

Sexual Orientation/Gender Identity Harassment

The Morgan Hill Unified School District is committed to maintaining a safe and supportive school environment in which all members of the school community are treated with dignity and respect. It is the policy of this District that harassment and discrimination based on sexual orientation and gender identity, including perceptions of a person's identity, appearance or behavior, is expressly prohibited.

The Board considers harassment and discrimination based on sexual orientation and gender identity to be a major offense. The District shall investigate all complaints of discrimination and harassment, and take appropriate action against any student or employee who is found to have violated this policy.

Definitions

Sexual orientation describes whether a person is attracted to members of the same sex (gay or lesbian), to members of the opposite sex (heterosexuals), or to members of both sexes (bisexual).

Gender: is defined as "a person's sex or perceived sex and includes a person's perceived identity, appearance or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with a person's sex at birth." 5 CCR Section 4910(k).

Gender characteristics include traits such as facial hair or vocal pitch. Gender expression refers to the way in which a person expresses his or her gender, through gestures, movement, dress, and grooming. Gender nonconformity refers to gender characteristics or identity that do not conform to others' expectations.

Gender Identity means a person's identity, expression, or physical characteristics, whether or not traditionally associated with one's biological sex or one's sex assigned at birth.

Transgendered describes people whose gender identity, characteristics, or expression do not conform to the identity, characteristics, or expression traditionally associated with their sex at birth, and includes transsexuals, cross-dressers, intersex people and other gender nonconforming individuals.

Harassment means verbal or physical conduct based on the student's actual or perceived sexual orientation or gender identity, or on the basis of association with others identified by these categories, that (1) substantially interferes with or will substantially interfere with a student's educational benefits, opportunities, or performance; or a student's physical or psychological well-being; or (2) creates an intimidating or hostile environment.

Examples

Examples of Sexual Orientation/Gender Identity harassment *may* include, but are not limited to, the following:

1. Slurs, epithets, threats, verbal abuse, or derogatory comments based on sexual orientation or gender identity.
2. Jokes, stories, obscene letters, drawings, pictures or gestures based on sexual orientation or gender identity.
3. Spreading rumors regarding another's sexual orientation or gender identity.
4. Inappropriate touching or physical assault of another known or perceived to be gay, lesbian, bisexual or transgender.
5. Limiting a student's access to educational tools based on the student's actual or perceived sexual orientation or gender identity.

The District takes seriously the importance of ending harassment based upon sexual orientation or gender identity, and acknowledges the importance of addressing the underlying biases that result in violence.

Notifications

A copy of the District's Policy on Sexual Orientation and Gender Identity shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year and given to new students/parents and employees upon entering the district.
2. Be displayed in a prominent location along with the name of the site Compliance Coordinator.
3. Appear in any school or District publication that sets forth the school or District's comprehensive rules, regulations, procedures and standards of conduct.
4. Be provided to employees and employee organizations.

The Superintendent or designee shall take appropriate actions to reinforce the District's Policy on Sexual Orientation and Gender Identity. As needed, these actions may include, but are not limited to, the following:

1. Removal of vulgar or offending graffiti.
2. Providing staff in-service and student instruction or counseling.
3. Notifying appropriate agency, i.e., child protective services, social services, law enforcement.
4. Notifying parents/guardians.
5. Taking appropriate disciplinary action.

Compliance Coordinators

Each district school shall have at least one designated Compliance Coordinator, who will be familiar with

1. How to investigate and handle allegations of sexual orientation discrimination or harassment;
2. How to track, record, and report such incidents or complaints;
3. How to advise or work with other staff concerning incidents or harassment or discrimination.

The Compliance Coordinator will have ultimate responsibility at each school site for the receipt and investigation of complaints of sexual orientation/gender identity-based harassment or discrimination and for taking corrective action where necessary. The Compliance Coordinator will notify the site administrator or designee upon receipt of a complaint. The Compliance Coordinator will independently investigate and respond to all complaints of such harassment to determine whether school rules or district policies were violated, regardless of whether police are also conducting an investigation and regardless of the outcome of any such police investigation. Upon receipt of a written request by a police agency that is conducting its own investigation of an incident, the Compliance Coordinator may delay the school's investigation of and response to the incident until the police agency has completed its investigation.

The existence, role, and identity of the Compliance Coordinators shall be posted in at least one prominent location accessible to both students and staff in each district school.

The District web site and all school web sites shall describe the existence and role of the Compliance Coordinators and shall instruct students and parents that they should consult with principals or other administrators at their schools to learn the identity of site-specific Compliance Coordinators.

