

**SWEETWATER UNION HIGH SCHOOL DISTRICT**

**CLASSIFICATION:** Personnel

**REGULATION:** 4117.1

**SUBJECT:** Complaint of Sexual Harassment

**ADOPTED:** August 27, 1967

**RESPONSIBLE OFFICE:** Human Resources

**REVISED:** January, 2007

**REFERENCE:** Policy 4117

**REVIEW DATE:** 2011

**PAGE 1 OF 13**

---

**I. General Provisions**

- A. *Sexual Harassment is Illegal.* Sexual harassment and retaliation for pursuit of a good faith sexual harassment complaint is unlawful. Sexual harassment can lead to a hostile work environment for employees of the district. Sexually oriented acts or conduct are inappropriate in the workplace and any employee who engages in such conduct will be subject to disciplinary action up to and including termination.
- B. *Prevention of Sexual Harassment is a Partnership.* The district is committed to providing a workplace that is free of unlawful sexual harassment. This objective can be achieved only if the district's employees work in partnership toward this goal. The employees of the district have an obligation to not engage in conduct that would unlawfully sexually harass another person, and any employee who believes he or she has been sexually harassed has an obligation under this regulation to promptly report any allegations of sexual harassment.
- C. *Prompt Reporting of Alleged Harassment is Essential.* Allegations of sexual harassment or retaliation must be brought to the district's attention at the earliest possible time, preferably when the alleged harassment or retaliation occurs or when the complainant first obtains knowledge of facts of the alleged harassment or retaliation. Although there is no statute of limitations, untimely reporting of such

complaints to the district may severely hamper the ability of the district to both investigate and remedy problems of sexual harassment.

- D. *Retaliation is Prohibited.* The initiation or pursuit of a complaint of sexual harassment or retaliation, or the participation of any person in the investigation of a sexual harassment or retaliation complaint, shall not result in any retaliation against any employee of the district. However, a complainant who files an intentionally false complaint may be subject to disciplinary action up to and including termination. Any allegations of retaliation against a complainant, a complainant's representative or anyone participating in an investigation of allegations of sexual harassment shall be pursued through the second stage investigation process provided in this regulation.
- E. *Sexual Harassment May Result in Discipline or Termination.* The district shall not undertake any disciplinary action involving any respondent(s) or the complainant until a final decision has been rendered by the superintendent. However, immediate action may be necessary considering the health, safety, or welfare of the complainant, respondent(s), or other members of the district community or because of legal obligations of the district. If immediate action is necessary, the superintendent or his/her designee shall undertake reasonable efforts to first inform the respondent(s) and allow him/her an opportunity under the circumstances to respond to the allegations in accordance with the disciplinary procedures of the district or state law.
- F. *Paid Administrative Leave.* For the purposes of this regulation, placement on "paid administrative leave" shall not be considered disciplinary action.
- G. *Representation of the Parties.* The complainant and the respondent(s) may be assisted by a representative of his or her choice at any stage of these proceedings.

- H. *Investigation Must Be Completed.* Once a complaint has been lodged, the investigative process must be completed, whether or not the complainant withdraws his/her allegation.
- I. *Alternate Methods to Initiate a Complaint.* If the complaint of sexual harassment or retaliation is against one or more of the supervisors of the complainant, the complainant shall make his or her initial investigation complaint to the next supervisor in his or her chain of command that is not involved in the allegations of the complaint. In such a case, the supervisor receiving the initial investigation complaint shall be responsible for the duties of the immediate supervisor described in this regulation. If the allegations are against the superintendent, the complainant shall contact the president of the board of trustees, and the board shall initiate a second stage investigation and assume the duties of the superintendent as provided in this regulation.
- J. *Clarifying Where a Complaint Should be Initiated.* If the complainant is uncertain who his/her supervisor is, the complainant shall seek direction from the superintendent, whose designation of the supervisor shall be conclusive for purposes of this procedure.
- K. *Confidentiality To Be Respected But Is Not Absolute.* All complaints of sexual harassment will be handled in a confidential manner to the extent appropriate within the law. However, absolute confidentiality is not promised to any individual because some limited disclosure of personal information to persons with a need-to-know may be necessary to fully investigate and resolve issues raised in a complaint of sexual harassment or retaliation. Individuals interviewed, especially those who are not parties to the complaint, are required to maintain the confidentiality of the parties.
- L. *Independent Actions of the District.* Nothing herein prevents the district administration from implementing corrective action intended to create a workplace free of sexual harassment independent

of any complaint and whether or not a complaint has been filed, processed, withdrawn, or otherwise resolved.

