

**ALL PERSONNEL**

**Harassment Prevention Policy**

**Policy Against Unlawful Harassment**

EDCOE is committed to providing a workplace free of unlawful sexual harassment as well as unlawful harassment based on such factors as race, religious creed, color, national origin, ancestry, age (over 40), medical condition, marital status, sexual orientation, gender, disability, pregnancy or related medical condition, or any other basis protected by applicable law to the extent protected by applicable law. EDCOE strongly disapproves of and will not tolerate unlawful harassment of employees or contractors by managers, supervisors, contractors or co-workers. EDCOE will also attempt to protect employees and contractors from unlawful harassment by non-employees in the workplace. Harassment creates a negative work environment and affects the work performance of all employees.

This policy is available to each employee. The policy will also be disseminated periodically to all employees, including at the beginning of each school year and when a new employee is hired as required by Education Code section 231.5.

Eradicating workplace harassment is the responsibility of every employee, not just supervisors.

EDCOE, as your employer or contracting entity, must take all reasonable steps to prevent discrimination and unlawful harassment from occurring. Sexual or other unlawful harassment in employment violates EDCOE's policy and is prohibited under laws including Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Education Code, and the California Fair Employment and Housing Act (FEHA). FEHA also prohibits harassment of contractors.

EDCOE will not tolerate harassment on the basis of race, color, sex (gender), national origin, ancestry, religion, age (over 40), physical and mental disability, medical condition, marital status, sexual orientation, or pregnancy or related medical conditions. All such conduct is prohibited.

**Definition of Harassment**

Harassment includes verbal, physical or visual conduct that creates an intimidating, offensive or hostile working environment or that unreasonably interferes with job performance. Harassment may also include unwelcome, offensive slurs, jokes, or other similar conduct.

Harassment may include being annoyed, disturbed, bothered, coerced, pestered or threatened on the job and/or in any work-related situation because of one's membership in a protected class: Age, race, sex (gender), color, national origin, national ancestry, physical and mental disability, medical condition, religious creed, sexual orientation, marital status or pregnancy or related medical conditions.

Any behavior or action taken against a person because of that person's membership in a protected class may constitute unlawful harassment if:

- A. Submission to the conduct is either an explicit or implicit term or condition of employment;
- B. Submission to or rejection of the conduct is a basis for an employment decision (such as hiring, termination, promotion or transfer) affecting the person rejecting or submitting to the conduct; or
- C. The conduct has the purpose or effect of substantially interfering with an affected person's work performance or creating an intimidating, hostile, or offensive work environment.

Examples of harassment include but are not limited to:

1. Verbal harassment may include, but is not limited to: swearing, vulgar remarks, implied or connotative meanings, ethnic or derogatory jokes or email messages, threats of bodily harm or any other discriminatory expressions.
2. Physical harassment may include, but is not limited to: touching, hitting, shoving, pushing or any other form of physical contact.
3. Visual harassment may include, but is not limited to: photos, pictures, calendars, screensavers, comics or cartoons, posters, drawings and gestures.

### Sexual Harassment Defined

Federal law defines sexual harassment as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made a term or condition of employment; or (2) submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment.

California law defines sexual harassment as unwanted sexual advances or visual, verbal or physical conduct of a sexual nature. This definition includes many forms of offensive behavior. The following is a partial list:

- Unwanted sexual advances, unwanted sexual contact, or the threat of unwanted sexual contact.
- Offering employment benefits in exchange for sexual favors.
- Making or threatening reprisals after a negative response to sexual advances.
- Visual conduct: leering, making sexual gestures, or displaying of sexually suggestive objects or pictures, cartoons or posters.
- Verbal misconduct: making or using derogatory comments, epithets, slurs, sexually explicit jokes, uninvited sexual teasing, or comments about an employee's body or dress.
- Verbal sexual advances or propositions.
- 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.
- Physical conduct: touching, assaulting, impeding or blocking movements.

In addition, California Education Code section 212.5 defines sexual harassment as:

“Sexual harassment” means 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 work or educational setting, under any of the following conditions:

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

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

(c) 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.

(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.”

All such conduct is prohibited.

It is unlawful for males to sexually harass females or other males, and for females to sexually harass males or other females. Sexual harassment on the job is unlawful whether it involves co-worker harassment, harassment by a supervisor or manager, or by persons doing business with or for EDCOE.

