

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

Personnel
SEXUAL HARASSMENTPolicy Statement:

The Fresno County Superintendent of Schools ("FCSS") is committed to providing a safe, positive environment where all County Office employees are assured protection from sexual harassment in accordance with law. For purposes of this policy, employees include job applicants, student, interns, volunteers, and persons who contracted with the County Office to provide services, as applicable.

QUICK LINKS[Supervisor Report of Sexual Harassment Incident/Complaint](#)[Employee Sexual Harassment Complaint Form](#)[Employee Sexual Harassment Appeal Form](#)

This policy will be included in the **New Employee Orientation**, and the **Annual Employee Notifications** packet which is provided to all FCSS employees via U.S. Mail or FCOE email (hard copy or electronically) on an annual basis.

SEXUAL HARASSMENT

Any County Superintendent employee who engages or participates in sexual harassment, or who aids, abets, incites, compels, or coerces another to commit sexual harassment against a County Superintendent employee, job applicant, student, volunteer, or third party, is in violation of this and other County Superintendent policies and is subject to disciplinary action, up to and including dismissal.

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 when:

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

Examples of sexual harassment, whether committed by a supervisor, a co-worker, a non-employee, in the work or educational setting, include, but are not limited to,

1. Making unsolicited written, verbal, or physical contact of a sexual nature;
2. 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;
3. Engaging in reprisals, threats of reprisal, or implied threats of reprisal following a negative response to sexual overtures;

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4. Engaging in implicit or explicit coercive sexual behavior, which is used to control, influence, or affect the career, salary, and/or work environment of another employee;
5. Offering favors or employment benefits, such as promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations or reclassifications, in exchange for sexual favors; or
6. Being made to feel uncomfortable or isolated for not participating or responding to sexual jokes, cartoons, or comments.

I. COMPLAINT INVOLVING TITLE IX SEXUAL HARASSMENT

The following complaint procedures shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a County Superintendent employee was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30)

1. A County Superintendent employee conditioning the provision of a FCSS aid, benefit, or service on a 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 FCSS' educational programs or activities; or
3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291.

A report of sexual harassment shall be submitted directly to or forwarded to the County Superintendent's Title IX Coordinator using the contact information listed in SP HR 1316.

Upon receiving such a report, the Title IX Coordinator shall inform the complainant of the process for filing a formal complaint.

Even if the alleged victim chooses not to file a formal complaint, the Title IX Coordinator shall file a formal complaint in situations in which a safety threat exists. In addition, the Title IX Coordinator may file a formal complaint in other situations as permitted under the Title IX regulations. In such cases, the alleged victim is not a party to the case, but will receive notices as required by the Title IX regulations at specific points in the complaint process.

A formal complaint, with the complainant's physical or digital signature, may be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by the County Superintendent. (34 CFR 106.30)

The County Superintendent or designee shall ensure that the Title IX Coordinator, investigator, decision-maker, or a facilitator of an informal resolution process does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and that such persons receive training in accordance with 34 CFR 106.45. (34 CFR 106.45)

Supportive Measures

Upon receipt of a report of Title IX sexual harassment, even if a formal complaint is not filed, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures which are nondisciplinary, nonpunitive, and do not unreasonably burden the other

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party. Such measures may include, but are not limited to, counseling, extensions of deadlines, modifications of work schedules, mutual restrictions on contact, changes in work locations, leaves of absence, increased security, and monitoring of certain areas of the work site. The Title IX Coordinator shall consider the complainant's wishes with respect to supportive measures. (34 CFR 106.30, 106.44)

Emergency Removal

If a County Superintendent employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

If the respondent is a student, the County Superintendent may, on an emergency basis, remove the student from the FCSS education program or activity, provided that the County Superintendent conducts an individualized safety and risk analysis, determines that removal is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations, and provides the student with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

Dismissal of Complaint

The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30, even if proved. The Title IX Coordinator shall also dismiss any complaint that did not occur in the County Superintendent's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies the County Superintendent in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer employed by the County Superintendent, or sufficient circumstances prevent the County Superintendent from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, the Title IX Coordinator shall promptly, and simultaneously to the parties, send written notice of the dismissal and the reasons for the dismissal. (34 CFR 106.45)

If a complaint is dismissed on the grounds that the alleged conduct does not constitute sexual harassment as defined in 34 CFR 106.30, the conduct may still be addressed pursuant to SP HR-1316.

Informal Resolution Process

When a formal complaint of sexual harassment is filed, the County Superintendent may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. The FCSS shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint. (34 CFR 106.45)

The County Superintendent may facilitate an informal resolution process provided that the FCSS: (34 CFR 106.45)

1. Provides the parties with written notice disclosing the allegations, the requirements of the informal resolution process, the right to withdraw from the informal process and resume

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the formal complaint process, and any consequences resulting from participating in the informal resolution process, including that records will be maintained or could be shared.

