student programs or alternative educational programs.
- Ensure that pregnant/parenting students who voluntarily participate in alternative programs are given educational programs, activities and courses equal to those they would have been in if participating in the regular programs.
- Treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom in the same manner and under the same policies as any other temporary disability.

DISCRIMINATION

Discrimination is defined as treating people in some way differently than other people not in the same category. The basic categories include, but are not limited to, unlawful discrimination against and/or harassment of pupils on the basis of actual or perceived race, color, national origin, ancestry, religious creed, age, marital status, pregnancy, physical or mental disability, medical condition, sex, gender, gender identity, gender expression or sexual orientation.

HARASSMENT

Harassment includes, but is not limited to, derogatory comments, offensive jokes, unwelcome physical contact, or persistently annoying conduct that interferes or creates an unpleasant/offensive-learning environment. This includes, but is not limited to, such conduct relating to or directed toward persons, on the actual or perceived basis of a particular race, national origin, religion, color, sex, gender, gender identity, gender expression, sexual orientation, physical or mental disability.

Examples of unlawful discrimination or harassment of a pupil include, but are not limited to,

1. Slurs, threats or verbal abuse;
2. Derogatory or degrading comments descriptions, drawings, pictures or gestures;
3. Unwelcome jokes, stories, teasing or taunting;
4. Any other verbal written, visual or physical conduct against the pupil which:
 - a. Adversely affects his/her employment; or
 - b. Has the purpose or effect of unreasonably interfering with the pupil's ability to learn or creating an intimidating, hostile or offensive learning environment.

SEXUAL HARASSMENT

Any student who feels that he/she is being or has been sexually harassed by a school employee, another student, or a non-employee on school grounds or at a school-related activity (e.g. a visiting athlete or coach) shall immediately contact his/her teacher or any other employee. An employee who receives such a complaint shall report it to the FCSS Compliance Officer.

Student complaints that allege unlawful sexual harassment within the definitions set forth under Title IX of the Educational Amendments of 1972 will be processed under Superintendent Administration Regulation 5145.71 and Superintendent Policy SP HR-1315.

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Sexual Harassment includes, but is not limited to: unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature constitutes sexual harassment when:

1. Submission to the conduct is made either an explicit or implicit term or condition of academic status or progress;
2. Submission to, or rejection of, the conduct is used as the basis for academic decisions affecting a pupil;
3. The conduct has the purpose or effect of unreasonably interfering with the pupil's work performance, or of creating an intimidating, hostile or offensive learning environment;
4. Submission to, or rejection of the conduct is the basis for any decision affecting benefits, services, honors, programs or other available activities.

EXAMPLES OF SEXUAL HARASSMENT

Sexual harassment includes, but is not limited to:

1. Making unsolicited written, verbal or physical contact of a sexual nature;
2. Continuing to express sexual interest after being informed that the interest is unwelcome;
3. Engaging in reprisals, threats of reprisal, or implied threats of reprisal following a negative response to sexual overtures;
4. Engaging in implicit or explicit coercive sexual behavior, which is used to control, influence or affect the career, grade, and/or learning environment of another pupil;
5. Being made to feel uncomfortable or isolated for not participating or responding to sexual jokes, cartoons, or comments;
6. Spreading of sexual rumors;
7. Limiting a pupil's access to educational tools;
8. Displaying sexually suggestive objects.

COMPLIANCE

FCSS shall avoid/resolve any act or actions, implied or explicit that may suggest, discrimination, harassment or retaliation. The County Superintendent or designee shall take all actions necessary to ensure the prevention, investigation and correction of discrimination, harassment, or retaliation. The FCSS will not tolerate discrimination, harassment or retaliation of any kind and will take appropriate disciplinary action whenever such discrimination, harassment or retaliation is demonstrated. Any individual who engages in such conduct contrary to this policy may be personally liable in any legal action brought against him or her.

Any pupil or staff member who engages in the discrimination, harassment or retaliation of anyone attending classes at or who is on FCSS staff will be subject to disciplinary action up to and including expulsion or dismissal.

RETALIATION PROHIBITED

FCSS encourages students and staff to file discrimination, harassment, or retaliation complaints to ensure that such unacceptable conduct is fully eradicated. Moreover, retaliation against any pupil or other person who chooses to exercise the right to file a discrimination or harassment complaint or for participating in the investigation of such complaints is strictly prohibited.

To avoid retaliation and the appearance of retaliation, pupils/FCSS staff are directed:

1. To refrain from taking any action, which dissuades any person from exercising the right to file a discrimination, harassment and/or retaliation complaint.

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2. To keep confidential the facts of any complaints or investigation made pursuant to this policy, including the identity of any witnesses or any facts, which disclose the identity of the claimant(s), or witness(s).
3. The person against whom a complaint has been filed is directed not to communicate with any complainant, witness or other person involved in any complaint whether in person, by mail, e-mail, telephone or through any intermediary.

REPORTING COMPLAINTS

Any pupil who feels that he/she has been discriminated against harassed or retaliated against shall immediately report the incident to his/her teacher, site administrator, other staff member or the FCSS Compliance Officer.

