

WESTMORLAND UNION ELEMENTARY SCHOOL DISTRICT

I.

Board Policies Covering All Employees

**Board Policy No. 4002: SEXUAL HARASSMENT POLICY INCLUDING
COMPLAINT PROCEDURE FOR ALL ILLEGAL
DISCRIMINATION AND HARASSMENT**

A. Introduction

The District recognizes that harassment on the basis of sex is a violation of both federal and state employment discrimination laws as well as this District Policy. The District will provide to all employees a work environment free from sexual harassment, and will not tolerate such conduct on the part of any employee.

Any individual with a complaint of sexual harassment should immediately report it to the Superintendent or designee. If the Superintendent is the individual about whom the complaint is to be made, the employee should make the complaint directly to the Board President. All complaints of sexual harassment will be promptly and thoroughly investigated and properly resolved. No individual will suffer reprisals for reporting any incidents of sexual harassment or making any complaints.

B. Definitions Of Sexual Harassment

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. It includes but is not limited to circumstances in which:

1. Submission to such conduct is made a term or condition of an individual's employment; or
2. Submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. A hostile work environment is established where there is unwelcomed sexual conduct that a reasonable person of the same gender as the complainant would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.

C. Forms Of Sexual Harassment

Forms of sexual harassment include but are not limited to the following:

1. "Quid pro quo" sexual harassment occurs when a person in a position to effectively recommend, grant, deny, or adversely effect the terms or conditions of employment or a student's status, educational or career opportunities offers or suggests that such effects are conditional on an individual's willingness to engage in or tolerate the unwelcome sexual conduct.
2. "Hostile environment" sexual harassment occurs when the unwelcome sexual conduct is sufficiently severe or pervasive so as to alter the conditions of an individual's learning or work environment, unreasonably interfere with an individual's academic or work performance, or create an intimidating, hostile, or abusive learning or work environment.

D. Examples of Prohibited Sexual Harassment

1. Verbal harassment - Includes but is not limited to unwelcome derogatory comments, remarks, slurs, jokes or innuendo based on sex or of a sexual nature and may include, but is not limited to, unwelcome sexual comments, obscenities or innuendo regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome or repeated flirting, or proposals to meet, date, or engage in conversations which include the verbal statements defined above; demands for sexual favors, or verbal abuse, threats or intimidation of a sexual nature, or patronizing or ridiculing statements which convey derogatory attitudes toward or are demeaning to a particular gender.
2. Physical harassment - Includes, but is not limited to, unwelcome and offensive touching, assault, impeding or blocking free movement, attempting to or kissing, patting, stroking, grabbing, or invading the space of another; pinching, leering, staring, unnecessarily brushing against, whistling or making sexual signs or gestures toward or in the presence of another.
3. Visual harassment - Includes but is not limited to the display or circulation of sexually derogatory, demeaning, or offensive posters, pictures, cards, cartoons, graffiti, drawings, or gestures; or reading materials, computer graphics or electronic media transmissions.
4. Solicitation of sexual favors - Includes, but is not limited to, unwelcome sexual advances, suggestions or requests for sexual acts or favors.

E. Complaints Of Illegal Discrimination/Harassment

If any employee perceives comments, gestures or actions on the part of any other employee, including supervisors or members of management, to be offensive, the employee should notify the Superintendent, or where appropriate, the Board President. No employee is required to file any complaint with the alleged harasser.

The District will promptly and thoroughly investigate any complaints of illegal harassment, and will take immediate action to resolve such complaints.

Upon notification or discovery of an illegal harassment complaint, the Superintendent or designee will:

1. Inform the complainant of any rights under any relevant complaint procedure or policy;
2. Authorize the investigation of the complaint and supervise and/or investigate the complaint. The investigation will include interviews with: 1) the complainant; 2) the accused harasser; and 3) any other persons who reasonably may have relevant knowledge concerning the complaint, such as witnesses and victims of similar conduct;
3. Review factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment; giving consideration to all factual information, the totality of the circumstances, including the nature of the verbal, physical, or visual aspects of the action and the context in which the alleged incidents occurred;
4. Report the results of the investigation and the determination as to whether harassment occurred to appropriate persons including to the complainant and the alleged harasser;
5. If harassment occurred, take and/or recommend to the Board prompt and effective remedial action against the harasser. This action will be commensurate with the severity of the offense and will be communicated to the complainant;
6. Reasonable steps will be taken to protect the victim and other potential victims from further harassment;
7. Reasonable steps will be taken to protect the victim from any retaliation as a result of communicating the complaint; and
8. Appropriate action will be taken whenever possible to alleviate the effects of the harassment.

