

**POWAY UNIFIED SCHOOL DISTRICT
ADMINISTRATIVE PROCEDURE**

Originator: Assoc. Superintendent, PSS

Issue No: 4

Date: 9/25/01

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Reference: Education Code Sections 200-212.5, 200, 260-262.4; Government Code Sections 12900-12996; Title 2 of the California Code of Regulations; Sections 7287.6-7287.8; Title 5 of the California Code of Regulations, Sections 4600 *et seq.*; Title VII, Federal Civil Rights Act of 1964

ARTICLE: 4.0 PERSONNEL SUPPORT SERVICES
4.1 GENERAL PERSONNEL PRACTICES
**4.123 SEXUAL HARASSMENT –
EMPLOYEES**

SECTION 4.123.1 Sexual Harassment - Employees

I. SCOPE

This Administrative Procedure applies to all allegations of sexual harassment involving employment and pre-employment at Poway Unified School District. Employees, applicants for employment, student workers, interns, and student teachers who believe they have been the victims of sexual harassment by a District employee or official should be referred to, and their complaints processed pursuant to, this Administrative Procedure.

Students who have allegations of sexual harassment against other students, or against District employees or officials, should use Administrative Procedure 5.24.1.

II. GENERAL BACKGROUND

A. INTRODUCTION

The District is committed to providing all employees with a work environment free from sexual harassment, and will not tolerate such conduct on the part of any District employee or official. Individuals who believe they have been subjected to sexual harassment by a District employee or official should pursue claims of sexual harassment through this Administrative Procedure.

Poway Unified School District will not tolerate any retaliation by any District employee or official for the filing of, assistance with, or participation in, sexual harassment complaints, investigations, and remedies.

A complaining individual (hereafter referred to as the "complainant") does not have to confront the alleged harasser (hereafter referred to as the "respondent"), nor have the allegations processed by the respondent nor by an individual who is a direct subordinate of the respondent. (See Part V, Procedures, subpart D, Initiating the Complaint Process.)

Nothing within this Administrative Procedure prevents the District from implementing investigative and/or corrective actions independently of this Administrative Procedure, whether or not an informal or formal complaint has been filed, processed, withdrawn, or otherwise resolved. Any District administrator or supervisor who has knowledge of allegations of sexual harassment shall investigate those allegations or ensure that the appropriate administrator is informed of the allegations, regardless of whether or not a complaint is processed.

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This Administrative Procedure is intended to comply with State and Federal requirements regarding sexual harassment complaints and shall be interpreted and adjusted accordingly.

Any individual who has designated a representative should inform that representative of the need to maintain confidentiality as appropriate to this process, and shall confirm in a signed, written communication to the appropriate District representative that information may be supplied to or received from that named representative.

B. ALTERNATIVE SOURCES OF INFORMATION AND ASSISTANCE

Requests for information about the specific rules and procedures for reporting charges of sexual harassment, pursuing available remedies, resolving questions or concerns, or obtaining assistance due to disability or language, should be directed to the EEOC Compliance Officer for Poway Unified School District, on behalf of this District:

Associate Superintendent, Personnel Support Services or his/her designee
POWAY UNIFIED SCHOOL DISTRICT
13626 Twin Peaks Road
Poway, CA 92064
(858) 748-0010, extension 2014

C. TRAINING

The Superintendent, or the Superintendent's designee, shall ensure that the employees and other persons responsible for compliance and/or investigations regarding this Administrative Procedure shall be knowledgeable about the laws and programs that he/she is assigned to investigate.

The Superintendent, or designee, shall ensure periodic training of staff regarding the District's sexual harassment policy and these complaint procedures.

