

5000 STUDENTS

5200 STUDENT WELFARE

5205 STUDENT SEXUAL AND GENDER-BASED HARASSMENT

Purpose of Policy

It is the policy of the Superintendent/Governing Board of the Marin County Office of Education to provide an educational environment free of sexual or gender-based harassment. To accomplish this purpose, the policy is designed to secure, at the earliest level possible, an appropriate resolution to an allegation of sexual or gender-based harassment.

This policy is intended to supplement, and not replace, any applicable state or federal laws and regulations. Complaints under these laws and regulations shall be processed through the procedures established by the appropriate state and/or federal agencies.

It is the position of this Superintendent/Governing Board that sexual or gender-based harassment is unlawful and will not be tolerated. It is a violation of this policy for any employee, agent, student, or party with which the Marin County Office of Education has a cooperative agreement, to engage in sexual or gender-based harassment.

Definitions of Sexual and Gender-Based Harassment

As it pertains to students, Education Code Section 212.5 defines "sexual harassment" as "unwelcome sexual conduct including advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting.

Gender-based harassment includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, although they are not necessarily sexual in nature. Prohibited conduct includes harassment of a student for exhibiting what is perceived as a stereotypical characteristic for her or his sex, or for nonconformity with stereotypical notions of masculinity and femininity.

Sexual and/or gender-based harassment denies or limits a student's ability to participate in or benefit from the District's school's program under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or condition of an individual's academic status or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's academic performance, or of creating an intimidating, hostile, or offensive educational environment.

(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.”

Specifically, sexual or gender-based harassment may occur as a pattern of degrading sexual speech or actions ranging from verbal or physical annoyances or distractions to deliberate intimidations and frank threats or sexual demands.

Examples of conduct which may constitute sexual harassment include, but are not limited to:

- (1) Suggestive or obscene letters, notes, invitations, derogatory comments, slurs, jokes, epithets, assault, touching, impeding or blocking movement, leering, gestures, display of sexually suggestive objects or pictures, or cartoons, whether conducted in person or through an electronic means.
- (2) Among peers, continuing to show sexual interest after being informed that the interest is unwelcome. (Reciprocal attraction, among peers, is not considered sexual or gender-based harassment.)
- (3) Within the educational environment, implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied as a condition of receiving sexual favors.
- (4) Within the educational environment, engaging in sexual behavior to control influence, or affect the educational opportunities, grades, and/or learning environment of a student.
- (5) Offering favors or education or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.

Any expression of sexual interest between adults and students, regardless of reciprocity is considered inappropriate and shall be subject to discipline under applicable state law.

Examples of conduct which may constitute gender-based harassment include, but are not limited to:

- (1) Slurs, threats, derogatory comments, unwelcome jokes, or degrading descriptions related to or because of a student's gender or gender identity.
- (2) Harassment of a male student because of his perceived effeminate mannerisms.
- (3) Harassment of a student because of his/her non-traditional choice of extracurricular activities, apparel, and personal grooming choices.
- (4) Disparaging remarks about a student because the student socializes with students of the opposite sex, or is predominately friends with students of the opposite sex;

Definition of Hostile Environment

A hostile environment based on sex or gender has been created where the conduct is sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical.

Remedial and Corrective Actions

Where unlawful sexual or gender-based harassment is found to have occurred, the Marin County Office of Education will take appropriate remedial and/or corrective action(s), including consideration of the following: providing counseling to a targeted student or for student(s) found to have engaged in harassment; limiting the interaction between the targeted student(s) and the harassing student(s); whether remedial measures are necessary to respond to the impact of the harassing conduct on witnesses or bystanders; and whether other schoolwide actions, such as education and training, are appropriate to respond to the harassing conduct and prevent a recurrence.

Training and Curriculum

To implement this policy, the Marin County Office of Education will provide appropriate training programs for staff and students.

Notification

There will be adequate notification of the policy to include permanent posters in public areas, offices, and hallways. The policy will be published in Marin County Office of Education handbooks and other appropriate materials for employees.

