

# **Fresno Unified Administrative Regulation (AR) 5145.7**

## **Sexual Harassment**

### **Definitions**

Sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex, in the educational setting, under any of the following conditions: (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student
3. The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile or offensive educational environment
4. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through any district program or activity

*(cf. 1312.3 - Uniform Complaint Procedures)*

*(cf. 5131 – Conduct)*

*(cf. 5131.2 – Bullying)*

*(cf. 5145.3 – Nondiscrimination/Harassment)*

*(cf. 6142.1 – Sexual Health and HIV/AIDS Prevention Instruction)*

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sexual harassment in violation of district policy if it has a continuing effect on or creates a hostile school environment for the complainant or victim of the conduct.

For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, sexual harassment is defined as any of the following forms of conduct that occurs in an education program or activity in which a district school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)

1. A district employee conditioning the provision of a district aid, benefit, or service on the student'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 student equal access to the district's education program or activity
3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

*(cf. 5145.71 – Title IX Sexual Harassment Complaint Procedures)*

### **Examples of Sexual Harassment**

Examples of types of conduct which are prohibited in the district and which may constitute sexual harassment under state and/or federal law, in accordance with the definitions above, include, but are not limited to:

1. Unwelcome leering, sexual flirtations or propositions
2. Unwelcome sexual slurs, 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, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures or computer-generated images of a sexual nature
5. Spreading sexual rumors
6. Teasing or sexual remarks about students enrolled in a predominantly single-sex class
7. Massaging, grabbing, fondling, stroking or brushing the body
8. Touching an individual's body or clothes in a sexual way
9. Impeding or blocking movements or any physical interference with school activities when directed at an individual on the basis of sex
10. Displaying sexually suggestive objects
11. Sexual assault, sexual battery, or sexual coercion
12. Electronic communications containing comments, words, or images described above

### Notifications

The Superintendent or designee shall notify students and parents/guardians that the district does not discriminate on the basis of sex as required by Title IX and that inquiries about the application of Title IX to the district may be referred to the district's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education. (34 CFR 106.8)

*(cf. 5145.6 – Parental Notifications)*

The district shall notify students and parents/guardians of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

A copy of the district's sexual harassment policy and regulation shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year. (Education Code 48980; 5 CCR 4917)
2. Be displayed in a prominent location in the main administrative building or other area where notices of district rules, regulations, procedures and standards of conduct are posted (Education Code 231.5)
3. Be summarized on a poster which shall be prominently and conspicuously displayed in each bathroom and locker room at each school. The poster may be displayed in public areas that are accessible to and frequented by students, including, but not limited to, classrooms, hallways, gymnasiums, auditoriums, and cafeterias. The poster shall display the rules and procedures for reporting a charge of sexual harassment; the name, phone number, and email address of an appropriate school employee to contact to report a charge of sexual harassment; the rights of the reporting student, the complainant, and the respondent; and the responsibilities of the school. (Education Code 231.6)
4. Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the District's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6; 34 CFR 106.8)

*(cf. 1113 - District and School Web Sites)*

*(cf. 1114 - District-Sponsored Social Media)*

5. Be provided as part of any orientation program conducted for new and continuing students at the beginning of each quarter, semester, or summer session (Education Code 231.5)
6. Appear in any school or school district publication that sets forth the school or school district's comprehensive rules, regulations, procedures, and standards of conduct (Education Code 231.5)
7. Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to students or parents/guardians (34 CFR 106.8)

The Superintendent or Designee shall also post the definition of sex discrimination and harassment as

described in Education Code 230, including the rights set forth in Education Code 221.8, in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6)

### Reporting Complaints

A student or parent/guardian who believes that the student has been subjected to sexual harassment by another student, an employee, or a third party who has witnessed sexual harassment is strongly encouraged to report the incident to a teacher, the principal, the district's Title IX Coordinator, or any other available school employee. Within one school day receiving such a report, the principal or other school employee shall forward the report to the district's Title IX Coordinator. Any school employee who observes an incident of sexual harassment involving a student shall, within one school day, report the observation to the principal or Title IX Coordinator. The report shall be made regardless of whether the alleged victim files a formal complaint or requests confidentiality.

*(cf. 5141.4 – Child Abuse Prevention and Reporting)*

When a report or complaint of sexual harassment involves off-campus conduct, the Title IX Coordinator shall assess whether the conduct may create or contribute to the creation of a hostile school environment. If the Title IX Coordinator determines that a hostile environment may be created, the complaint shall be investigated and resolved in the same manner as if the prohibited conduct occurred at school.

When a verbal or informal report of sexual harassment is submitted, the Title IX Coordinator shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with applicable district complaint procedures.

### Complaint Procedures

All complaints and allegations of sexual harassment by and against students shall be investigated and resolved in accordance with law and district procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with AR 5145.71 – Title IX Sexual Harassment Complaint Procedures.

If sexual harassment is found following an investigation, the Title IX Coordinator, or designee in consultation with the Coordinator, shall take prompt action to stop the sexual harassment, prevent recurrence, implement remedies, and address any continuing effects.