COMPLAINT PROCESS

The County Superintendent expects pupils or staff to immediately report incidents of discrimination, harassment or retaliation to the pupil's teacher, site administrator, other staff member or the FCSS Compliance Officer. FCSS staff members have the responsibility to immediately notify the FCSS Compliance Officer of the incident.

Note: If the teacher, Principal or site administrator is involved in the reported conduct, or, if for some reason the pupil feels uncomfortable about making a report to his or her teacher, Principal or site administrator, the report should be made to the Assistant Superintendent, Human Resources. .

The following procedures shall be used when a pupil alleges a specific action in violation of this policy has occurred:

1. Site Administrator is to gather accurate, complete information to ensure an immediate and thorough investigation of the complaint. Site Administrator is to document information volunteered by the complainant on the "Prohibition of Pupil Harassment Supervisor Report of Incident/Complaint" form.
2. Site Administrator is to submit written report of concern to Program Administrator, and Assistant Superintendent, Human Resources
3. The Program Administrator, and the Assistant Superintendent, Human Resources will review the information gathered by the supervisor along with the supervisor's recommendation.
4. Appropriate and immediate action will be taken if the County Superintendent's nondiscrimination, harassment, and retaliation policy has been violated.
5. The supervisor shall counsel the pupil and outline possible options for informal/formal resolution of the complaint.
6. No action will be taken against a pupil for filing a complaint.
7. The pupil filing the complaint will be notified of the outcome of the investigation.

INFORMAL /FORMAL INVESTIGATION

The appropriate Program Administrator shall counsel the pupil and outline possible options for informal resolution of the complaint. The Site Administrator will review facts, impact of conduct, efforts to correct and recommended resolution by pupil. Should informal resolution be achieved, the Site Administrator shall follow up with the pupil to ensure that the behavior(s) initially generating the complaint have been corrected and that there is not a likelihood of recurrence.

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If informal resolution of the complaint is not quickly achieved, the Assistant Superintendent, Human Resources shall conduct an appropriate investigation. An appropriate investigation may include interviewing the complainant, the accused, witnesses, and other suspected victims.

A formal complaint shall be in writing, signed by the pupil, and completed on a form prescribed by FCSS.

INVESTIGATION/REPORTING AND DECISION

A comprehensive investigation will be conducted to gather information that supports a fair and just decision. Upon completion of the investigation, the Deputy Superintendent, Business Services or designee shall render a determination as to whether the alleged conduct constitutes discrimination, harassment and/or retaliation. The Deputy Superintendent – Business Services shall look at the record as a whole, and the totality of the circumstances, including the nature of the alleged harassment, discrimination, or retaliation, the context in which the alleged incidents occurred, and the perspective of the victim.

REMEDIAL ACTION

If the investigation reveals there is reasonable cause to believe that discrimination, harassment or retaliation has occurred, the FCSS shall take appropriate action to ensure that the discrimination, harassment and/or retaliation ceases and will not recur.

APPEAL PROCESS

Following the complainant's receipt of the report and recommended disposition of the complaint by the Deputy Superintendent, Business Services or designee, the complainant may, if not satisfied by the report or the recommended disposition, appeal the matter to the County Superintendent. The complainant's appeal shall be in writing, signed by the complainant and completed on a form prescribed by the FCSS. The appeal shall state specifically the reasons why the complainant is dissatisfied with the report and recommended disposition by the Deputy Superintendent, Business Services or designee.

The County Superintendent shall review the basis for the complainant's appeal and make a decision based on the record presented. The County Superintendent reserves the rights to determine if it is necessary to collect additional information and/or to accept or modify the final disposition and action implemented as a result of the complaint.

CONFIDENTIALITY

All FCSS employees involved in processing discrimination, harassment or retaliation complaints shall endeavor in good faith to protect the privacy of all involved parties. Discussions among FCSS employees regarding discrimination, harassment or retaliation complaints shall be prohibited unless necessary to process and/or investigate the facts surrounding the complaint. FCSS staff members shall not have access to files concerning discrimination, harassment or retaliation complaints unless the employees are assigned to process and/or investigate the complaint. FCSS files pertaining to discrimination, harassment or retaliation complaints shall not be made available to the general public. All matters pertaining to the filing, investigation, and resolution of discrimination, harassment or retaliation complaints shall be confidential.

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS**ENFORCEMENT**

A violation of the FCSS' policy prohibiting discrimination, harassment and/or retaliation shall constitute just cause for discipline, up to and including expulsion and/or dismissal, and shall be deemed to be a violation of or refusal to obey state law and the policies and regulations of the County Superintendent. The FCSS or designee shall take appropriate actions to reinforce the County Superintendent's discrimination, harassment and retaliation policy. As needed, these actions may include any of the following:

1. Providing staff inservice and pupil instruction or counseling.
2. Notifying parents/guardians.
3. Notifying child protective services.
4. Taking the appropriate disciplinary action.

Adopted: 04/07/1997

Amended: 04/11/2003; 08/31/2005; 10/05/2007; 04/14/2010; 04/04/2011; 04/16/2012;
10/22/2013; 02/23/2016; 08/14/2020;10/1/2020

References:

Education Code 48980 (h)

Education Code 212.6

Superintendent Administration Regulation 5145.71

Superintendent Policy SP HR-1315