Administrative Regulation

The Superintendent/Governing Board shall adopt, and from time to time may revise, further procedures as may be necessary to implement this policy and provide for a means of enforcing this policy. Such further procedures may include the following: posting and other means of distributing the policy; a process under which complaints will be handled, formally or informally, an explanation of possible civil proceedings and potential legal consequences of sexual or gender-based harassment. The Superintendent will initiate training and education programs to enable all persons, and in particular, supervisors, to better understand the problem of sexual or gender-based harassment. In addition, the Superintendent shall designate appropriate employees to enforce or administer this policy within the Marin County Office of Education and shall provide for appropriate training for Principal/Program Managers and other supervisory personnel on an annual basis.

Special Assistance

It is expected that questions may arise concerning the interpretation of the prohibition against sexual or gender-based harassment, the methods and procedures to be following in the investigation of complaints, and the appropriateness of specific solutions in disposition of complaints. For assistance in these matters, individuals may contact the Superintendent or designee.

Current Legal references barring sexual or gender-based harassment in education:

Title VII of the Civil Rights Act – 42 USC Section 2000-e-2(a)(1)
California Fair Employment & Housing Act – Government Code Section 12940
Title IX of the Education Amendments of 1972 29 USC Section 1681 et. seq.
California Education Code, Section 200 et seq.

Approved as to form:


Robert J. Henry of Counsel

Approved by Marin County Board of Education: 6/11/13

ADMINISTRATIVE REGULATION 5205 STUDENT SEXUAL AND GENDER-BASED HARASSMENT

Reporting Procedure

Any student who believes he or she has been sexually harassed by an employee, agent, or student of the Marin County Office of Education, should promptly report the facts of the incident(s) and the name of the individual(s) involved to an adult staff member with whom they feel comfortable, and that person shall report the incident to the school site administrator or Superintendent/or designee within 24 hours. A written report of the alleged incident will be developed by the site administrator or Superintendent/or designee. A copy of the report, along with a copy of this policy, shall be mailed to the parent of the student who initiated the complaint.

All staff, upon personal knowledge of an incident of sexual or gender-based harassment or who have received report(s) or information of allegation(s) of sexual or gender-based harassment, whether such incidents are verbal or physical or amount to harassment in other forms are obligated to report it to the school principal or Superintendent.

Students who feel aggrieved because of unwelcome conduct that may constitute sexual or gender-based harassment are not required to inform the person engaging in such conduct that the conduct is unwanted, offensive and must stop, but are encouraged to do so. An aggrieved individual is not required to complain to his or her instructor if that instructor is the individual who is harassing the student. Any individuals making a report may bring an advocate to assist them.

Confidentiality

An allegation of sexual or gender-based harassment and the results of the investigation shall be kept confidential to the extent reasonably possible under the investigative process. Witnesses and those interviewed shall be informed of the confidential nature of the issues and the investigation, and shall be informed that it will be a violation of this administrative regulation to disclose the allegation or the nature of the investigation to others and shall be subject to disciplinary action as defined in this policy.

Retaliation is Prohibited

So long as the allegation is not brought forward in bad faith, the initiation of an allegation of sexual or gender-based harassment, will not cause any reflection on the individual reporting the incident or witnesses nor will it affect such persons' future business dealings with the Marin County Office of Education, his or her employment, compensation or work assignments, or, in the case of students,

grades, class section or other matters pertaining to his or her status as a student of any Marin County Office of Education programs. It shall be a violation of this policy to engage in such retaliation. An allegation of retaliation shall be considered as a separate incident, shall be investigated, and shall be subject to disciplinary action.

Reasonable measures will be taken to prevent retaliation against any target student(s) and/or any other student(s) who provide information as witnesses, including identifying school personnel to make follow-up inquiries with the targeted student(s), witness(es) and/or their parents.

It shall be a violation of this policy to engage in such retaliation. An allegation of retaliation shall be considered as a separate incident, shall be investigated, and shall be subject to disciplinary action as defined in this policy.

Time Limits

Students are encouraged to report allegations of sexual or gender-based harassment to an adult staff member with whom they feel comfortable as soon as reasonably possible after the conduct in question has taken place.

