

SEXUAL AND OTHER HARASSMENT

The San Bernardino County Superintendent of Schools (SBCSS) is committed to a work and educational environment that is free from discrimination and harassment. Thus, SBCSS prohibits sexual harassment of employees, job applicants and students, as well as harassment of employees, job applicants and students based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or any other reason protected by state or federal law. SBCSS also prohibits harassment based on the perception that an individual has one or more of these characteristics, or associates with a person or group with one or more of these actual or perceived characteristics that is protected by state or federal law.

SBCSS prohibits all forms of harassment through and by any means, including nonverbal (gestures or leering), verbal (including derogatory comments, slurs, propositions, teasing, jokes, vulgar remarks, threats of harm, or taunts), physical (including touching, obstructing, or otherwise interfering with a person's movement) or visual (including cartoons, magazines, notes, letters, e-mails, or posters).

Any employee of SBCSS who engages or participates in harassment or who aids, abets, incites, compels, or coerces another to commit harassment against an employee, job applicant or student is in violation of this policy and is subject to disciplinary action, up to and including dismissal. Employees, who engage in prohibited harassment, including sexual harassment, may be subject to personal liability for damages, including punitive damages.

Definition of Harassment

Definitions Regarding Sex and Gender

- “Gender expression” concerns a person's gender-related appearance or behavior, whether or not stereotypically associated with the person's sex at birth.
- “Gender identity” is in reference to a person's self-identification as male, female, a gender different from the person's sex at birth, or transgender.
- “Sex” includes, but is not limited to, pregnancy, childbirth, breastfeeding, and any related medical conditions, and gender identity and expression.
- “Sex Stereotype” means an assumption made about a person's appearance or behavior, or about an individual's ability or inability to perform certain kinds of work based on myths, social expectations, or generalizations about the individual's sex.
- “Transgender” is a general term that refers to a person whose gender identity differs from the person's sex at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. Moreover, a transgender person may or may not identify as “transsexual.”

Harassment consists generally of unwelcome verbal, nonverbal, physical or visual conduct that is based on an individual's actual or perceived membership in a protected class, or association with

a person or group with one or more of these actual or perceived protected characteristics, and that is so severe or pervasive that it adversely affects an individual's employment opportunities, has the purpose or effect of unreasonably interfering with work performance, or creates an intimidating, offensive or hostile working environment.

Prohibited 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 work or educational setting under any of the following conditions:

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

Examples of conduct, whether committed by a supervisor, a co-worker, or a non-employee in the work or educational setting, that might constitute unlawful sexual harassment in particular include, but are not limited to, the following:

1. Unwanted sexual advances, unwanted sexual contact, or the threat of unwanted sexual contact;
2. Offering employment benefits in exchange for sexual favors;
3. Making or threatening reprisals after a negative response to sexual advances;
4. Visual conduct: leering, making sexual gestures, or displaying of sexually suggestive objects or pictures, cartoons or posters;
5. Verbal misconduct: making or using derogatory comments, epithets, slurs, sexually explicit jokes, uninvited sexual teasing, or comments about an employee's body or dress;
6. Verbal sexual advances or propositions;
7. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, or suggestive or obscene letters, notes or invitations; and/or

8. Physical conduct: massaging, touching, fondling, stroking or brushing the body, assaulting, impeding or blocking movements.

Any behavior or action taken against an individual because of his/her actual or perceived membership in a protected class, or association with a person or group with one or more of the actual or perceived protected characteristics, may constitute unlawful harassment when occurring under the conditions listed above.

Preventing Sexual Harassment and Other Unlawful Harassment

SBCSS or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual and other harassment, including but not limited to the actions described above.

A. Training

Every two years, SBCSS or designee shall ensure that supervisory employees receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment. All newly hired or promoted supervisory employees shall receive training within six months of their assumption of the supervisory position.

The training and education program for supervisory employees shall include information and practical guidance regarding the federal and state laws on the prohibition against and the prevention and correction of sexual harassment, and the remedies available to the victims of sexual harassment in employment.

In addition, SBCSS or designee shall ensure that all employees receive periodic training regarding the Superintendent's harassment policy, particularly the procedures for filing complaints and employees' duty to use the Superintendent's complaint procedures.