Disciplinary Action

Students who act in violation of this policy or the law are subject to discipline up to and including suspension or expulsion. Such disciplinary action shall be in accordance with District policy and, where appropriate, federal and state law.

Employees who act in violation of this policy and/or the law are subject to discipline up to and including dismissal. Such disciplinary action shall be in accordance with applicable policies, laws, and/or collective bargaining agreements.

Complaint Procedures

The Compliance Coordinator shall investigate all complaints of sexual orientation or gender identity discrimination or harassment in accordance with Board Policy and regulation. The Compliance Coordinator shall document all investigations and shall

inform the complainant, as well as the alleged violator, of the decision regarding any complaint. Confidentiality shall be maintained to the highest degree possible.

Before a formal complaint is filed, an aggrieved student may discuss with the Compliance Coordinator whether the alleged conduct might constitute a violation of the District's policy and what options, besides filing a formal complaint, are available to the aggrieved individual. The Compliance Coordinator will assist the aggrieved student, or refer the student to another appropriate resource, to determine what action should be taken. Documentation of this meeting will be maintained by the Compliance Coordinator.

While complaints are encouraged to be in writing, any complaint received, whether or not anonymous or whether or not in writing, shall be accepted and investigated to the extent possible and appropriate.

An aggrieved student need not be someone who has been the specific target of harassment or discrimination. It might be any student who has been a target of retaliation as a result of a complaint or someone who has observed a violation or retaliation.

If the Compliance Coordinator is not of the same gender of the aggrieved student, the Compliance Coordinator shall inform the complainant that a Compliance Coordinator of the same gender may assist in taking the complaint, and shall assist the complainant in contacting a Compliance Coordinator of the same gender.

If the Compliance Coordinator is the alleged violator, the aggrieved student may report the alleged violation to any teacher or other staff member or file the complaint with another Compliance Coordinator or with the Assistant Superintendent for Human Resources.

In the event a student informs a teacher or other district employee about conduct which could constitute a violation of this policy, the teacher or other district employee is responsible for bringing the issue to the appropriate administrator. Documentation of this incident will be maintained by the Compliance Coordinator. Retaliation against a teacher or staff member who takes such action is strictly prohibited.

Retaliation for raising a complaint or for participating in the investigation of a complaint is strictly prohibited. If it is determined that retaliation has occurred, appropriate disciplinary action will be taken in accordance with the guidelines below.

Persons found to have knowingly made false allegations under the Policy on Sexual Orientation and Gender Identity shall be subject to disciplinary action. Persons submitting an unsubstantiated good faith complaint or report under the policy shall not be subject to disciplinary action.

Investigation

1. Review and Disclosure of Complaint

The Compliance Coordinator shall review the complaint and notify the superintendent's office or designee of the complaint. As soon as reasonably possible after receipt of the complaint, the student, employee, or other person who is accused of a policy violation shall be informed of the complaint. To the extent possible, and when appropriate, the identity of the complainant will not be revealed. The Compliance Coordinator shall confer with the parties within five (5) working days of receipt of the complaint.

2. Complaints Against Students

Upon completion of the investigation of a complaint filed against a student, the Compliance Coordinator shall determine whether a policy violation has occurred and, if so, the appropriate corrective action. Corrective action may include counseling, warning, or the initiation of other disciplinary procedures against the student.

3. Complaints Against Employees

Upon completion of the investigation of a complaint filed against an employee, the Compliance Coordinator shall determine whether a policy violation has occurred and, if so, the appropriate corrective action. Corrective action may include counseling, warning, or the initiation of other disciplinary procedures against the employee in accordance with the relevant collective bargaining agreement and/or applicable state and/or federal law.

4. Safety

The Compliance Coordinator shall also be responsible for taking any appropriate actions, when indicated, to ensure the safety of all parties during the investigation process. The assessment and determination of such actions shall include, but not be limited to physical safety concerns, protection of confidentiality, and any other potential retaliation.