2. Obtains the parties' voluntary, written consent to the informal resolution process.

Formal Complaint Process

If a formal complaint is filed, the Title IX Coordinator shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. The County Superintendent's complaint process, including any informal resolution process;
2. The allegations potentially constituting sexual harassment with sufficient details known at the time, including the identity of parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview;
If, during the course of the investigation, the County Superintendent investigates allegations about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties;
3. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process;
4. The opportunity for the parties to have an advisor of their choice who may be, but is not required to be, an attorney, and the ability to inspect and review evidence; and
5. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process

The above notice shall also include the name of the investigator, facilitator of an informal process, and decision-maker, and shall provide either party with no less than three calendar days to raise concerns of conflict of interest or bias regarding any of these persons.

During the investigation process, the County Superintendent shall: (34 CFR 106.45)

1. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
2. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney;
4. Not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding, although the County Superintendent may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties;
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate;
6. Send in an electronic format or hard copy to both parties and their advisors, if any, the

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evidence that is directly related to the allegations raised in the complaint, and provide the parties at least 10 working days to submit a written response for the investigator to consider prior to the completion of the investigative report;

7. Objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and determine credibility in a manner that is not based on a person's status as a complainant, respondent, or witness;
8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 working days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response; and
9. After sending the investigative report to the parties and before reaching a determination regarding responsibility, afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

Written Decision

The Deputy Superintendent-Business Services is the decision-maker to determine responsibility for the alleged conduct.

The Deputy Superintendent-Business Services shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct. (34 CFR 106.45)

The written decision shall be issued within 45 calendar days of the receipt of the complaint.

The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

In making this determination, the County Superintendent shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30;
2. A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if the

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- County Superintendent includes hearings as part of the grievance process;
3. Findings of fact supporting the determination;
 4. Conclusions regarding the application of the County Superintendent's code of conduct to the facts;
 5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions the County Superintendent imposes on the respondent, and whether remedies designed to restore or preserve equal access to the FCSS' educational program or activity will be provided by the FCSS to the complainant; and
 6. The County Superintendent's procedures and permissible bases for the complainant and respondent to appeal

Appeals

Either party may appeal the Deputy Superintendent-Business Services' decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or Deputy Superintendent-Business Services affected the outcome. If an appeal is filed, the County Superintendent shall: (34 CFR 106.45)

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
4. Issue a written decision describing the result of the appeal and the rationale for the result; and
5. Provide the written decision simultaneously to both parties.

An appeal must be filed in writing within 10 calendar days of receiving the determination, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered. Either party has the right to file a complaint with the U.S. Equal Employment Opportunity Commission.

A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

Remedies

When a determination of responsibility for sexual harassment has been made against the respondent, the County Superintendent shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent. (34 CFR 106.45)

Disciplinary Actions

The County Superintendent shall not impose any disciplinary sanctions or other actions against

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a respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made. (34 CFR 106.44)

When an employee is found to have committed sexual harassment or retaliation, the County Superintendent shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

Record-Keeping

The County Superintendent or designee shall maintain for a period of seven years a record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, any appeal or informal resolution and the results therefrom, and responses made pursuant to 34 CFR 106.44. (34 CFR 106.45)

The County Superintendent or designee shall also maintain for a period of seven years all materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. The County Superintendent shall make such training materials publicly available on its web site. (34 CFR 106.45)

II. ALL OTHER SEXUAL HARASSMENT COMPLAINTS

All other applicant/employee sexual harassment complaints that do not fall within the purview of Title IX of the Educational Amendments of 1972 will be processed in accordance with the following procedure.

COMPLAINT PROCESS

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

INFORMAL COMPLAINT

Upon receipt of a verbal complaint and review by appropriate administration, the supervisor shall counsel employee and outline possible options for informal resolution of the complaint. The supervisor will review facts, impact of conduct, efforts to correct, and the complainant's recommended resolution. Should informal resolution be achieved, the supervisor shall follow up with complainant to ensure that the behavior(s) initially generating the complaint have been

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corrected and that there is not a likelihood of recurrence. The supervisor shall report on the monitoring to the Assistant Superintendent, Human Resources or designee.

FORMAL COMPLAINT

If informal resolution of the complaint is not quickly achieved, or if the complainant files a written complaint, the Assistant Superintendent, Human Resources or designee shall conduct a thorough and complete investigation. An appropriate investigation may include interviewing the complainant, the alleged harasser, witnesses, and other suspected victims.