#### Preventing Sexual and Other Unlawful Harassment

A program to eliminate sexual and other unlawful harassment from the workplace is required by law and is the most practical way to prevent incidents from occurring. EDCOE's complaint procedure provides for an immediate, thorough, impartial and objective investigation of any sexual or other harassment claim alleged to be on a basis protected by applicable law; appropriate disciplinary action against one found to have engaged in prohibited sexual or other harassment; and appropriate remedies to any victim of unlawful harassment. EDCOE will act to remedy unlawful harassment according to the following procedures:

#### EDCOE's Complaint and Investigation Procedure:

- Employees or contractors who believe they have been sexually or otherwise harassed on the job on a basis protected by law, including harassment by persons doing business with or for EDCOE, should provide a complaint (preferably in writing) as soon as possible to their own or any other supervisor or manager at EDCOE or the Human Resources Director or other Human Resources staff. The complaint should include details of the incident(s), names of individuals involved, and the names of any witnesses. Supervisors, managers, and other Human Resources staff must immediately refer all harassment complaints to the Human Resources Director of EDCOE who will oversee the investigation and resolution of such complaints. If the Human Resources Director is the alleged harasser, the complaint may be made to a Deputy Superintendent or the

Superintendent. EDCOE and its representatives will protect the confidentiality of harassment complainants to the extent possible.

- All incidents of sexual or other unlawful harassment that are reported shall be investigated. The Human Resources Director or designated representative will immediately undertake an effective, thorough and objective investigation of the harassment allegations. The investigation will be completed and a determination regarding the alleged harassment will be made and communicated to the employee(s) or contractor(s) who complained and the accused harasser(s).
- If EDCOE determines that sexual or other unlawful harassment has occurred, EDCOE will take immediate and effective remedial action commensurate with the circumstances. Appropriate action will also be taken to deter any future harassment. If a complaint of sexual or other unlawful harassment is substantiated, appropriate disciplinary action, up to and including discharge, will be taken. Whatever action is taken against the harasser will be communicated to the employee or contractor who complained, and EDCOE will take appropriate action to remedy any loss to the employee or contractor resulting from the sexual or other unlawful harassment. The complaining employee or contractor will not have to resolve the complaint directly with the accused harasser.
- All documentation created as a result of the investigation will be retained and held in strictest confidence unless required to be revealed by applicable law.
- If the complaining employee or contractor prefers, his/her complaint can be investigated and addressed through the Uniform Complaint Procedure in BP 1010.
- If the complaining employee or contractor prefers to use the complaint and investigation procedure in this SP 4120, but later determines to use the Uniform Complaint Procedure in BP 1010, the complaining employee or contractor can initiate a complaint under BP 1010 in compliance with the requirements in BP 1010 and applicable law.

### Protection Against Retaliation

EDCOE's policy and law prohibit retaliation against any employee or contractor by another employee, by another contractor, or by EDCOE for opposing unlawful practices prohibited by discrimination laws, for using this complaint procedure or for filing, testifying, assisting or participating in any manner in any investigation, proceeding or hearing conducted by a federal or state enforcement agency.

Prohibited retaliation includes, but is not limited to, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making employment or contracting decisions, failure to make employment recommendations impartially, adversely affecting working conditions or otherwise denying any employment benefits.

Once EDCOE knows of the occurrence of sexual or other unlawful harassment, no further harassment will knowingly be permitted, and EDCOE will not knowingly permit any retaliation against any employee or contractor who complains in good faith of unlawful harassment or who participates in an investigation even if a violation of this policy is not proven. EDCOE policy and law prohibit retaliation against any employee or contractor who opposes unlawful harassment. Opposition includes, but is not limited to: seeking advice or assisting or advising any person in seeking advice of an enforcement agency regardless of whether a complaint is filed or, if filed, substantiated; opposing employment practices or other practices that an employee or a contractor reasonably believes to be unlawful; participating in an activity

perceived to be opposition to discrimination by an employer covered by the law; or contacting, communicating with or participating in any federal, state, or local human rights or civil rights agency proceedings.

Any report of retaliation by the one accused of harassment, or by co-workers, contractors, supervisors or managers, will also be immediately, effectively and thoroughly investigated in accordance with EDCOE's complaint procedure outlined above. If a complaint of retaliation is substantiated, appropriate disciplinary action, up to and including discharge, will be taken against the parties found to have retaliated against the complainant(s).

