

**SWEETWATER UNION HIGH SCHOOL DISTRICT**

**CLASSIFICATION:** Students

**REGULATION:** 5349.1

**SUBJECT:** Sexual Harassment

**ADOPTED:** Aug., 1997

**RESPONSIBLE OFFICE:** Student Support Services

**REVISED:** Jan. 2001

**REFERENCE:** Policy 5349

**NEXT REVIEW:** 2005

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**I. Sexual Harassment Involving Student**

- A. Prohibited 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 made by someone from or in the educational setting, under any of the following conditions: (Education Code 212.5)
1. Submission to the conduct is explicitly or implicitly made a term or condition of an individual's academic status or progress.
  2. Submission to or rejection of the conduct by an individual is used as the basis for academic decisions affecting the individual.
  3. The conduct has the purpose or effect of having a negative impact on the individual's academic performance, or of creating an intimidating hostile or offensive educational environment.
  4. Submission to or rejection of the conduct by the individuals used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the school.
- B. Prohibited types of conduct which may constitute sexual harassment include, but are not limited to:
1. Unwelcome sexual flirtations or propositions.
  2. Sexual slurs, leering, epithets, threats, verbal abuse, derogatory comments or sexually degrading descriptions.
  3. Graphic verbal comments about an individual's body, or overly personal conversation.

4. Sexual jokes, notes, stories, drawings, pictures, or gestures.
  5. Spreading sexual rumors.
  6. Teasing or sexual remarks about students enrolled in a predominantly single gender class.
  7. Touching an individual's body or clothes in a sexual way.
  8. Purposefully cornering or blocking normal movements.
  9. Limiting a student's access to educational program or resources.
  10. Displaying sexually suggestive objects, drawings or photographs.
  11. Profanity, inappropriate offensive and profane language (without intent to harm).
- C. Guidelines in determining the difference between sexual harassment and flirting include at least the following:
1. Sexual harassment feels "bad" (causes fear, humiliation, embarrassment), is one-sided, may involve negative touching, is degrading and demeaning, is power-based, is invading and unwanted, leaves the victim feeling powerless, and is bad for the victim's self-esteem.
  2. Flirting feels "good" (makes the receiving individual feel happy, attractive), is reciprocal, is flattering and is a compliment, is done out of a sense of equality between persons, is open and wanted, leaves the receiving individual feeling in control, and has a positive effect upon the receiving individual's self-esteem.
- D. Sexual harassment by a student may result in suspension and/or expulsion from school, pursuant to Education Code section 48900.2 and 48915(e). Nothing within this regulation shall require or justify delay of consideration or imposition of the procedures leading to student discipline based upon sexual harassment.
- E. Individuals receiving information regarding sexual harassment shall also implement any requirements to report to the appropriate Child Protective Service to the extent required by law.

- F. No complaining party, witness or participant in the investigation shall suffer retaliation for making of any complaint of sexual harassment or for cooperating in the investigation. Retaliation may be reported by the complaining party, witness or participant in the investigation directly to the director of student support services or the district superintendent immediately and within two weeks of the alleged retaliation. Any act of improper retaliation shall result in appropriate discipline.
- G. This regulation is intended to comply with state and federal requirements regarding sexual harassment complaints and shall be interpreted and adjusted accordingly. This regulation and the procedures within this regulation shall supersede other more general procedures within board policies and administrative regulations, as well as within collective bargaining agreements unless another process is explicitly, in writing, designated as superseding this process.
- H. A complaint must be filed no later than six months from the dated alleged discrimination occurred or the date the complainant first obtained knowledge of facts of the alleged discrimination, unless the time for filing is extended by the State Superintendent of Public Instruction upon written request by the complainant setting forth the reasons for the extension. Any extension by the State Superintendent shall be in writing, for good cause, not to exceed ninety days following the expiration of the time allowed.
- I. The district's Sexual Harassment officer and 504 Complain officer is:

Earl Wiens, Director of Student Support Services  
Sweetwater Union High School District  
1130 Fifth Avenue  
Chula Vista, California 91911.  
Phone Number: (619) 691-5564  
E-Mail Address: earl.wiens@SUHSD.k12.ca.us

## **II. Investigation of Complaints at School(s) or School Activity(s)**

- A. The principal or appropriate administrator or designee shall promptly investigate all complaints of sexual harassment. The investigating administrator shall, when practical, be of the same gender as the alleged victim. If the principal is the accused, involved, or a conflict of interest exists, the complainant shall be referred to the Office of the Director of Student Support Services, who shall appoint an

investigator other than the accused principal. The investigator shall consider talking individually with at least:

1. The student who has reported the sexual harassment.
2. The person accused of harassment.
3. Anyone who saw the harassment take place.
4. Anyone mentioned as having related information.
5. The parent/guardian of students involved.

Individuals interviewed, especially those who are not parties to the complaint, should be encouraged to maintain the confidentiality of the parties.

