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# SEXUAL HARASSMENT

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## POLICY

The California Department of Child Support Services (DCSS) is committed to providing a workplace in which all individuals are treated with respect and professionalism. Consistent with this commitment, the DCSS goal is to provide a workplace that is free from all forms of discrimination and harassment. Under this policy, the DCSS employees are prohibited from engaging in behavior that:

- Rises to the level of sexual harassment in violation of the Title VII of the Civil Rights Act of 1964 and the Fair Employment and Housing Act.
- Is unprofessional and disrespectful; and, while not unlawful, may contribute to a hostile work environment.

## ZERO TOLERANCE

The DCSS maintains a Zero Tolerance Policy aimed at preventing inappropriate behavior. As a result, the DCSS may take corrective actions, up to and including formal discipline, when policy violations are determined to have occurred, even if they are not so serious as to be unlawful.

## COVERAGE

This Sexual Harassment Policy applies to conduct that occurs in any location that is operated by the DCSS or a workplace of any DCSS employee, or conduct that occurs at any location such as a work related off-site social, business function, or other location that could be reasonably regarded as an extension of the workplace. Furthermore, this policy applies to outside vendors, contractors, students, visitors, or other members of the public. If the harassment is by a person who is not employed by the DCSS, or if a person who is not employed by the DCSS is harassed, the conduct should be reported as set forth in this policy.

## AUTHORITY

- Title VII of the Civil Rights Act of 1964 as amended.
- California Government Code Sections 12920, et seq.
- California Fair Employment and Housing Act, Government Code Sections 12940 et seq.
- California Government Code Section 19572.
- State Employee Bargaining Agreements.

## DEFINITIONS

**Sexual Harassment** is any unwanted sexual advances, requests for sexual favors, and other visual, verbal, or physical conduct of a sexual nature that interferes with work performance by creating an intimidating, hostile or offensive work environment directed to a person of the same or opposite sex. The intent of the person accused of sexual harassment is of secondary importance; the impact of the offensive conduct on the offended person is the primary factor in determining if sexual harassment has occurred. This definition includes inappropriate and offensive behavior that is based on gender, sexual orientation, pregnancy, childbirth or any related medical conditions.

The law defines two types of sexual harassment and is considered a violation of this policy:

1. **Quid Pro Quo** (Latin for “something for something”): This form of sexual harassment occurs when a supervisor or manager:
  - a. Demands, as an explicit or implied term or condition of employment decisions, a subordinate submit to sexual advances.
  - b. Makes requests for sexual favors or other verbal, visual, or physical conduct of a sexual nature that is an explicit or implied term or condition of employment decisions.
  - c. Examples of quid pro quo harassment include:
    - Requests for sexual favors in exchange for a promotion or raise.
    - Expressed or implied statement that a person will be demoted or fired if he or she does not submit to a sexual request, or actually carrying out the threat.
  
2. **Hostile Work Environment**: Conduct or communication which may negatively affect an employee’s work performance, and/or create an intimidating, hostile, or otherwise offensive working environment. Conduct or communications which violate this policy are those which would offend or intimidate a reasonable person of the same sex as the complainant.
  - a. The following are examples of conduct or communication which are prohibited:
    - Sexually suggestive or obscene letters, invitations, notes, e-mails, facsimile, voice mails, or gifts.
    - Sexually derogatory comments, slurs, explicit jokes, remarks, or epithets.
    - Leering or making sexual gestures.
    - Making offensive, negative, or demeaning remarks about a person’s gender or physical appearance.
    - Displaying sexual suggestive objects, pictures, cartoons, or posters.
    - Assault, impeding or blocking movement, grabbing, pinching, or touching.

- Any sexual advances that are unwanted (this may include situations that began as reciprocal attractions, but later ceased to be reciprocal).