Other complaints of sexual harassment, or any behavior prohibited by the district's Nondiscrimination/Harassment policy – BP 5145.3, which do not meet the definition of sexual harassment under Title IX, shall be handled in accordance with the following procedure:

1. Notice and Receipt of Complaint: Any student who believes they have been subjected to sexual harassment by another student, an employee, or a third party or who has witnessed sexual harassment is strongly encouraged to report the incident to their teacher, the principal, or any other available school employee. Within one school day of receiving such a report, the school employee shall forward the report to the Principal or the district's compliance officer designee. In addition, any school employee who observes an incident of sexual harassment involving a student shall, within one school day, report their observation to the Principal or a district compliance officer. The employee shall take these actions, whether or not the alleged victim files a complaint. In any case of sexual harassment involving the Principal, compliance officer, or any other person whom the incident would

ordinarily be reported or filed, the report may instead be submitted to the Superintendent or designee who shall determine who will investigate the complaint.

2. **Initiation of Investigation:** The principal or designee shall promptly initiate an impartial investigation of an allegation of sexual harassment within two school days of receiving notice of the harassing behavior, regardless of whether a formal complaint has been filed. The district shall consider to have “notice” of the need for an investigation upon receipt of information from a student who believes they has been subjected to harassment, the student’s parent/guardian, an employee who received a complaint from a student, or any employee or student who witnessed the behavior. If the Principal or designee receives an anonymous complaint or media report about alleged sexual harassment, they shall determine whether it is reasonable to pursue an investigation considering the specificity and reliability of the information, the seriousness of the alleged incident, and whether any individuals can be identified who were subjected to the alleged harassment.

In investigating a sexual harassment complaint, evidence of past sexual relationships of the victim shall not be considered, except to the extent that such evidence may relate to the victim's prior relationship with the respondent.

3. **Initial Interview with the Student:** When a student or parent/guardian has complained or provided information about sexual harassment, the Principal or designee shall describe the district’s grievance procedure and discuss what actions are being sought by the student in response to the complaint. The student who is complaining shall have the opportunity to describe the incident, identify witnesses who may have relevant information, provide other evidence of the harassment, and put their complaint in writing. If the student requests confidentiality, they shall be informed that such request may limit the district’s ability to investigate.

**Confidentiality:** All complaints and allegations of sexual harassment shall be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR 4964).

However, when a complainant or victim of sexual harassment notifies the district of the harassment but requests confidentiality, the compliance officer shall inform them that the request may limit the district's ability to investigate the harassment or take other necessary action. When honoring a request for confidentiality, the district will nevertheless take all reasonable steps to investigate and respond to the complaint consistent with the request.

When a complainant or victim of sexual harassment notifies the district of the harassment but requests that the district not pursue an investigation, the district will determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students.

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*  
*(cf. 5125 - Student Records)*

The Principal or designee shall interview individuals who are relevant to the investigation, including, but not limited to:

- a. The student who is complaining
- b. The person accused of harassment
- c. Anyone who witnessed the reported harassment
- d. Anyone mentioned as having related information

The Principal or designee may take other steps such as reviewing any records, notes, or statements related to the harassment or visiting the location where the harassment is alleged to have taken place.

When necessary to carry out their investigation or to protect student safety, the Principal or designee may discuss the complaint with the following persons:

- a. The Superintendent or designee
- b. The parent/guardian of the student who complained
- c. If the alleged harasser is a student, their parent/guardian
- d. A teacher or staff member whose knowledge of the students involved may help in determining who is telling the truth
- e. Law enforcement and/or child protective services
- f. Legal counsel for the district or the district's Risk Management

*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

4. **Interim Measures:** When an incident of sexual harassment is reported, The Principal or designee, in consultation with the compliance officer, shall determine whether interim measures are necessary pending the results of the investigation. The principal/designee or compliance officer shall take immediate measures necessary to stop the harassment and protect students and/or ensure their access to the educational program. To the extent possible, such interim measures shall not disadvantage the complainant or victim of the alleged harassment. Interim measures may include placing the individuals involved in separate classes or transferring a student to a class taught by a different teacher, in accordance with law and Board policy. The school should notify the individual who was harassed of their options to avoid contact with the alleged harasser and allow the complainant to change academic and extracurricular arrangements as appropriate. The school should also ensure that the complainant is aware of the resources and assistance, such as counseling, that are available to them. As appropriate, such actions shall be considered even when a student chooses to not file a formal complaint, or the sexual harassment occurs off school grounds or outside school- sponsored or school-related programs or activities.
5. **Optional Mediation:** In cases of student-on- student harassment, when the student who complained and the alleged harasser so agree, the principal or designee 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 provided and both parties agree, and they shall be advised of the right to end the informal process at any time