- B. The student who is complaining shall have an opportunity to describe the incident, present witnesses and other evidence of the harassment, and put his/her complaint in writing. The investigating administrator shall provide appropriate assistance to a complaining party who, as a result of disability or language, requires assistance in writing a complaint.
- C. The identity of the complainant alleging sexual harassment shall remain as confidential as possible under the circumstances; however, confidentiality should not be promised to any individual (due to potential future legal requirements relating to disclosures). When necessary to carry out his/her investigation or for other good reasons that apply to the particular situation, the principal, designee, or investigating administrator may also discuss the complaint with at least the following persons:
1. The superintendent or designee.
  2. The parent/guardian or other legal representative of the student who complained.
  3. The parent/guardian or other legal representative of the person accused of harassing someone.
  4. Any teacher or staff member whose knowledge of the student(s) involved may help in determining the actual facts of the incidents.

5. Child protective agencies and local law enforcement agencies responsible for investigating child abuse reports as required by law.
  6. Legal counsel for the district, after approval from the appropriate district official.
- D. When the student who complained and the person accused of harassment so agree, the principal/administrator, designee or investigator may arrange for them to resolve the complaint informally with the help of a counselor, teacher, administrator or trained mediator. The student who complained shall never be asked to work out the problem directly with the accused person unless such help is requested.
- E. The principal, designee, or investigator shall tell the student who complained that he/she has the right to file a formal complaint at any time in accordance with the district's uniform complaint procedures or with local law enforcement agencies. If the student wishes to file a formal district complaint, the principal or designee shall assist the student in doing this.
- F. In reaching a decision about the complaint, the principal or designee may take into account at least:
1. Statements made by the persons identified above.
  2. The details and consistency of each person's account.
  3. Evidence of how the reporting student reacted to the incident.
  4. Evidence of past instances of harassment by the accused person.
  5. The subject(s) of harassment.
  6. The place and situation where the incident occurred.
  7. Other incidents at the school, including incidents of harassment that were not related to sex.
  8. Those factors listed within this sexual harassment regulation, within part I, subparts A, B, C, as well as other statutory and regulatory guidelines.

- G. The principal, designee or investigator shall write a report of his/her findings, decision, and reasons for the decision and shall present this report to the student who complained, and the person accused. This written report should be issued whenever practical no later than thirty days from receipt of the complaint. The decision shall also include notice of the right of the complainant or the victim to appeal the decision within five calendar days of its issuance, to the Director of Student Support Services or the director's designee, as reflected within part K, below.
- H. The principal, designee or investigator shall provide the Director of Student Support Services a written report of the complaint, investigation, finding and decision. If he/she verifies that sexual harassment occurred, this report shall describe the actions he/she took to end the harassment, address the effects of the harassment on the person harassed, and prevents retaliation or further harassment.
- I. Within two weeks after receiving the complaint, the principal, designee or investigator shall determine whether or not the student who complained has been further harassed.
- J. If the complainant or alleged victim is dissatisfied with the decision issued by the principal, designee or investigator, an appeal may be filed in writing, to be received no later than five calendar days after the issuance of the decision, in the Office of the Director of Student Support Services or the director's designee. The appeal shall state the grounds of the disagreement with the decision.
- K. Any appeal to the Director of Student Support Services or the director's designee should result in a written decision sent to the complainant and the person accused within sixty calendar days from the complaint's original receipt by a district official, unless agreed otherwise or unless due to particular circumstances, additional time is appropriate and the complainant is informed of the extension in writing. The decision of the director or of the director's designee shall include notice of whatever appeal rights exists, including any right to appeal to the California Department of Education and the procedures for initiating any such appeal.
- L. Pursuant to 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/she is a victim of discrimination may not seek civil remedies pursuant to Education Code section 262.3 until at least sixty days have elapsed from the filing of an appeal to the State Department of Education pursuant to Title 5 of the California Code of Regulations (commencing with section 4600).

### III. Enforcement and Notification

The superintendent, designee or appropriate district official(s) shall take the appropriate actions to reinforce the district's sexual harassment policy at the site. These site actions include the following:

- A. Remove known vulgar or offending graffiti in a timely manner.
- B. Provide student instruction including information in the student handbook as part of any orientation program conducted for students at the beginning of each semester or summer session, and a copy of this district's written policy on sexual harassment as pertaining to students.
- C. Provide staff instruction as a part of the initial staff meeting at the beginning of each school year or summer session (or, as to new employees, upon hiring) including notice of this regulation and a copy of the district's written policy on sexual harassment.
- D. Provide counseling as needed.
- E. Notify parents/guardians through the annual notification of parent/student rights and responsibilities.
- F. Notify child protective agencies and local law enforcement agencies responsible for investigating child abuse reports as required by law.
- G. Take appropriate disciplinary action. In addition, the principal or designee may take disciplinary measures against any person who is found to have made a complaint of sexual harassment which he/she knew was not true.
- H. Post district sexual harassment policies and regulations in a prominent location in the administration office.