**Retaliation** is prohibited against anyone for reporting sexual harassment activity, registering a complaint pursuant to this policy, assisting in making a complaint pursuant to this policy, or cooperating in an investigation. This policy extends to any employee, whether victim or third party, who makes a complaint regarding behavior which he or she reasonably and in good faith believes is sexual harassment; assists, testifies, or participates in any sexual harassment investigation or court proceeding, or who reasonably opposes such conduct, and prohibits any adverse change in the terms and conditions of his or her employment, or any form of discrimination including discharge in response to engaging in such activity. When initiated in response to such protected activity, retaliatory conduct may include, but is not limited to, the following:

- Disciplining, changing work assignments, providing inaccurate work information, or refusing to cooperate or discuss work-related matters.
- Withholding an appointment, promotion, transfer, or change of assignment.
- Initiating a rejection on probation or other adverse personnel action.
- The express or implied threat to do any of the above.

**Third Party Sexual Harassment** is any unwelcome behavior of a sexual nature that may or may not be directed at an individual but nonetheless creates an uncomfortable or hostile work environment.

## **REQUIREMENTS**

Compliance with this policy depends on the efforts of both management and employees of the DCSS at all levels. All employees are responsible for ensuring that sexual harassment does not occur by complying with the conduct standards in this policy and by conducting themselves at all times in an appropriate and professional manner. Management is responsible for setting the tone for a harassment-free work environment and for taking appropriate measures, whether or not a complaint has been received, whenever they witness or learn of behavior which could be perceived as sexual harassment. Employees may also help to prevent harassment by taking the initiative to oppose and report conduct that they reasonably believe to be sexual harassment.

**Conduct That Violates This Policy** includes, but is not limited to:

- Making or threatening reprisals after a negative response to sexual advances.
- Demands for sexual favors in exchange for employment benefits, whether expressed or implied.
- Leering, making sexual gestures, displaying sexually suggestive objects or pictures.
- Downloading, posting or sending derogatory or demeaning comments, slurs, and sexually explicit jokes; comments about an individual's body, or physical appearance; and suggestive or obscene remarks.

- Verbally making or using derogatory comments, epithets, slurs and jokes.
- Making sexual advances or propositions.
- Touching, assault, impeding or blocking movements.

### **Restrictions on Relationships**

Generally, reciprocal attraction and consensual relationships among the DCSS employees are not considered to be sexual harassment. However, the DCSS does not allow romantic or sexual consensual relationships between its employees when one of the involved employees has the potential ability to control, influence, or affect the career, salary, and/or work environment of the employee. Such relationships include, but are not limited to, supervisor or manager and subordinate employee relationships. When such a relationship commences, the person in the position of greater authority or power (generally the supervisor or manager) bears the primary burden of accountability, and must report the relationship to his or her supervisor and/or the Equal Employment Opportunity (EEO) Officer. Corrective action to remove one employee from the potential control, influence, or power of the other employee will be taken. This action may include, but is not limited to, lateral transfers of one or both employees into different units or positions.

Even though consensual between the parties, the relationship may create problems for the parties and others. These potential problems include, but are not limited to:

- The potential for conflict of interest, exploitation, favoritism, and bias may undermine the real or perceived integrity of the supervision and evaluation provided.
- The relationship may injure third parties when it gives undue access or advantage to the partner in the relationship, or restricts opportunities of third parties, or creates the perception of these problems.
- The relationship may create a hostile work environment when other employees believe that they must consent to such relationships as a term or condition of employment.
- The relationship may lead to claims by third party employees who believe they were disadvantaged when favoritism is shown by the superior to the partner in the relationship.

### **INVESTIGATIONS**

Every employee, whether witness, complainant or alleged harasser, is expected to cooperate fully with every investigation. Confidentiality concerning complaints or investigations is maintained to the greatest extent possible in order to prevent embarrassment, further discrimination, harassment, or retaliation. Confidential or sensitive information obtained by any employee during the course of an official investigation, whether acquired as a witness, complainant, respondent, or representative, shall not be disclosed to others unless required by law. Concerns of individuals regarding confidentiality of information provided by them will be handled as

sensitively as possible, and information shall not unnecessarily be disclosed to others. However, employees should be aware that the DCSS is required in certain circumstances to take preventive or corrective actions that may be inconsistent with an individual's desire that a report of certain behavior be kept completely confidential.