III. PROHIBITIONS & PRECAUTIONS

- A. **Sexual Harassment** Poway Unified School District strictly prohibits sexual harassment based upon gender or sex in the workplace environment, such as unwelcome harassment based upon sex or gender. Improper sexual harassment can involve conduct by a member of the opposite or same gender, a coworker, a supervisor or manager, an employee or agent of the District, a District official, or any such individual who aids, abets, incites, compels, coerces, or encourages the prohibited conduct or attempts to do so. It is not necessary that discipline, loss of tangible job benefits, or economic damage occurred to constitute sexual harassment. The complainant does not have to be the person who was harassed but could be an individual personally and adversely affected by the unwelcomed, offensive conduct.
- B. **Retaliation** Poway Unified School District strictly prohibits any retaliation and attempts or threats to retaliate against any employee or individual for initiating, reporting, pursuing, participating in, or intending to do so, as a complainant, witness, or in any other capacity relating to a complaint or potential complaint. Examples of retaliatory actions include but are not limited to employment decisions which adversely impact terms or conditions of employment. Any employee or official who retaliates or attempts or threatens to retaliate against any District employee or individual in violation of this Administrative Procedure may be subject to disciplinary action whether or not the underlying substantive allegations of sexual harassment are true.

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- C. **False Claims** No individual shall file any knowingly false allegation of sexual harassment or provide any knowingly false information in a sexual harassment complaint or investigation. Any individual violating these prohibitions may be subject to disciplinary action, independently of this Administrative Procedure.

IV. SEXUAL HARASSMENT: DEFINITIONS AND ILLUSTRATIONS

- A. **Definition of Sexual Harassment** Two general categories of sexual harassment exist: (1) quid pro quo, meaning "this for that" such as submission to sexual conduct is made a condition of employment benefits or terms and conditions of employment, and (2) hostile work environment, meaning the conduct is so severe, persistent, or pervasive that it created a hostile or abusive work environment.

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, or verbal, visual, or physical conduct, made by someone in the work setting, under any of the following conditions:

1. Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, progress, or participation in a District employment activity; or
2. Submission to, or rejection of, the conduct by the individual is used as the basis of employment decisions affecting the individual; or
3. The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment; or
4. Submission to, or rejection of, the conduct by the individual is used as or threatened to be used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through Poway Unified School District.

- B. **Factors to Consider** A determination of whether particular unwelcome conduct creates an intimidating, hostile, or offensive work environment is assessed from the point of view of a reasonable person in the alleged victim's position and takes into account the totality of circumstances. Factors to consider may include but are not limited to the following:

1. frequency of the offensive conduct
2. nature and seriousness
3. whether the conduct is physically threatening or humiliating
4. location of the conduct and the context in which it occurred
5. degree to which the conduct affected the employment environment
6. relationship between the parties
7. total physical environment of the victim's work area
8. impact on complainant.

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- C. **Illustrations of Sexual Harassment** Examples of unwelcomed conduct which may be sexual harassment include, but are not limited to, the following:
1. Deliberate written or oral comments, gestures, or physical contacts of a sexual nature or demeaning to one's gender which are unwelcome and/or interfere with work productivity.
 2. Implicit or explicit sexual behavior by an employee, supervisor, or co-worker which has the effect of controlling, influencing, or otherwise affecting the job, salary, project, performance evaluation, opportunity for employment, or career of an employee or an applicant for employment, including but not limited to preferential treatment or promises of preferential treatment to an employee for submitting to sexual conduct or offers of sexual conduct, or a consensual, romantic, or sexual relationship which causes adverse treatment of a third party or creates a hostile or intimidating working environment for a third party.
 3. Unwelcome suggestive, vulgar, or obscene letters, notes, posters, calendars, or other visual products, or derogatory comments, slurs, and/or jokes of a sexual nature.

V. PROCEDURES**A. Time Limit**

All formal complaints of sexual harassment must be presented within one (1) year from the date the alleged conduct occurred. However, nothing within this procedure prohibits District representatives from pursuing an investigation and implementing remedies beyond that deadline, with or without the implementation of this procedure.

B. Confidentiality

The confidentiality of the information received and the privacy of the individuals involved will be protected and honored, except as disclosures are required by law or as to those individuals who need to know within the context of an investigation, analysis, appeal of sexual harassment allegations, or prevention or correction of misconduct.

The informal as well as the formal complaint procedures cannot be implemented by a potential complainant without discussing the identity of the complainant with the respondent, and the formal complaint procedure cannot be implemented without a written, signed complaint.

Some allegations may be so egregious as to require District investigation, regardless of an individual's desire to remain anonymous or not process a complaint. Therefore, confidentiality is not guaranteed.