Investigation Guidelines

All investigations of allegations of sexual or gender-based harassment shall be handled promptly, in a serious, sensitive and confidential manner. The Superintendent shall determine in advance which administrative staff positions will be trained to complete these investigations and a trained, qualified administrator at the school site of the reported incident will complete the investigation, unless deemed inappropriate in a specific situation.

All sexual and gender-based harassment investigations at the Marin County Office of Education will be conducted by individual(s) with knowledge of the applicable legal standards and theories of such claims of harassment under Title IX, and the relevant District policies and complaint procedures. The investigator will also be knowledgeable in how to recognize and remedy such harassment. If the targeted student wishes, the targeted student may identify the harassing student(s) and/or witnesses and provide other information in a manner which initially protects the targeted student's confidentiality, to the extent possible; and consistent with statutory and constitutional due process;

If the investigator receives an anonymous complaint or media report about alleged sexual or gender-based harassment, he/she shall consider 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 determining whether it is reasonable to pursue an investigation.

Investigation Process

The investigator shall promptly investigate all complaints of sexual or gender-based harassment. In so doing, he/she shall talk individually with:

- (a) The student who is complaining;
- (b) The person accused of harassment;
- (c) Anyone who witnessed the conduct complained of; and
- (d) Anyone mentioned as having material information related to the complaint

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 investigator shall discuss the complaint only with the people described above. When necessary to carry out his/her investigation or for other good reasons that apply to the particular situation, the investigator also may discuss the complaint with the following persons:

- (a) The Superintendent or designee or school administration;
- (b) The parent/guardian of the student who complained;
- (c) If the alleged harasser is a student, his/her parent/guardian;
- (d) A teacher or staff member whose knowledge of the students involved may help in determining who is telling the truth; and
- (e) Child protective agencies responsible for investigating child abuse reports

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. In reaching a decision about the complaint, the investigator 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;
and
- (e) Evidence of any past harassment complaints that were found to be untrue.

To judge the severity of the harassment, the investigator may take into consideration:

- (a) How the misconduct affected one or more students' education;
- (b) The type, frequency and duration of the misconduct;
- (c) The number of persons involved;
- (d) The age and gender of the person accused of harassment;
- (e) The subject(s) of harassment;
- (f) The place and situation where the incident occurred; and
- (g) Other incidents at the school, including incidents of harassment that were not related to gender.

Investigation Protocol

The Marin County Office of Education's designated staff member(s) shall memorialize in writing all reports of alleged harassment.

The Marin County Office of Education shall implement appropriate interim measures to prevent further harassment of the targeted student, as well as measures to avoid retaliation against the reporting student, pending the resolution of the complaint.

The Marin County Office of Education shall maintain on-going contact with the targeted student throughout the investigation.

The Marin County Office of Education shall make reasonable efforts to identify the harassing student(s) and/or witnesses if the targeted student is unaware of their identities or names (e.g. interviewing other students and/or staff who were present during the incident).

The Marin County Office of Education shall refer the matter to law enforcement authorities where appropriate.

The Marin County Office of Education shall interview all relevant student and staff witnesses, and review all relevant documents and physical evidence.

Subject to applicable evidentiary privileges and/or privacy rights, the Marin County Office of Education shall maintain documentation of all investigative steps, including statements provided by targeted student, his/her parents, and any other witnesses or reporting parties, the evidence reviewed, any remedial actions taken, and a copy of the letter of finding issued at the conclusion of the investigation; and

The Marin County Office of Education shall contact the targeted student within a reasonable period of time following the conclusion of the investigation to assess whether there are new allegations of on-going harassment or retaliation, and to determine whether additional supportive measures are needed.

The designated investigator shall, as soon as reasonably possible after the incident has been reported, inform the student, employee, or other person accused of sexual or gender-based harassment of the allegation, and they will be given an opportunity to respond. The person accused shall not be given a copy of the complaint but shall be informed of the allegations. The name of complaint party shall remain confidential to the extent possible.