- M. *Specific Procedure for Sexual Harassment.* This regulation is intended to comply with state and federal requirements regarding sexual harassment complaints and shall be interpreted accordingly. This regulation and the procedures within this regulation shall supersede other more general procedures within board policies and regulations.
- N. *Distribution of Policy and Regulation.* The assistant superintendent of human resources will ensure that all district employees and professional organizations representing employees receive copies of Board Policy 4117 and this regulation. Furthermore, Board Policy 4117 shall be posted in prominent locations throughout the district work locations.

## II. Definitions

- A. "Complainant" - An individual, employee or job applicant who brings a complaint of alleged sexual harassment or retaliation.
- B. "Respondent" - A person against whom a claim of sexual harassment or retaliation has been made. In cases of retaliation, the district itself may be considered a respondent.
- C. "Supervisor" - The individual who is the immediate supervisor of the complainant.
- D. "Workday" - Monday through Friday, excluding federal, state, and local holidays during which the district office is officially closed. When action must be undertaken within a designated number of workdays, the action must occur by the close of business of the last workday.
- E. Sexual Harassment
  - 1. Unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature constitutes sexual harassment when:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  - b. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual;
  - c. the conduct has the purpose or effect of having a negative impact upon the individual's work performance or creating an intimidating, hostile, or offensive work environment; or,
  - d. submission to or rejection of the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.
2. Specifically, sexual harassment may occur as a result of pervasive unwelcome, degrading sexual speech or actions ranging from verbal, visual, or physical annoyances or distractions to deliberate intimidation and threats or sexual demands. Sexual harassment can occur between members of the opposite or same sex. Sexual harassment may involve co-worker harassment, harassment by a supervisor or manager, harassment by anyone doing business with or for the district. Sexual harassment may include, but is not limited to:
- a. leering, vulgar remarks or gestures.
  - b. sexually derogatory comments regarding a person's appearance.
  - c. physically touching, pinching, patting, or blocking free movement.
  - d. sexual propositions or advances (with or without threats to a person's job or

- promotion if that person does not submit).
- e. physical assault of a sexual nature.
  - f. sexually suggestive or degrading posters, cartoons, pictures or drawings. (A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully clothed, or in clothes that are not suited, to or ordinarily accepted for the accomplishment of routine work in and around the workplace and who is posed for the obvious purpose of displaying or drawing attention to private portions of his or her body).
  - g. preferential treatment or promises of preferential treatment to an employee for submitting to sexual conduct.
  - h. offensive sexual jokes, slurs, insults, innuendoes or comments directed at or made in the presence of any employee who indicates or has indicated in any way that such conduct is unwelcome in his or her presence.
  - i. spreading sexual rumors.
- F. "Evidence Intended to Correct a Factual Error"- Evidence submitted by a party intended to correct a factual error includes a statement under penalty of perjury of any person, documents, electronic records, or any other item of evidence submitted by a party in response to the investigating officer's report issued in Section III D that is intended to dispute one or more factual conclusions of the investigating officer. Such materials may not include arguments regarding the law applicable to the facts or the procedure specified in this regulation.

### III. Complaint Procedures

- A. Any employee or job applicant who believes he or she has been sexually harassed is encouraged to utilize the district's investigation procedure as set forth herein. Employees who believe that they have been sexually harassed must initiate the investigation process using the procedure outlined in subsection C of this section. Applicants for employment who believe that they have been sexually harassed must initiate the investigation process using the procedure outlined in subsection D of this section.
- B. All district employees have an obligation to ensure that sexual harassment does not occur in partnership with the district. If an administrator has reason to believe that sexual harassment has occurred, he or she has the responsibility of completing an investigation as explained in this regulation, even if a complaint has not been filed.
- C. Initial Investigation Process for Employees
  1. Employees who believe that they have been sexually harassed are encouraged to contact their immediate supervisor to initiate the complaint process. Employees may initiate the initial investigation process verbally or in writing.
  2. Upon the receipt of a verbal or written complaint, the immediate supervisor shall give notice to the superintendent by completing a report of complaint of sexual harassment form and forward to the assistant superintendent of human resources within three working days.
  3. The immediate supervisor shall have ten working days to either:
    - a. resolve the complaint with a signed resolution memorandum as described in this subsection, or

- b. refer the matter to the second stage investigation process described in subsection D of this section.