If an individual informs a supervisor or administrator about alleged harassment but asks the matter be kept confidential and no action be taken, the District must still discharge its duty to prevent and correct harassment.

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C. Interim Administrative Options

At any time, interim actions may be implemented, such as, but not limited to:

- notification to the respondent of the complaint, of the right of the complainant and participants to be free of retaliation, and that consequences may be imposed should retaliation be attempted or occur
- direction to the respondent to restrict contact with the complainant
- placement of the respondent on administrative leave with pay (which shall not be considered a disciplinary action).

A complainant shall not be penalized in his or her employment circumstances for the good-faith filing or processing of an informal or formal complaint, and shall not be transferred, reassigned, or removed from active employment without his or her request or voluntary agreement for such action.

D. Initiating the Complaint Process

If any District administrator, supervisor, or official becomes aware of a concern from a potential complainant of allegations of sexual harassment, that District representative shall provide a copy of and refer the potential complainant to this Administrative Procedure. The District administrator, supervisor, or official shall also report the contact with the potential complainant to the Associate Superintendent, Personnel Support Services who will record and document the contact.

A potential complainant may begin the complaint process through the informal or formal processes contained in this Administrative Procedure.

The potential complainant may directly inform the harasser that the conduct is unwelcome and must stop, but it is not required for the complainant to do so.

At no time must a potential complainant file a complaint with, or have it processed by, the respondent or have a complaint processed by a District official who is a direct subordinate of the respondent. Such respondents and their direct subordinates are disqualified from receiving, investigating, overseeing, or in any way acting as an official District participant for purposes of this Administrative Procedure. In such cases, the complaint should be filed with or processed by the next higher level above the respondent. For example, if the respondent is an Assistant Superintendent, the complaint should be presented to the Superintendent. Also, if the respondent is the Superintendent, the complaint should be filed with the President of the Board of Education. The Board President, or the President's designee, will represent the Board of Education in receiving and investigating complaints against the Superintendent, unless and until the Board of Education determines otherwise.

E. Informal Resolution Process

If the complaining individual wishes assistance to halt the conduct but does not desire to file a formal complaint, an informal process is available. It is not necessary to implement or exhaust the informal resolution process.

An informal complaint is an oral request made to the concerned individual's immediate supervisor or other District manager for assistance with resolving a concern about sexual harassment. An informal complaint may necessitate an inquiry but does not result in implementation of this Administrative Procedure's formal complaint process.

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The supervisor or administrator receiving the informal complaint should provide a copy of the Board Policy prohibiting sexual harassment and this Administrative Procedure to the complainant and respondent or ensure that copies have already been provided.

The goals of the informal complaint process are to encourage the individuals involved to identify the concern and agree on how to deal with it, and obtain resolution. All outcomes (successful or unsuccessful) must be reported to the Associate Superintendent, Personnel Support Services, within a reasonable period of time (typically thirty (30) calendar days) of the commencement of the informal process, although further time may be granted within the discretion of the Associate Superintendent, Personnel Support Services.

Regardless of any informal resolution or the desire or request of a complainant to pursue any matter informally, the District may implement additional investigatory, corrective, and/or preventative actions.

F. **Formal Resolution Process**

Implementation The formal resolution process is implemented by the filing of a written, signed complaint with the Associate Superintendent, Personnel Support Services. The complaint should include at least the names of the individuals involved, the approximate dates of the events at issue, a detailed description of the actions constituting the alleged sexual harassment, and a statement of the remedy desired by the complainant. Names, addresses and telephone numbers of witnesses and other pertinent information which may assist the investigator may be included.

Investigation and Report The Associate Superintendent, Personnel Support Services, or his/her designee, shall commence a timely investigation. Assistance of legal counsel or licensed investigator may be obtained by the Associate Superintendent, Personnel Support Services, or his/her designee.

The investigation and report shall be completed as expeditiously as practical and no later than sixty (60) calendar days from receipt by the District of a written, signed complaint, unless further time is required by law or if the complainant agrees in writing to an extension.

The formal investigation shall result in a report which shall contain, at the minimum, a copy of the complaint, a summary of evidence, findings of fact, a determination of whether the facts indicate that sexual harassment occurred, and a recommendation to resolve the complaint. The report shall also contain notice of the right of either party to appeal, notice that retaliation is prohibited, and notice that the report should remain confidential to the extent required by law.