All parties, specifically including complainants, and witnesses, will be promptly and fully informed of their rights pursuant to this policy, including the fact that complainant and witnesses will not be retaliated against and the confidential nature of the allegation and investigation.

Investigation Results

A written report of the investigation findings shall be filed by the investigator with the Superintendent's office within twenty (20) school days of the date the student filed the incident report. Subject to applicable evidentiary privileges and/or privacy rights, the final written report will describe the steps taken in the investigation and the facts gathered, whether or not the alleged sexual and/or gender-based harassment occurred, and explaining the basis for the Marin County Office of Education's conclusion.

Subject to applicable evidentiary privileges and/or privacy rights, the Marin County Office of Education shall provide written notification to the parents/guardians of the targeted student generally explaining the Marin County Office of Education's investigative process, its factual findings, its determination as to whether harassment occurred, the reasons for the decision, and the appeal procedures within thirty (30) school days. The Marin County Office of Education may also provide a summary of its findings to the accused student's parents

The Superintendent may extend the timeline depending on the nature of the investigation. If an extension is needed, the Marin County Office of Education will notify the targeted student and the student's parent/guardian (if the parent/guardian made the complaint), and explain the reasons for the extension.

The name or title and contact information for the Marin County Office of Education employee(s) responsible for receiving and/or investigating reports of alleged harassment, including the investigatory report is:

Name Marin County Office of Education
Title Attn: Deputy Superintendent
Contact Information 1111 Las Gallinas Avenue/P.O. Box 4925
San Rafael, CA 94913-4925
(415) 499-5866

Steps to Remedy Harassment and Prevent Recurrence

The Marin County Office of Education will, as appropriate, offer counseling to students found to have engaged in harassment in order to ensure that they understand what constitutes harassment, the consequences for engaging in harassment and the effects harassment can have on others, and limiting the interaction between the harassing student(s) and the targeted student;

The Marin County Office of Education will offer counseling services and may consider providing academic support services to any student found to have been subjected to unlawful harassment, as appropriate.

The Marin County Office of Education will also consider whether remedial measures are necessary to respond to the impact of the harassing conduct on witnesses or bystanders and whether other schoolwide actions, such as education and training, are appropriate to respond to the harassing conduct and prevent a recurrence.

The Marin County Office of Education will take measures to prevent retaliation against targeted students and/or any other students who provided information as witnesses. The measures may include, for example, school personnel making follow-up inquiries with the targeted student and/or witness students and/or their parents to see if there have been incidents of retaliation, and to advise them that they should report any such incidents if they occur.

Disciplinary Action

When an allegation of sexual or gender-based harassment is supported by the investigation and disciplinary action is necessary, the Superintendent will determine what course of action is appropriate, depending upon whether the

harasser is a student, staff member, agent or guest/vendor of the Marin County Office of Education.

Students who violate this policy may be subject to discipline up to and including expulsion. Such disciplinary action shall be in accordance with board policy and state law.

Students who are found to have engaged in harassment shall be offered training/counseling by the Marin County Office of Education. Training/counseling will focus on assisting students understand what constitutes harassment, the consequences for engaging in harassment, and the effects harassment can have on others.

The Marin County Office of Education shall limit the interaction between the harassing student(s) and the targeted student to the extent possible.

Employees who violate this policy may be subject to discipline up to and including dismissal. Such disciplinary action shall be in accordance with applicable policies, laws, and/or collective bargaining agreements.

Agents, guests or vendors of the Marin County Office of Education who violate this policy may be subject to penalties and sanctions as may be available to the Marin County Office of Education, including termination of business relationships and contracts.

Appeal Procedures

Either the complaining party or the accused may appeal the findings of an investigation to the Superintendent/Governing Board of the Marin County Office of Education. Appeals shall be made in writing within ten (10) business days from the date a written finding is issued.

Filing Complaints with State and Federal Agencies

Aggrieved parties may wish to file complaints with other appropriate state and federal agencies, including:

U.S. Department of Education
Office for Civil Rights
50 Beale Street, Suite 7200
San Francisco, CA 94105-1813
Telephone: (415) 486-5555
www.ed.gov/ocr