

Fowler Unified School District



Sexual Harassment Handbook

For Employees and Supervisors

Paul Marietti, Ed.D.
Superintendent

TO ALL EMPLOYEES

SUBJECT: SEXUAL HARASSMENT

The purpose of this handbook is to establish a strong commitment to prohibit and prevent discriminatory harassment in employment, to define harassment, and to set forth a procedure for investigating and resolving internal complaints of harassment.

Harassment based on sex (with or without sexual conduct), race, color, religion, national origin, age, disability, and protected activity (i.e., opposition to prohibited discrimination or participation in the statutory complaint process) will not be tolerated. Harassment is prohibited by anyone in the workplace – supervisors, co-workers, or non-employees.

The intent of this manual is to assist you in developing an awareness of sexual harassment in the workplace and the educational environment by clarifying behavior that could be interpreted as sexual harassment and to reaffirm that sexual harassment is misconduct that will not be tolerated within the District. It is also intended to familiarize you with the legal liabilities and the legislation pertaining to this form of sex discrimination and the proper procedure for filing a complaint.

It is essential that we provide a healthy working and educational environment for all our employees and students in order to afford everyone the opportunity to perform to his/her fullest potential. Sexual harassment can damage relationships, lower morale, undermine the integrity of the district, and interfere with the effectiveness of the district. Therefore, the workplace and schools must be free of sexual harassment to assure fair and courteous treatment of all employees and students.

Fowler Unified School District

TABLE OF CONTENTS

RECOGNIZING SEXUAL HARASSMENT IN THE WORKPLACE AND EDUCATIONAL ENVIRONMENT	1
A. LEGAL BASIS.....	1
B. RECOGNIZING SEXUAL HARASSMENT	2
DEFINITIONS.	2
EXAMPLES.....	4
C. HOW TO PREVENT SEXUAL HARASSMENT	5
D. WHAT TO DO IF YOU ARE SEXUALLY HARASSED.	5
RESPONSIBILITY.....	6
A. ADMINISTRATIVE RESPONSIBILITY	6
B. SUPERVISORY RESPONSIBILITY.....	6
C. EMPLOYEE RESPONSIBILITY.....	7
COMPLAINT PROCEDURES.....	8
A. F.U.S.D. INTERNAL PROCEDURE.....	8
B. OUTSIDE AGENCIES	9
C. PRINCIPAL/SUPERVISOR/MANAGER.	9
D. SUPERVISOR.	9
E. HUMAN RESOURCES DEPARTMENT	10
F. EMPLOYEES / STUDENTS	11
SEXUAL HARASSMENT LEGISLATION / POLICY.....	12
A. FEDERAL EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.....	12
B. CALIFORNIA STATE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING REGULATIONS.....	13
C. FOWLER UNIFIED SCHOOL DISTRICT POLICY.....	13
LIABILITIES	14

RECOGNIZING SEXUAL HARASSMENT IN THE WORKPLACE AND EDUCATIONAL ENVIRONMENT

Effective prevention and education are the best tools for the elimination of sexual harassment.

A. LEGAL BASIS

Prohibition of Sex Discrimination/Harassment, California Education Code section 212.5, Section 220.

The education code prohibits sex discrimination in the schools. The definition of sex discrimination includes sexual harassment.

For purposes of the education code, "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 as 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.

Federal and State Basis for Liability

All employers are affected by both federal and state laws, which apply equally and simultaneously with respect to the topic of sexual harassment. Because the federal and state laws are not identical, an employer must be in compliance with both.

The federal law, which is the basis for a prohibition against sexual harassment, is found in Title VII of the Civil Rights Act of 1964. The regulations developed by the Equal Employment Opportunity Commission (EEOC) to implement Title VII are found in the Code of Federal Regulations, 29 CFR, Chapter XIV, (§1604.11).

The statutory basis for California's prohibition against sexual harassment is found in the California Fair Employment and Housing Act (FEHA) which is in the California Government Code §§12900 through 12996. The regulations which were developed to implement the California Fair Employment and Housing Act are found in Title II of the California Code of Regulations § 7287.6 through § 7287.9.