Copies of the report shall be provided to the complainant who signed the complaint and to the respondent, or to their respective representatives.

If neither the respondent nor the complainant appeal the report, the report (including its proposed resolution) shall be implemented and the complaint shall be considered closed.

Appeal to Superintendent The complainant or the respondent may appeal the findings, conclusions, or recommendations, by appealing to the District Superintendent. Any appeal must be received in the Superintendent's office no later than five (5) working days following forwarding of the investigator's report. The appeal shall be in writing, specifying at least

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what facts, conclusions, and/or recommendations are contested and the basis for the appeal, and shall be signed.

Role of Superintendent. The Superintendent, or the Superintendent's designee, as soon as practical, shall forward a copy of the appeal to the other party, with a request that any response or further information be provided to the Superintendent within five (5) working days following the transmission of the copy of the appeal.

The Superintendent shall consider the appeal and may conduct or direct any such additional investigation as the Superintendent deems necessary or appropriate, and may modify the deadlines within the Superintendent's level of appeal after the receipt of a timely appeal and upon notice to the parties.

The decision should be issued within twenty (20) working days of the Superintendent's receipt of the appeal. The written decision shall indicate the basis and reasons for the decision and include notice of the right of either party to appeal to the Board of Education.

Copies of the decision shall be provided to the complainant who signed the complaint and to the respondent, or to their respective representative(s).

Appeal to Board of Education The complainant or the respondent may appeal the Superintendent's decision to the Board of Education. An appeal must be received in the Superintendent's office no later than the close of business on the fifth (5th) working day following transmission of the Superintendent's decision. The appeal shall be in writing, specifying at least why the Superintendent's decision should be changed, and be signed.

A copy of the appeal will be forwarded to the other party as soon as practical, and include at least notice of the right to submit any written response within seven (7) business days of transmission of the copy of the appeal.

As soon as it is feasible, the Board of Education will consider what, if any, additional actions should be undertaken and issue its final determination upon the appeal to the parties. The procedural prerequisites of the Brown Act (within Government Code Section 54957, paragraph 2) shall apply to the extent required by law.

Notice of the Board's decision shall be provided to the complainant and to the respondent or their respective representatives, and shall contain notice of the complainant's right to appeal to the California Department of Education and the procedures to be followed for initiating an appeal.

Access to Other Entities In accordance with Title 5 of the California Code of Regulations, Section 4631(c), complainants are advised of the right to appeal the local decision to the California Department of Education. Any complainant may appeal the Board's decision to the State Superintendent in accordance with Title 5, the California Code of Regulations, Section 4652, by filing a written appeal with the State Superintendent within fifteen (15) days of receiving the Board's decision.

In accordance with Education Code Section 262.3, persons who have filed a complaint with an educational institution are advised that civil law remedies, including but not limited to, injunctions, restraining orders, or other remedies or orders may also be available to complainants. Pursuant to subdivision (d) of Section 262.3, a person who alleges that he or she is a victim of discrimination may not seek civil remedies pursuant to that section until at least sixty (60) days have elapsed from the filing of an appeal to the State Department of Education, except that such moratorium does not apply to injunctive relief.

The California Department of Fair Employment and Housing (DFEH) and the Federal Equal Employment Opportunity Commission (EEOC) are agencies that enforce compliance with state and federal laws and regulations protecting individuals from employment discrimination and may be contacted for assistance with complaints of employment discrimination. Retaliation is prohibited by federal and state law, e.g., by Section 7287.8 of Title 2 of the California Code of Regulations.

VI. Dissemination

Information regarding the District's sexual harassment policy and this Administrative Procedure shall be provided to all employees, including substitute and temporary employees, at the beginning of the first semester of the school year or at the time of hire.

Information regarding the District's sexual harassment policy and this Administrative Procedure shall be posted and displayed prominently within the District's main administration building and each other District work facility within this District.

Information regarding the District's sexual harassment policy and this Administrative Procedure shall appear in any publication of the District that sets forth its comprehensive rules, regulations, procedures, and standards of conduct for employees