The ten (10) working day period of initial investigation may be extended by the immediate supervisor up to twenty working days by giving written notice to the complainant that additional time is required to complete the initial investigation process. If the complainant and the respondent willing to resolve the complaint at the initial investigation stage, the immediate supervisor will attempt such resolution. Depending on the situation, the immediate supervisor may, for example:

- a. bring both parties together to discuss the complaint and mediate resolution;
- b. serve as an intermediary between the complainant and the respondent; and/or;
- c. present a settlement proposal for consideration by the complainant and the respondent which resolves the complaint.

While the options listed above are discretionary, the complainant has the absolute right to reject any face to face meeting with the respondent(s) and the immediate supervisor shall respect such rejection without question. The resolution of an initial investigation complaint shall be reduced to a written memorandum and signed by the complainant, respondent(s), and the supervisor. Copies of the written memorandum shall be provided to all parties and to the superintendent.

4. If resolution of the complaint does not occur during the initial investigation, the immediate supervisor shall initiate the second stage investigation process as described in subsection D by completion and submittal of a written complaint of sexual harassment or retaliation form that includes the supervisor's summary of the allegations.

Additionally, the immediate supervisor shall encourage the complainant to prepare a written statement of the allegations in his or her own words to be attached to the second stage investigation form submitted by the supervisor, but such a written statement by the complainant is not required.

D. Second Stage Investigation Process For Employees or Job Applicants

1. The second stage investigation process is initiated by the filing of one of the following with the assistant superintendent of human resources:
  - a. A written complaint by a job applicant whether on the district's second stage investigation form or not.
  - b. A second stage investigation form completed by an immediate supervisor whenever there is no resolution of the complaint at the initial investigation level.
2. The assistant superintendent of human resources shall immediately forward a copy of the second stage investigation complaint to the superintendent and the district general counsel.
3. Upon receipt of a second stage investigation complaint, the superintendent will appoint an investigating officer. The investigating officer shall be responsible for conducting an investigation and submitting a written report to the superintendent.
4. The investigating officer will conduct a thorough investigation of the alleged act(s) of sexual harassment and/or retaliation and will:
  - a. interview witnesses he or she determines to have relevant information; and,

- b. review relevant documents including the personnel files or similar files of any party or witness, if necessary for the investigation.
5. The investigating officer shall submit to the superintendent a two-part written report within thirty workdays from the filing of the second stage investigation complaint unless otherwise agreed by complainant or unless extended in writing by the investigating officer due to particular circumstances which warrant additional time. However, the investigation and report shall be completed and issued not more than sixty (60) workdays after the date the second stage investigation complaint was filed. Part one of the report will include a compilation of written statements by the complainant, the respondent(s), and all witnesses interviewed and all documentary evidence submitted in support of the claims and defenses of the parties. Part One of the report also shall make findings of fact and conclusions of law regarding the validity of the allegation(s) of sexual harassment or retaliation. Part Two of the report will include recommended corrective action (if any), and the rationale for such proposed disposition. Part One of the report shall be submitted to the superintendent and shall also be served upon the complainant, respondent(s), and their representatives, if any. Because recommendations for corrective action may include discipline and are only to assist the superintendent in deciding whether to initiate the normal disciplinary process, the complainant and respondent have no right to receive Part Two of the report.
  6. The superintendent shall review Part One of the report of the investigating officer including all witness statements and evidence submitted therein. The complainant or respondent may, within five (5) working days of the date of issuance of Part One of the investigating officer's report, submit to the

superintendent any evidence that would correct a factual error contained in the investigating officer's report. Any evidence seeking to correct a factual error submitted by a party shall be served on the other parties, their representatives, if any, and the district general counsel.

7. Within ten (10) working days of the date of the investigating officer's report and recommendation, the superintendent shall take one of two actions:
  - a. Adopt Part One of the investigating officer's report including the findings of fact and conclusions of law, taking into consideration any evidence submitted by the parties intended to correct a factual error, if any.
  - b. Adopt Part One of the investigating officer's report but modify the findings of fact or conclusions of law based upon his or her own review of the entire record including any evidence submitted by the parties intended to correct a factual error.

The superintendent shall issue to the complainant, the respondent(s), and any of their representatives, a written decision reporting whether the allegations of sexual harassment or retaliation have been established based upon the review of Part One of the investigating officer's report.