The EEOC concept of sexual harassment has been interpreted as any unwelcome, unsolicited, or deliberate sexual advance; request for sexual favor; abuse; mistreatment; prejudice; and/or any continuous written, visual, verbal, or physical conduct which is based solely upon sex or sexual orientation that has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile, or offensive work or educational environment for any person.

Fowler Unified School District

Board Policy

The policy of the Fowler Unified School District states that sexual harassment in the workplace or educational setting is forbidden and will not be condoned or tolerated. District administrators have the duty and responsibility to take all necessary steps, including appropriate disciplinary action, to promote and maintain an environment that is free of sexual harassment, intimidation, and coercion.

II. RECOGNIZING SEXUAL HARASSMENT

Definitions

Sexual Harassment

Co-workers or Supervisors [or Nonemployees Providing a Service to the District]:

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Such behavior is illegal when it is part of a supervisor's decision to hire or fire someone; when it is used to make other employment decisions like pay, promotion, or job assignment; when it interferes with an employee's work performance; or when it creates an intimidating, hostile, or offensive work environment. Other examples of sexual harassment include:

- a. Making reprisals, threats of reprisal, or implied threats of reprisal following a negative response constitutes sexual harassment; for example, either implying or actually withholding support for a promotion or change of position suggesting that a poor evaluation will be prepared, or suggesting that a probationary period will be failed;
- b. Engaging in implicit or explicit coercive sexual behavior which is used to control, influence, or affect the career, salary, and/or work environment of another employee; offering favors of employment benefits, such as promotions, favorable work performance evaluations, recommendations, reclassifications, etc., in exchange for sexual favors are forms of sexual harassment;
- c. Deliberate or repeated behavior of a sexual nature which is unwelcome, not asked for, and not returned is sexual harassment. The behavior can be verbal, non-verbal, physical, or visual contact with sexual overtones. The

behavior is deliberate, not happening by accident but by someone's intent, or it is repeated, happening more than once; or

- d. Situations which began as reciprocal attractions but later ceased to be reciprocal constitute sexual harassment. Men, as well as women, can be victims of sexual harassment. Each employee must develop a sensitivity for the feelings of others and respect each person's individual dignity and right to work free from fear of any harassment or discrimination. Respect for individual dignity is an integral part of the Fowler Unified School District's philosophy and must be adhered to by all employees.

Students

Students can and have made claims of sexual harassment against teachers, other school personnel, and other students. All district employees should conduct themselves with particular sensitivity to the fact that they hold a position of "special trust" and avoid any actions which might be considered as sexual harassment of a student. Students have the same rights as do employees with regard to filing a complaint of sexual harassment. Further, any employee engaging in actions that constitute sexual harassment may be suspended or dismissed pursuant to the Education Code provisions pertaining to unprofessional conduct, immoral conduct, evident unfitness, or, in extreme cases, conviction of a crime.

Employees may become confused about what sexual harassment is or is not due to individual behavior being subject to personal judgment. As a rule of thumb, employees might ask themselves this question about their behavior:

- "If someone behaved this way toward my spouse, parent, child, fiancée or girlfriend, how would I feel?"

Another question about behavior is:

- "Would you be embarrassed to see your remarks or behavior reported in the newspaper or described to your own family?"

To help recognize sexual harassment, consider the following:

- Has it happened before? Is it deliberate?
- Does it create an environment that is hostile, intimidating, or offensive for an employee or student? Is it unwelcome?
- Has the person (receiving the attention) objected in any way? Is it unsolicited?

Examples

Harassment may include, but is not limited to:

Verbal Harassment

Sexual comments, epithets, derogatory comments, slurs, suggestions, lewd propositioning, jokes, innuendos, and the use of sexually oriented language which is offensive. This might include inappropriate sex-oriented comments on appearance, including dress or physical features, jokes, graphic comments about an individual's body, or sexually degrading words used to describe an individual.

Non-verbal Harassment

Suggestive looks, leering, ogling, and displaying of sexually suggestive objects, pictures, movies, cartoons, or posters.