INVESTIGATION, REPORTING & DECISION

The comprehensive investigation of a formal complaint will be conducted to gather information that supports a fair and just decision. The Assistant Superintendent, Human Resources or designee shall determine whether interim measures, such as scheduling changes, transfers, or leaves need to be taken before the investigation is completed to ensure that further incidents do not occur. The Assistant Superintendent, Human Resources or designee shall ensure that such interim measures do not constitute retaliation. Upon completion of the investigation, the Assistant Superintendent, Human Resources or designee shall render his/her findings and render a determination as to whether the alleged conduct constitutes sexual harassment. The Assistant Superintendent, Human Resources or designee shall look at the record as a whole and the totality of the circumstances, including the nature of the alleged sexual harassment, 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 unlawful sexual harassment has occurred, FCSS shall take appropriate action to ensure that the offensive conduct ceases and will not recur. Actions taken in response to substantiated allegations of sexual harassment may include: reprimand, reassignment, transfer, and/or disciplinary action up to and including dismissal. Unlawful sexual harassment shall be deemed to be insubordination, a violation of or refusal to obey state law and the policies and regulations of the County Superintendent, and all other legally expressed causes for disciplinary action against public school employees. The harasser(s) and other employees, if appropriate, will be informed that appropriate action shall be taken if further acts of sexual harassment recur.

APPEAL PROCESS

Following the complainant's receipt of the disposition of the complaint by the Assistant Superintendent, Human Resources or designee, the complainant may, if not satisfied with the disposition, appeal the matter to the Deputy Superintendent-Business Services, within ten (10) calendar days that disposition is dated. The complainant's appeal shall be in writing, signed by the complainant, and completed on a form prescribed by the County Superintendent. The appeal shall state specifically the reasons why the complainant is dissatisfied with the report and recommended disposition by the Assistant Superintendent, Human Resources or designee.

The Deputy Superintendent-Business Services shall review the basis for the complainant's appeal and make a decision based on the record presented. The Deputy Superintendent -Business Services reserves his/her 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.

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS**CONFIDENTIALITY**

All complaints and allegations of sexual harassment shall be kept confidential to the extent necessary, to carry out the investigation or to take other subsequent necessary action.

All FCSS employees involved in processing unlawful sexual harassment complaints shall endeavor in good faith to protect the privacy of all parties involved in a complaint. Discussions among FCSS employees regarding unlawful sexual harassment shall be prohibited unless necessary to process and/or investigate the facts surrounding the complaint.

County Superintendent employees shall not have access to files concerning sexual harassment complaints unless the employees are assigned to process and/or investigate the complaint. FCSS' files pertaining to sexual harassment shall not be made available to the general public unless otherwise compelled by law. All matters pertaining to the filing, investigation, and resolution of sexual harassment complaints shall be confidential insofar as appropriate.

ENFORCEMENT

A violation of FCSS' policy prohibiting sexual harassment shall constitute just cause for discipline, up to and including 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.

In addition to the complaint process available through FCOE, an employee may file a complaint with the following agencies:

Department of Fair Employment and Housing (DFEH)
1320 East Shaw Avenue, Suite 150
Fresno, California 93710-7915
Phone: (800) 884-1684
www.dfeh.ca.gov

Equal Employment Opportunity Commission (EEOC)
2300 Tulare Street, Suite 215
Fresno, California 93721
Phone: (800) 669-4000
www.eeoc.gov/field/fresno/index.cfm

The employee may pursue a civil law remedy, and may also file an appeal to the Department of Education at:

California Department of Education (CDE)
1430 N Street
Sacramento, California 95814-5901
Phone: (916) 319-0800
www.ed.gov/about/offices/list/ocr

Adopted: 10/01/2020

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Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

48900 Grounds for suspension or expulsion

48900.2 Additional grounds for suspension or expulsion; sexual harassment

48985 Notices, report, statements and records in primary language

CIVIL CODE

51.9 Liability for sexual harassment; business, service and professional relationships

1714.1 Liability of parents/guardians for willful misconduct of minor

GOVERNMENT CODE

12950.1 Sexual harassment training

CODE OF REGULATIONS, TITLE 5

4600-4670 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1092 Definition of sexual assault

1221 Application of laws

1232g Family Educational Rights and Privacy Act

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 34

12291 Definition of dating violence, domestic violence, and stalking

UNITED STATES CODE, TITLE 42

1983 Civil action for deprivation of rights

2000d-2000d-7 Title VI, Civil Rights Act of 1964

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

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 Family Educational Rights and Privacy

106.1-106.82 Nondiscrimination on the basis of sex in education programs

COURT DECISIONS

Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567

Flores v. Morgan Hill Unified School District, (2003, 9th Cir.) 324 F.3d 1130

Reese v. Jefferson School District, (2000, 9th Cir.) 208 F.3d 736

Davis v. Monroe County Board of Education, (1999) 526 U.S. 629

Gebser v. Lago Vista Independent School District, (1998) 524 U.S. 274

Oona by Kate S. v. McCaffrey, (1998, 9th Cir.) 143 F.3d 473

Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447

Management Resources:

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

REFERENCES

Superintendent Administration Regulation 5145.71