*(cf. 5138 – Conflict Resolution)*

6. **Factors in Reaching a Determination:** In reaching a decision about the complaint, the principal or designee may take into account:
  - a. Statements made by the persons identified above
  - b. The details and consistency of each person's account
  - c. Evidence of how the complaining student reacted to the incident
  - d. Evidence of any past instances of harassment by the alleged harasser
  - e. Evidence of any past harassment complaints that were found to be untrue

To judge the severity of the harassment, the principal or designee may take into consideration:

- a. How the misconduct affected one or more student's education
- b. The type, frequency and duration of the misconduct
- c. The identity, age and sex of the harasser and the student who complained, and the relationship between them

- d. The number of persons engaged in the harassing conduct and at whom the harassment was directed
  - e. The size of the school, location of the incidents, and context in which they occurred
  - f. Other incidents at the school, involving different students
7. **Written Report on Findings and Follow-Up:** No more than 30 days after receiving the complaint the principal or designee shall conclude the investigation and prepare a written report of their findings. This timeline may be extended for good cause. If an extension is needed, the Principal or designee shall notify the student who complained and explain the reasons for the extension. The report shall include the decision and reasons for the decision and shall summarize the steps taken during the investigation. If it is determined that harassment occurred, the report shall also include any corrective actions that have or will be taken to address the harassment and prevent any retaliation or further harassment. This report shall be presented to the student who complained, the person accused, the parents/guardians of the student who complained and the student who was accused, and the Superintendent or designee. In addition, the Principal or designee shall ensure that the harassed student and their parent/guardian are informed of the procedures for reporting and subsequent problems. The Principal or designee shall make follow-up inquiries to see if there have been any new incidents or retaliation and shall keep a record of this information.

### Enforcement of District Policy

The Superintendent or designee shall take appropriate actions to reinforce the district's sexual harassment policy. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti

*(cf. 5131.5 – Vandalism and Graffiti)*

2. Providing training to students, staff, and parents/guardians about how to recognize harassment and how to respond

*(cf. 4131 – Staff Development)*

*(cf. 4231 – Staff Development)*

*(cf. 4331 – Staff Development)*

3. Disseminating and/or summarizing the district's policy and regulation regarding sexual harassment
4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating the school's response to parents/guardians and the community

*(cf. 4119.23/4219.23/4319.23 – Unauthorized Release of Confidential/Privileged Information) (cf. 5125 – Student Records)*

5. Taking 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 they knew was not true.

If dissatisfied with the district's decision, the complainant may submit their concerns in writing to the Office of Constituent Services within 15 calendar days of receiving the district's decision. The written concerns shall specify the basis for the appeal of the decision and whether the facts are incorrect and/or the law has been misapplied.

Title IX Coordinator/Compliance Officer

The district designates the following individual(s) as the responsible employee(s) to coordinate, along with

the appropriate administrators, its efforts to comply with Title IX of the Education Amendments of 1972 and California Education Code 234.1, in accordance with AR 5145.7 – Title IX Sexual Harassment Complaint Procedures, as well as to oversee, investigate, and/or resolve sexual harassment complaints processed under AR 1312.3 – Uniform Complaint Procedures. The Title IX Coordinator/compliance officer(s) may be contacted at:

<p>Teresa Plascencia, Executive          Director Constituents Services Office          Fresno Unified School District          2309 Tulare Street, Fresno, CA 93721          Telephone Number: (559) 457-3736          FAX: (559) 457-3933          Email:          Constituent.Services@fresnounified.org</p>	<p>Tangee Pinheiro, Instructional Superintendent          Special Education Office          Address: 1301 M Street, Fresno, CA 93721          Telephone Number: (559) 457-3226          FAX: (559) 457-3258          Email: SPEDLeadership@fresnounified.org</p>
<p>David Chavez, Chief of Human Resources/Labor          Relations/Title IX Coordinator          Division of Human Resources          Fresno Unified School District          2309 Tulare Street, Fresno, CA 93721          (559) 457-3548          FAX: (559) 457-3528          Email: titleix@fresnounified.org</p>	<p>Sean Virnig, 504 Coordinator          Fresno Unified School District          1301 M Street, Fresno, CA 93721          (559) 457-3220          FAX: (559) 457-3258          Email: 504@fresnounified.org</p>

*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 4118 – Suspension/Disciplinary Action)*  
*(cf. 4218 – Dismissal/Suspension/Disciplinary Action)*  
*(cf. 5144.1 – Suspension and Expulsion/Due Process)*  
*(cf. 5144.2 – Suspension and Expulsion/Due Process (Students with Disabilities))*

*Fresno Unified School District prohibits discrimination, harassment (including sexual harassment), intimidation, and bullying based on actual or perceived race, color, ethnicity, national origin, immigration status, ancestry, age (40 and above), religious creed, religion, political belief or affiliation, gender, gender identity, gender expression, genetic information, mental or physical disability, sex, sexual orientation, marital status, pregnancy or parental status, childbirth, breastfeeding/lactation status, medical condition, military and veteran status, or association with a person or a group with one or more of these actual or perceived characteristics or any other basis protected by law or regulation, in its educational program(s) or employment.*

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