Physical Harassment

Assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement when directed at an individual on the basis of sex, marital status, or sexual orientation. This includes pinching, grabbing, patting, "friendly" pats, brushing against someone's body, squeezes or pinches, forcing sexual relations or making explicit or implied job threats or promises in return for submission to physical acts.

Visual Harassment

Display of sexually suggestive or derogatory objects, pictures, movies, cartoons, drawings, posters, or suggestive or obscene letters, notes, or invitations.

Sexually Explicit Material

Display of any book, magazine, newspaper, video, television, transmission, or other publication containing photographs or pictures of actual sexual acts or sexual organs in which the primary purpose or effect is sexual arousal, titillation, or gratification.

Unwanted Sexual Advances

Requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.

Unwelcome Behavior

The idea of "unwelcome behavior" helps clarify what is and what is not appropriate at work or in the educational setting. The following examples include some of the social behaviors that are inappropriate and/or illegal on the job or in the educational setting:

- Negative or offensive comments, jokes, or suggestions about another employee's/student's gender or sexual orientation.
- Obscene or lewd sexual comments, jokes, or suggestions.
- Slang, names, or labels, such as "honey," "sweetie," "boy," "girl," that others find offensive.
- Talking about or calling attention to another employee's or student's body or sexual characteristics in a negative or embarrassing way.
- Laughing at, ignoring, not taking seriously, an employee or student who experiences sexual harassment.
- Blaming the victim of sexual harassment for causing the problem.
- Continuing certain behavior after a co-worker has objected to that behavior.
- Displaying nude or sexual pictures, movies, cartoons, or calendars on any district property.

The preceding examples are to help all employees of Fowler Unified School District to provide an environment free from unwelcome sexual overtures, advances, and coercion. All persons are expected to adhere to a standard of conduct that is respectful to all employees and students within the district.

The Key Word is “Unwelcome”

The key word in defining sexual harassment is “**unwelcome.**” When any unwanted, unwelcome, or unsolicited sexual conduct is imposed on a person who regards it as offensive or undesirable, it is sexual harassment. When a person finds the conduct is unwelcome, it becomes illegal. Even conduct implicit in nature--hidden in subtlety or innuendo--is unlawful if it is unwelcome. If the employee or student states that she (or he) finds the behavior offensive, the actions are unwelcome. Often victims will seek to avoid confrontation or may fear reprisals and consequently do not clearly state their objection. Therefore, all employees must learn to be sensitive to how their actions may be perceived by others, no matter what they personally may believe or intend.

C. HOW TO PREVENT SEXUAL HARASSMENT

1. Conduct yourself in a professional manner; remember that in the public school setting you hold a position of "special trust."
2. Dress appropriately for the job.
3. Become familiar with your right to work in an environment free from discrimination based on sex.
4. Be prepared to assert these rights.
5. Become acquainted with your district's policy and procedures for reporting harassment.
6. Take a few minutes to stop and decide, ahead of time, what kind of action you would take if you were harassed.

D. WHAT TO DO IF SEXUALLY HARASSED

Specific actions to pursue if harassment takes place.

- Remain cool and professional.
- If you feel comfortable, be direct and candid with the person. Let your feelings be known, and let them be known right away.
- Use the district's sexual harassment reporting procedure and report the incident to your supervisor; or, if the harasser is your supervisor, you have the right to go to his or her supervisor. Clarify district procedures if there is any question or doubt as to whom to report the incident. And remember, the district can better take appropriate action if your complaint is made while the harassment is occurring or shortly thereafter.
- When reporting the harassment, be prepared to tell all the facts surrounding the incident. Give the who, what, when, where, and how.

You can help the process by writing down the important details so that you don't leave anything out. Sit down and relax--collect your thoughts before you begin your story. Be prepared to supply the interviewer with the names of witnesses or others who can

support your complaint. It is critical to be as factual and informative to the investigator as possible.

RESPONSIBILITY

The District has a duty to stop the current harassment and take all reasonable steps to prevent future harassment of its employees.