#### Liability For Sexual Or Other Unlawful Harassment

Any contractor or employee of EDCOE, whether co-worker, supervisor or manager, who is found to have engaged in unlawful sexual or other unlawful harassment is subject to disciplinary action up to and including discharge from employment or termination of contract. An employee who engages in sexual or other unlawful harassment, including any manager who knew about the harassment and took no action to stop it, may be held personally liable for monetary damages. EDCOE will not pay damages assessed personally against an employee.

Harassing conduct is not within the scope of employment; therefore, if litigation results from the harassing behavior, the harassing employee may have to obtain his/her own legal counsel.

#### Additional Enforcement Information

In addition to EDCOE's internal complaint procedure, employees should also be aware that the federal Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment & Housing (DFEH) investigate and prosecute complaints of sexual or other unlawful harassment in employment. DFEH also investigates and prosecutes contractor complaints of unlawful harassment.

Employees who believe that they have been sexually harassed or harassed on other grounds protected by applicable law may file a complaint with the EEOC within 300 days of the harassment or with the DFEH within one year of the harassment. Contractors may file a complaint of unlawful harassment with the DFEH. Both the EEOC and the DFEH serve as neutral fact finders and attempt to help the parties voluntarily resolve disputes.

If the EEOC finds a complaint is justified, it may bring a lawsuit in federal court seeking an order to prevent further unlawful activity, as well as orders to pay fines and damages, and remedies such as hiring, reinstatement, backpay, promotion and changes in the employer's policies and/or practices. If the DFEH finds evidence of sexual or other unlawful harassment, and settlement efforts fail, the DFEH may file a formal accusation against the employer and the harasser. The accusation may result in a hearing before the Fair Employment and Housing Commission or a lawsuit on the complainant's behalf by the DFEH. If the Commission finds that harassment occurred, it can order remedies, including damages and/or fines from each employer or harasser charged. The Commission may order hiring or reinstatement, backpay, promotions and changes in the policies or practices of the involved employer. A court may order unlimited damages and that the employer conduct training on the legal requirements, rights and remedies, and the employer's internal complaint procedures.

For more information, contact EDCOE's Human Resources Director or the nearest office of the EEOC or DFEH, as listed in the telephone book.

### Training

All supervisory employees at EDCOE will be required to attend at least two hours of classroom or other interactive training on harassment prevention in compliance with Government Code section 12950.1. All supervisors must be trained on harassment prevention by January 1, 2006. After January 1, 2006, all supervisors must be trained on harassment prevention at least once in a two-year period. Newly hired or promoted supervisors must attend training within 6 months of becoming a supervisor.

#### Legal Reference:

##### EDUCATION CODE

200 et al. Prohibition of discrimination on the basis of sex, ethnic group identification, race, national origin, religion, mental or physical disability, and any actual or perceived characteristic that is contained in the definition of hate crimes

212 Definition of sex

212.5 Definition of sexual harassment

220 Prohibition of discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, mental or physical disability, and any basis contained in the prohibition of hate crimes

230 Particular practices prohibited, including sexual harassment

231.5 Written policy on sexual harassment and distribution to employees

##### GOVERNMENT CODE

12900 et seq. Fair Employment & Housing Act

12940 Employers, labor organizations, employment agencies and other persons; unlawful employment practice; exceptions

12950 Sexual harassment; amendment of poster; distribution of information sheet

12950.1 Training requirements

##### PENAL CODE

422.6 Hate crimes

##### U.S. CODE

Title VI, 42 U.S. Code § 2000d

Title VII, 42 U.S. Code § 2000e et seq.

Title IX, 20 U.S. Code § 1681

Americans With Disabilities Act, 42 U.S. Code § 12101 et seq.

Rehabilitation Act of 1973, 29 U.S. Code § 794

Age Discrimination in Employment Act, 29 U.S. Code § 621 et seq.

##### CALIFORNIA CODE OF REGULATIONS

2 C.C.R. § 7287.8 Protection against retaliation

## EMPLOYEE ACKNOWLEDGEMENT

I hereby acknowledge that I have read and had the opportunity to ask questions about the Harassment Prevention Policy (SP 4120). I understand the policy and that any harassing behavior is behavior not in the course and scope of my employment. I will abide by this policy. I have received a copy of this policy and understand the original of this Employee Acknowledgment of SP 4120 will be kept in my personnel file.

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Date

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Employee's Signature

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Employee's Name Printed