8. The action of the superintendent shall be final and is regarded as the conclusion of the administrative process of the district in assessing complaints of sexual harassment and retaliation.
9. Anytime after completion of the investigation and superintendent's decision regarding a finding concerning sexual harassment or retaliation, the superintendent shall report to the board of trustees his or her findings and what corrective action, if any, is

warranted based upon his or her findings. In making his or her decision regarding corrective action, the superintendent may consider the recommendations contained in Part Two of the investigating officer's report but such recommendations are not binding upon the exercise of the superintendent's discretion.

10. The superintendent and the assistant superintendent of human resources shall be responsible for implementation of all corrective action adopted by the superintendent.

**E. Confidentiality**

1. All complaints of sexual harassment will be handled in a confidential manner to the extent required and permitted by law.
2. Only those who have an immediate need to know, including, the investigating officer and or his/her designee, the alleged target of harassment or retaliation, the alleged harasser or retaliators, and any witnesses, should know the identity of the complainant. All parties contacted in the course of an investigation will be advised that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint, or who has participated in the investigation, may subject the individual to disciplinary action up to and including termination.

**IV. Notifications**

- A. A copy of this policy and administrative regulation will be distributed to all employees.
- B. A copy of board policy and administrative regulation shall be displayed in a prominent location at each school site and within each department at the administration center.

- C. In addition to this procedure for investigation of complaints, employees and job applicants should also be aware that the federal Equal Employment Opportunity Commission and the California Department of Fair Employment and Housing investigate and prosecute complaints of harassment, discrimination, or retaliation in employment. The current addresses and the telephone numbers of these agencies can be found in the Government listing of the telephone directory.

**SWEETWATER UNION HIGH SCHOOL DISTRICT  
Initial Report of Complaint of Sexual Harassment**

***To Be Completed By Supervisor Contacted by A Person Alleging Sexual Harassment:***

Whenever a person in the District that supervises other employees receives an oral or written complaint of alleged sexual harassment from any other person, that supervisor has an affirmative duty to file a written Initial Report to the Superintendent through the Assistant Superintendent of Human Resources. Please complete this form and immediately forward confidentially to the Assistant Superintendent of Human Resources. Upon receipt of the Complaint, the supervisor has a duty to follow the District's Initial Investigation Process found at District Policies at Section 4117.1 (III)(C).

Complainant \_\_\_\_\_

Job Title \_\_\_\_\_ Date of Complaint \_\_\_\_\_

Complainant Work Phone \_\_\_\_\_ Other Phone \_\_\_\_\_

Complainant Immediate Supervisor \_\_\_\_\_

Name of Respondent \_\_\_\_\_

Relationship to Complainant \_\_\_\_\_

Summary of Complaint: Please provide as much information as possible, including who, what, when, where, the time period and the names of witnesses.

Report made by: \_\_\_\_\_

Signature of Supervisor

**SWEETWATER UNION HIGH SCHOOL DISTRICT**

**Second Stage Complaint of Sexual Harassment**

(Form used by Complainant (employee or non-employee) or Supervisor unable to mediate initial complaint)

Complainant \_\_\_\_\_

Job Title \_\_\_\_\_ Date of Complaint \_\_\_\_\_

Complainant Work Phone \_\_\_\_\_ Other Phone \_\_\_\_\_

Complainant Immediate Supervisor \_\_\_\_\_

Name of Respondent \_\_\_\_\_

Relationship to Complainant \_\_\_\_\_

Concerns expressed by the complainant: Please provide as much information as possible, including who, what, when, where, the time period and the names of witnesses.

Why does the complainant (employee or non-employee) think the above is happening?

What remedy is sought by the complainant?

\_\_\_\_\_  
Complainant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor Unable to Mediate Initial Complaint

\_\_\_\_\_  
Date

**SWEETWATER UNION HIGH SCHOOL DISTRICT  
Resolution Memorandum**

***To Summarize Informal Resolution of Complaint:***

Complainant \_\_\_\_\_

Job Title \_\_\_\_\_ Date of Complaint \_\_\_\_\_

Complainant Work Phone \_\_\_\_\_ Other Phone \_\_\_\_\_

Complainant Immediate Supervisor \_\_\_\_\_

Name of Respondent \_\_\_\_\_

Relationship to Complainant \_\_\_\_\_

Description of Terms of Resolution:

\_\_\_\_\_  
Complainant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Respondent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mediating Supervisor  
(Copy to each party and Assistant Superintendent of Human Resources)

\_\_\_\_\_  
Date