A. ADMINISTRATIVE RESPONSIBILITY: Superintendent, Assistant Superintendent, Director, or Principal

Administrators are responsible for ensuring that their assigned schools and departments are free of sexual harassment by providing appropriate training and ongoing inspection which ensures the existence of a working environment free of sexual harassment. Moreover, administrators shall ensure that they enforce the policy of the district relative to sexual harassment promptly and appropriately. Administrators shall also ensure that each employee at their school site or in their department is familiar with the contents of this manual.

B. SUPERVISORY RESPONSIBILITY: Director, Principal, Assistant Principal, Supervisor

Supervisors have two primary responsibilities in preventing sexual harassment within their workplace: 1) informing and educating employees; and 2) recognizing and correcting offensive behaviors as they occur.

Supervisory employees shall ensure that each workplace has an atmosphere free from sexual harassment for all employees. The working environment shall be businesslike, assuring fair and courteous treatment for all employees and the students and public we serve. All supervisors will be provided at least two hours of sexual harassment awareness training and education biannually, starting January 1, 2006. All new supervisors will receive the same training within six months of assuming their position.

Employees need not, and realistically cannot, be prohibited from all social interactions; but it should be made clear that social relationships cannot be permitted to interfere with work performance or business decisions. Supervisors should investigate any circumstances that might give rise to a charge of sexual harassment.

Whenever a supervisor becomes aware of sexual harassment, corrective action must immediately be taken. The supervisor must contact the appropriate human resources department. This department will initiate a careful examination of the need for appropriate action by investigating the complaint, ensuring that due process and confidentiality are provided to those involved. An investigation of a sexual harassment complaint must protect the due process rights of the person accused and, at the same time, be thorough enough to evaluate the complaint. The failure to properly investigate a complaint may have serious consequences for the employer and all parties involved.

The district must take preventive steps to ensure that sexual harassment will not occur. A supervisor can create a climate that discourages such conduct by conveying the message that sexual harassment will not be tolerated. Supervisors shall take prompt

and appropriate action whenever they observe or are made aware of any conduct that may be interpreted as sexual harassment.

Supervisors shall adhere to the following:

1. Federal and state regulations which pertain to sexual harassment;
2. The district's policy on sexual harassment and recommended procedures for handling complaints of sexual harassment. (Adm. Regs. - 4119.11/4219.11); and
3. Documentation procedures regarding sexual harassment complaints.

C. EMPLOYEE RESPONSIBILITY

All employees are responsible for avoiding situations which involve actual or apparent sexual harassment. Every employee is entitled to work in an environment free from sexual harassment or coercion. An employee who perceives unwelcome comments, gestures, or actions of a sexual nature by another employee or administrator should IMMEDIATELY and CLEARLY communicate to that person that such behavior is unwelcome. Acts constituting sexual harassment are not limited to acts by a male toward a female but can be committed by and against persons of both sexes.

If an employee believes he/she has been sexually harassed, the employee may file a complaint, with any of the listed agencies or administrative positions listed. However, the district's procedure is to first pursue complaints through the available district internal procedures which ultimately will result in appropriate actions that will effectively stop the sexual harassment.

NOTE: ALL EMPLOYEES ARE ASSURED THAT THEY MAY MAKE SUCH REPORTS WITHOUT FEAR OF RETALIATION BY THE DISTRICT, ADMINISTRATORS, OR THEIR IMMEDIATE SUPERVISOR.

Allegations of sexual harassment will be fully and completely investigated.

COMPLAINT PROCEDURES

A. FUSD INTERNAL PROCEDURE

REPORT THE COMPLAINT

Fowler Unified School District's procedure for reporting a sexual harassment complaint is to first pursue the complaint through the following internal procedures:

Employees shall report the sexual harassment complaint to their immediate supervisor or the next level supervisor (if their immediate supervisor is the alleged harasser) or the appropriate human resources department. Students shall report the sexual harassment complaint to their principal or assistant principal. Complaints should also be addressed under BP 4030/AR 4030 or AR 4031 as appropriate.

The District encourages employees to report harassment before it becomes severe or pervasive. While isolated incidents of harassment generally do not violate state or federal law, a pattern of such incidents may be unlawful.