As of April 1, 2016, when amendments to the Fair Employment and Housing Act took effect, training for supervisory employees to prevent, investigate and correct sexual and other harassment must now have **interactive** components to ensure that supervisory employees are engaged and understand the material. The amendments add required substance, including: potential exposure and liability for employers and individuals; supervisors' obligation to report sexual harassment, discrimination, and retaliation when they become aware of such occurrences; steps for appropriate remedial measures to correct harassing behavior; and a review of the definition of "abusive conduct" (workplace bullying).

In accordance with FEHA, the mandated supervisory employee training has certain learning objectives, which include: (1) assistance in changing or modifying workplace behaviors that create or contribute to "sexual harassment" as the term is defined in California and federal law; (2) imparting information to supervisory employees regarding the negative effects of abusive conduct in the workplace, including a discussion about the elements of abusive conduct and the effects that abusive conduct has on the victim of the conduct, others in the workplace and the employer; and (3) development, fostering, and encouragement of a set of values in supervisory employees that will assist them in preventing, effectively responding to incidents of sexual and other types of harassment, and implementing mechanisms to promptly address and correct wrongful behavior.

Training must include information regarding potential employer and individual liability in civil actions and highlight a supervisory employee's mandatory legal obligations to report sexual harassment, discrimination, and retaliation. According to AB 1825 there is a two-year record retention requirement for all sexual harassment training materials. Among the materials retained would be sign-in sheets and course materials, including questions and written answers exchanged in connection with the training done interactively and by assigned on-line training. As stated, employers must maintain certain information related to the supervisor harassment trainings for a minimum of two years, including the names of the employees trained, the date of training, the sign-in sheet, a copy of all certificates of attendance or completion issued, the type of training, a copy of all written or recorded materials that comprise the training, a copy of all written questions received during or after an assigned on-line training and all written responses or guidance provided, and the name of the training provider.

B. Notifications

SBCSS or designee shall publicize and disseminate this harassment policy to all employees at the beginning of the first quarter or semester of the school year, or whenever a new employee is hired. Additionally, a copy of the Superintendent's Policy shall:

1. Be displayed in a prominent location in the main administrative building or other area where notices of rules, policies, procedures and standards of conduct are posted; and
2. Appear in any school or SBCSS Office publication that sets forth the comprehensive rules, policies, procedures, and standards of conduct.
3. To the extent the SBCSS workforce contains persons whose spoken language is a language other than English, then SBCSS as the employer must translate the policy into every language that is spoken by at least 10 percent of its workforce. In addition, as to policies pertaining to discrimination, harassment or retaliation, SBCSS shall make a reasonable effort to give either oral or written notice in the appropriate language to any employee whom SBCSS knows is not proficient in English, and for whom written notice previously has not been given in his or her primary language.

C. Investigation and Corrective Action

Any employee or applicant for employment who feels that he/she, or another individual in SBCSS, has been harassed should promptly report the matter to his/her supervisor, the principal, or other administrator, or to the Coordinator for Nondiscrimination in Employment or SBCSS, who will ensure the report or complaint is appropriately investigated.

Complaints of sexual harassment or harassment on any other protected characteristic shall be filed and addressed in accordance with SBCSS Procedure 4030.1—Complaints Concerning Discrimination in Employment. An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.

A supervisor, principal or other administrator of SBCSS who receives a report or complaint of harassment shall promptly notify the Coordinator for Nondiscrimination in Employment or SBCSS, who will ensure the report or complaint is appropriately investigated.

Each report or complaint of harassment shall be promptly investigated in a way that, to the extent possible, respects the privacy of all parties. All complaints and allegations of harassment shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions.

SBCSS or designee shall take timely and appropriate corrective or remedial action(s), where appropriate. This may include interim separation of the complainant and the alleged harasser and subsequent monitoring of developments.

Protection Against Retaliation

SBCSS prohibits retaliation against anyone who reports or opposes unlawful harassment, files a complaint, testifies, assists or participates in the complaint procedures instituted pursuant to this policy or in any investigation, proceeding or hearing conducted by a federal or state enforcement agency.

Any report of retaliation by the one accused of harassment, or by coworkers, supervisors or managers will also be immediately, effectively and thoroughly investigated in accordance with SBCSS Procedure 4030.1—Complaints Concerning Discrimination in Employment. If a complaint of retaliation is substantiated, appropriate disciplinary action, up to and including discharge, will be taken against the individuals found to have retaliated against the complainant(s).

Approved: September 15, 1994

Revised: January 9, 2007

Revised: August 5, 2014

Revised: June 23, 2016