5. Incident Report

The Compliance Coordinator shall prepare a written record (hereafter referred to as an "Incident report") of the following verbal or written complaints of harassment or discrimination against students on the basis of actual or perceived sexual orientation or gender identity: (a) each and every complaint of physical harassment reported by a student or by another person who witnessed or learned of such harassment; (b) each and every complaint of verbal harassment or discrimination reported by a student complainant; (c) two or more incidents or verbal harassment or discrimination reported by witnesses or persons who learned of such harassment at second hand. Each Incident Report shall include:

- I. The name of the person making the allegation and, if different, the name of the alleged victim;
- II. The nature of the allegation and the date of the alleged incident;
- III. The names of all persons alleged to have committed violations, if known;
- IV. The names of all persons believed to have relevant information about the alleged incident;
- V. The statements of the complainant, the victim (if different from the complainant), the alleged perpetrator (if known), and any witnesses;
- VI. The outcome of the investigation;
- VII. Any action taken by Morgan Hill Unified School District;
- VIII. Attached copies of any documents supplied to the district or created during the investigation or complaint process.

The Compliance Coordinator shall complete the Incident Report no later than fifteen (15) school days after the date upon which the complaint is first made.

Confidentiality

The District will respect the confidentiality of the complainant and the individual(s) against whom the complaint is made as much as possible, consistent with the District's legal obligations and the need to investigate allegation of sexual orientation/gender identity harassment and take remedial and corrective action when the conduct has occurred.

Appeal and Disciplinary Procedures

All decisions made under this procedure may be appealed by the aggrieved student to the Superintendent or designee and thereafter, to the Governing Board.

If the complaint is against a student, the complainant, before appealing to the Superintendent, should appeal to the Assistant Superintendent for Human Resources.

If the complaint is against an employee, the complainant, before appealing to the Superintendent, should appeal to the Assistant Superintendent for Human Resources. If the employee is a site employee and the Compliance Coordinator of the site has not heard the complaint, the complainant should appeal to the Compliance Coordinator before appealing to the Assistant Superintendent for Human Resources.

Established statutory and District procedures shall be used in the event the administrative review results in a decision that disciplinary action is necessary.

Since established personnel disciplinary procedures provide for Board-level review or decision-making, the Board of Education will take no action on any complaint until it has been acted upon in accordance with this policy. In this way, employees shall be assured of their due process rights.

Within fifteen (15) school days of receiving the complaint, the District shall prepare and send to the complainant a written report summarizing the findings and disposition of the complaint, including corrective actions, if any, the rationale for such disposition, notice of the complainant's right to appeal such decision to the Morgan Hill Unified School District Board of Education within fifteen (15) school days. The report will also include the requirement that an appeal to the State Department of Education must be made within fifteen (15) school days of the receipt of the final report.

If the complainant is dissatisfied with the District's written response, he/she may file within fifteen (15) school days of receipt of the written report his/her complaint with the Board of Education in writing. The Board of Education will consider the matter at its next regularly scheduled Board meeting or at a special meeting convened as soon thereafter as possible but no later than forty-five (45) calendar days after receipt of the complaint. If the Board decides not to hear the complaint, the District's decision shall be final. If the Board hears the complaint, the Assistant Superintendent for Human Resources shall send the Board's decision to the complainant within seven (7) calendar days of the Board meeting, unless the complainant agrees in writing to extend the seven (7) calendar day deadline.

If a complainant is dissatisfied with the resolution of his/her complaint by the Governing Board, he/she may appeal to the State Department of Education within fifteen (15) school days of complainant's receipt of the District's final written report.

Time Limits

A complaint shall be submitted as soon as reasonably possible after the conduct in question has arisen. All complaints shall be promptly and thoroughly investigated in a manner as confidential as possible, given the specific circumstances surrounding the complaint. The investigation shall be completed within fifteen (15) school days. A written report summarizing the findings and disposition of the complaint will be provided to the complainant within fifteen (15) school days from receipt of the complaint. If it is not possible to provide a written report within the required time limits, the Compliance Coordinator shall provide a written indication of this fact to the complainant. In the event that school is not in session, causing a delay in meeting the time limits established in the regulation, the Compliance Coordinator shall notify the complainant of this fact.

Record Keeping

The Superintendent or Assistant Superintendent for Human Resources shall assure a record of any complaint and investigation of discrimination or harassment as well as the disposition of the complaint and any disciplinary or remedial action taken is maintained by the District in a confidential file. The investigator shall create and maintain a written record, including copies of interview notes and all written submissions by the parties and witnesses.

The Compliance Coordinator shall assure that the complainant is notified whether allegations of discrimination or harassment were found to be valid, whether a violation of the policy occurred, and whether action was taken as a result.

Legal References

California Constitution, Article 1, § 28(c)

California Fair Employment and Housing Act

California Labor Code Sections 1101 & 1102

Title VII of the Civil Rights Act of 1964 and 1991

Title IX of the Education Amendments of 1972

California Education Code Sections 200, 212.6, 48900.2, and 48980

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