B. OUTSIDE AGENCIES

State of California Department of Fair Employment and Housing

Employees who have been sexually harassed may have the right to file complaints with state regulatory agencies. If an employee has a valid claim for harassment on the basis of a protected class covered by the Fair Employment and Housing Act, the employee need not exhaust FUSD's internal procedure before filing a complaint with the Department of Fair Employment and Housing. Generally, a complaint must be filed within one year of the harassment. However, time limits for filing complaints with regulatory agencies vary and employees should check directly with this agency for specific directions:

Department of Fair Employment and Housing (State)
5720 Ralston Street, Suite 302
Ventura, California 93003
(800) 884-1684

If the Department finds that discrimination has occurred, it can order remedies including: fines or damages for emotional distress from each employer or person found to have violated the law, hiring or reinstatement, back pay or promotion, changes in the policies or practices of the involved employer, cease and desist orders, administrative fines or court ordered punitive damages.

Federal Equal Employment Opportunities Commission

Employees who have been sexually harassed may have the right to file complaints with federal regulatory agencies. Time limits for filing complaints with federal regulatory agencies vary and employees should check directly with this agency for specific directions:

Equal Employment Opportunity Commission (Federal)
2500 Tulare Street, Suite 2601
Fresno, CA 93721
(800) 669-4000

If the Commission finds that discrimination has occurred, it can order remedies including: back pay, hiring, promotion, reinstatement, front pay, reasonable accommodation, or other actions that will make an individual "whole" (in the condition s/he would have been but for the discrimination). Remedies also may include payment of: attorneys' fees, expert witness fees, and court costs.

C. PRINCIPAL/SUPERVISOR/MANAGER

Refer to Board Policy 4119.11/ Administrative Regulation 4219.11 for proper corrective action.

D. SUPERVISOR

If a supervisor receives a complaint, the supervisor should inform the complainant of the following:

- Assure the employee that you are taking the matter seriously.
- Assure the employee that all steps will be taken to ensure confidentiality to the extent possible of all parties throughout the complaint and/or investigation process.
- Repeat information back to complainant for confirmation of facts.
- Tell complainant that you intend to report the complaint to the Human Resources Department immediately and estimate when you will get back to the complainant.
- Document and date your discussion with the complainant.
- Urge the complainant to report to the Human Resources Department immediately if there is any repetition of the problem, behavior or if reprisals occur.
- Maintain confidentiality and continue to document appropriate facts that may surface during the investigation process while maintaining confidentiality.
- Assure the complainant that you will do everything possible to prevent any reprisals.
- Notify the Director of Human Resources immediately.

NOTE:

Since you have knowledge of (alleged) sexual harassment, you must take immediate, appropriate corrective action which is to take the form of reporting it to the appropriate human resources department. (See **Appendix "A"** for sample reporting form.) A fair and unbiased investigation will commence.

E. HUMAN RESOURCES DEPARTMENT

When the Director of Human Resources (or his/her agent) receives a complaint of sexual harassment, he/she shall maintain objectivity and proceed to conduct an impartial, objective investigation, which shall include the following:

- 1) Meet with complainant in private to elicit responses to the following:
 - Who is the alleged harasser?
 - What happened?
 - Where did the incident take place?
 - When did the incident take place?
 - How was your work affected?
 - Did anyone else witness the incident?
 - Is this the only incident or have there been others?
 - Did you indicate the conduct was unwelcome? How?
 - What were your feelings at the time? Now?
 - Did you talk to anyone else about the incident?
 - Did you document the incident?
 - What do you suggest should be done to stop the harassment?
- 2) Arrange to talk to the alleged harasser in private. Remind him/her of the sexual harassment policy.
 - a. Inform the employee that a complaint has been received about his/her behavior, being clear that this meeting is in response to an allegation and that you want to hear his/her side of the story. (Being neither accusatory nor dismissive of the seriousness of the complaint and by remaining non-judgmental.)
 - b. Explain the specific nature of the complaint and indicate the precise behavior that has been alleged.
 - c. Ask if the allegations are true. If the employee admits to the allegations:
 - Inform the employee that the behavior is unwelcome and must stop.
 - Remind the employee of Fowler Unified School District's sexual harassment policy.
 - Advise the employee that appropriate corrective action must be taken.
 - Document the conversations and any actions taken.
 - d. If the alleged harasser denies the allegations, advise the employee that an investigation will likely continue in order to properly resolve the complaint.
- 3) Interview corroborating witnesses.
- 4) Advise the complainant of the actions taken to resolve the complaint. Additionally, if necessary, advise the complainant of his/her rights and the procedure for pursuing the complaint further if he/she is not satisfied with the resolution reported.