F. Definitions

1. A "complaint" is a formal written allegation by an employee or applicant for employment who has been adversely affected by a violation of any equal employment opportunity law or policy applicable to the District.
2. A "complainant" is an employee or applicant for employment.
3. A "day" is a day in which the central administrative office of the District is open.

G. Complaint Procedure

1. Informal Level

Before filing a formal written complaint, the complainant shall attempt to resolve it by an informal conference with the Superintendent or the Principal.

2. Formal Levels

Step 1

- a. Within twenty (20) calendar days after the occurrence of the act or omission, or within twenty (20) calendar days after the complainant knew or reasonably should have known of the act or omission giving rise to the complaint, the complainant must present such complaint in writing to the Superintendent.
- b. This statement shall be a clear, concise statement of the complaint, the circumstances involved, the decision rendered at the informal conference, under paragraph G, subparagraph 1 above, and the specific remedy sought.
- c. The Superintendent shall communicate a decision to the complainant in writing within fifteen (15) calendar days after receiving the complaint. If the Superintendent does not respond within the time limits, the complainant may appeal to the next step.
- d. Within the above time limits, either party may request a personal conference with the other party.

3. Step 2

- a. In the event that the complainant is not satisfied with the decision at Step 1, the complainant may request that the complaint be submitted to the

Board. Such request must be in writing and filed with the Superintendent within ten (10) calendar days after receipt of the decision at Step 1.

- b The Board may or may not schedule a conference. The decision of the Board shall be the final decision within the District. The complainant, of course, may appeal to any appropriate federal or state agency.

H. Dissemination Of Policy

- 1 All employees shall be notified of this Policy.
- 2. A copy of this Policy shall be posted along with and in the same manner as is other material which is posted for the benefit or protection of employees.

I. Available Legal Remedies And Additional Complaint Process

Employees or job applicants who believe that they have been sexually or otherwise illegally harassed may, within one year of the harassment, file a complaint of discrimination with the California Department of Fair Employment and Housing (DFEH). The Department serves as a neutral factfinder and attempts to help the parties voluntarily resolve disputes. If the Department finds evidence of harassment and settlement efforts fail, the Department may file a formal accusation against the employer and the harasser. The accusation will lead to either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed on the complainant's behalf by the Department. If the Commission finds that the harassment occurred, it can order remedies, including up to \$50,000 in fines or damages for emotional distress for each employer or harasser charged. In addition, the Commission may order hiring or reinstatement, back pay, promotion, and changes in the policies or practices of the involved employer. A court may order unlimited damages.

For more information, employees or job applicants may contact the DFEH at 1-800 884-1684.

Legal Reference:

Federal: Civil Rights Act of 1964, as amended, Title VI, VII, 42 U.S.C. section 2000d & 2000e *et seq.*
Age Discrimination In Employment Act (ADEA), 29 U.S.C. section 621 *et seq.*
Americans With Disabilities Act (ADA), 42 U.S.C. section 12101 *et seq.*
Equal Pay Act of 1963, 29 U.S.C. section 206(d)
Title IX, Education Amendments of 1972 as amended by the Civil Rights Restoration Act of 1987, 42 U.S.C. 2000d-4a, 20 U.S.C. sections 1687-1688
Vocational Rehabilitation Act of 1973, 29 U.S.C. section 791 *et seq.*, sections 503 and 504
Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. section 4301 *et seq.*

State: Fair Employment And Housing Act, Government Code sections 12900-12996
Government Code section 11135
Education Code sections 210-231.5, 44100-44105, 44858, 44859
Labor Code section 1102.1
Military & Veterans Code section 389 *et seq.*

Date Policy Adopted By The Board: August 22, 1989 (formerly B.P. 4002 and 4003)
Date Policy Revised By The Board: May 16, 1995 (formerly B.P. 4002 and 4003)
Date Policy Revised By The Board: October 9, 2003 (formerly B.P. 4002 and 4003)