The Human Resources Department representative:

1. Will record the complaint.
2. Will make arrangements to talk with the complainant and alleged harasser to determine what form of investigation is warranted.
3. If there is a need for a formal investigation, the Director of Human Resources will investigate or designate someone else to investigate the claim.

4. After the formal investigation has been completed, the investigator will forward findings and recommendations to the human resources department.
5. Upon receipt of the findings, the Director of Human Resources will recommend the necessary, appropriate disciplinary action, if warranted. These actions may include counseling, suspension with loss of pay, and/or termination of an employee. The employee will be given the opportunity to respond to the charges before corrective action is initiated. The charges and investigation summary may become part of the personnel file.

F. EMPLOYEES/STUDENTS

Employees/students who believe they are victims of misconduct in the form of sexual harassment should be prepared to provide an investigator with the following:

- What happened.
- Who the alleged harasser is
- If it was indicated that the alleged conduct was unwelcome.
- Where the incident took place.
- When the incident took place.
- How his/her work was affected.
- If anyone else witnessed the incident.
- Was this the only incident, or were there others.
- What was done in response to the incident.
- What were his/her feelings at the time and what are they now.
- If he/she talked to anyone else about it.
- If the incident was documented by recording it in a diary, a memo, or a letter.
- How the situation can be resolved right now.

All allegations will be thoroughly investigated. The persons named as potential witnesses by the complainant will be contacted during the course of the investigation.

Any employee who observes an incident of sexual harassment or has corroborating evidence shall cooperate in any investigation. **All employees are assured that they may cooperate in such investigation without fear of retaliation or reprisal by the district, administrators, or their immediate supervisor.** All efforts to ensure confidentiality will be made.

Employees who have questions about rights and obligations set forth in this manual should contact the human resources department at 658 East Adams Avenue, Fowler, California, 93625, Phone (559) 834-6083.

Inquiries concerning the application of Title IX and the implementing regulations or complaints alleging noncompliance with, or actions prohibited by, Title IX shall be referred to the District's Title IX Compliance Officer, Director of Human Resources (see above).

Students who have questions about rights and obligations set forth in this manual should contact the school principal or assistant principal for reporting and further assistance.

SEXUAL HARASSMENT LEGISLATION / POLICY

A. FEDERAL EQUAL EMPLOYMENT OPPORTUNITY COMMISSION GUIDELINES

The EEOC provides the following guidance to those filing federal claims:

29 CFR section 1604.11 - Sexual Harassment

- a. Harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- b. In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis.
- c. [Repealed]
- d. With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.
- e. An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.
- f. Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.
- g. Other related practices: where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for, but denied, that employment opportunity or benefit.

B. CALIFORNIA STATE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING REGULATIONS

2 CCR section 7287.6(b) - Term, Condition, and Privileges of Employment

1. Harassment
 - a) Verbal harassment, e.g., epithets, derogatory comments or slurs on a basis enumerated in the Act.
 - b) Physical harassment, e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on a basis enumerated in the Act.
 - c) Visual forms of harassment; e.g., derogatory posters, cartoons, or drawings on a basis enumerated in the Act.
 - d) Sexual favors; e.g., unwanted sexual advances which condition an employment benefit upon an exchange of sexual favors. (See also Section 7291.1(f) (1).)
 - e) In applying this subsection, the rights of free speech and association shall be accommodated consistently with the intent of this subsection.
2. Harassment of an applicant or employee by an employer or other covered entity, its agents, or supervisors is unlawful.
3. Harassment of an applicant or employee by an employee other than those listed in subsection B.2 above is unlawful if the employer or other covered entity, its agents or supervisors knows of such conduct and fails to take immediate and appropriate corrective action. Proof of such knowledge may be direct or circumstantial. If the employer or other should have known of the harassment, knowledge shall be imputed unless the employer or other covered entity can establish that it took reasonable steps to prevent harassment from occurring. Such steps may include affirmatively raising the subject of harassment, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise the issue of harassment under California law, and developing methods to sensitize all concerned.
4. An employee who has been harassed on the job by a co-employee should inform the employer or other covered entity of the aggrievement; however, an employee's failure to give such notice is not an affirmative defense.

C. FOWLER UNIFIED SCHOOL DISTRICT

Board Policy 4119.11/4219.11/4319.11 - Sexual Harassment

It shall be the policy of this district to:

1. prohibit and discourage any person in the work or educational setting from sexually harassing any other person in the work or educational setting;
2. provide a harassment-free work and educational environment;
3. remedy in a speedy manner any consequences of sexual harassment;

4. provide on-going education and awareness of the problem of sexual harassment; and,

5. provide information about how to pursue claims of sexual harassment.

LIABILITIES

There are potential liabilities for engaging in behavior constituting sexual harassment. Employees must be aware that sexual harassment is a form of discrimination and a violation of Title VII of the 1964 Civil Rights Act. (Other forms of discrimination may occur with regard to race, religion, sex, sexual orientation and age.) Discrimination in any of these forms is a violation of Title VII of the Civil Rights Act.

The fact that liability has been established for violators is without question. Other important but less obvious costs (liability) to an organization can result from the effects of harassment on the victim. Studies show that sexually harassed employees may feel embarrassed, demeaned, intimidated, and that they suffer physically and emotionally. Their symptoms, such as headaches, stomach problems, and inability to concentrate, may show up as increased absenteeism, inefficiency, loss of productivity, and the filing of workers compensation claims. Since many harassed employees quit their jobs, the costs of turnover - rehiring and retraining - are also substantial.

It is also possible for sexual harassment to lower the productivity of an entire work group. Co-workers who see another employee being harassed may not speak up but may still be affected in terms of their own lowered morale, decreased motivation, and job performance.

If sexual harassment is tolerated, the following liabilities could result:

- The employer - The district can be held liable for the actions of its employees whether or not it knew or approved of such actions.
- Supervisors - Misconduct can place the employer in a position to defend itself from liability claims. In addition, court rulings have resulted in awards holding individual supervisors and employers acting outside the scope of their employment personally liable.
- Co-workers -- Court rulings have also resulted in awards paid by co-workers, as well as supervisors and employers.

**SEXUAL HARASSMENT
Reporting Form**

This form may be used both as a checklist and an instrument for reporting alleged instances of sexual harassment to the human resources department pursuant administrative regulations and the sexual harassment handbook for employees and supervisors.

DATE COMPLAINT RECEIVED: _____

TODAY'S DATE: _____

NAMES OF PARTIES INVOLVED

- a. Complainant _____
- b. Alleged harassee _____
- c. Alleged harasser _____
- d. Manager filing this report _____
- e. Other witnesses to the harassment [or the affects of the harassment on Complainant] _____

YES NO

- ___ ___ 1. Have you familiarized yourself with the reporting procedures outlined in Administrative Regulations 4119.11/4219.11 and the Sexual Harassment Handbook for Employees and Supervisors?
- ___ ___ 2. Have you followed all of the suggested procedures as outlined? (List omissions).

- ___ ___ 3. Have you documented the answers to those questions outlined on page 9 of the Sexual Harassment Handbook?
- ___ ___ 4. Have you arranged to follow up to determine if there is any recurrence of the alleged behavior?

Please append copies of the original complaint and your answer thereto, including a brief description of what remedial action was taken and forward to, Director of Certificated Human Resources or the Director of Classified Human Resources at the District Office.

4119.11 E-1

Signature _____