The DCSS maintains a zero tolerance policy against retaliation. Complaints of retaliation will be promptly investigated. If retaliation is substantiated, appropriate disciplinary action, including possible dismissal, will be taken.

Acts of reprisal are unacceptable. Reprisal or retaliation against an individual for lodging a complaint destroys faith in leadership and can damage the human relations climate and morale.

**RESPONSIBILITIES**

<b><u>ROLE</u></b>	<b><u>RESPONSIBILITIES</u></b>
All Employees	<ul style="list-style-type: none"> <li>• Comply with this policy and report incidents of sexual harassment to your Supervisor/Manager or to the Department's Equal Employment Opportunity (EEO) Officer.</li> <li>• Refrain from bringing fraudulent or revenge claims that are not based on a good faith belief.</li> <li>• Be cooperative and refrain from impeding or interfering with any investigation regarding violations of this policy.</li> <li>• Refrain from engaging in, condoning, tolerating, or leaving uncorrected conduct that violates this policy.</li> <li>• Refrain from retaliation against any employee or supervisor who denies or opposes the employee's allegations.</li> <li>• Attend Sexual Harassment Prevention training as mandated by the DCSS.</li> </ul>
Managers and Supervisors	<ul style="list-style-type: none"> <li>• Proactively work to prevent any unprofessional, disrespectful and inappropriate behavior.</li> <li>• Make reasonable effort to prevent harassment from occurring.</li> <li>• Ensure that all employees under their supervision and management receive a copy of this policy and attend mandated training.</li> <li>• Be obligated, responsible, and take immediate action to protect all employees from any form of sexual harassment and retaliation and to immediately notify the EEO Officer of all allegations of sexual harassment and retaliation.</li> <li>• Take proactive steps to identify and prevent harassment of which they should be aware.</li> <li>• May be subject to disciplinary action for failing to carry</li> </ul>

<b><u>ROLE</u></b>	<b><u>RESPONSIBILITIES</u></b>
	<p>out their duties and responsibilities in enforcing this policy even if they are not personally engaged or witnessed the harassment.</p>
EEO Officer	<ul style="list-style-type: none"> <li>• Administer the DCSS Equal Employment Opportunity Program.</li> <li>• Ensure that all complaints of sexual harassment are thoroughly investigated in accordance with the Equal Employment Opportunity Policy processes and procedures.</li> <li>• Process and investigate sexual harassment complaints in a timely, thorough, impartial, and confidential manner, as established by the Department’s EEO Policy.</li> <li>• Serve as the staff resource for managers, supervisors, and employees regarding equal employment opportunity and sexual harassment issues.</li> </ul>

**CONSEQUENCES/DISCIPLINARY ACTION**

Anyone who violates this policy will be subject to appropriate corrective and/or disciplinary action, up to and including termination from State service. Violators may be held personally liable for their conduct. Disciplinary action may include, but is not limited to, reprimand, suspension, demotion, or dismissal. Such action may also include counseling, changes in work assignments, or other measures designated to prevent future misconduct. The severity of any disciplinary action will correspond to the gravity of the offense as weighed by its potential effect on the Department and the complainant.

**EMPLOYEES RIGHTS/COMPLAINTS PROCEDURES**

If you believe you are the target of unwanted sexual attention or behavior, or if you have witnessed sexual harassment, you are encouraged to inform the offending employee or supervisor that the behavior is unwelcome, offensive and inappropriate. You may file a sexual harassment complaint without confronting the offender. Employees who are subject to sexual harassment should immediately report such conduct to their supervisor or the EEO Officer, unless their supervisor is the harasser, in which case the behavior may be reported to any other manager or supervisor, or to the EEO Officer. Every reasonable effort will be made to intervene early and resolve the complaint informally.

If you perceive comments, gestures or actions of an employee, at any level, to be of a sexual nature, mere documentation of that conduct or only confiding with family members or co-workers about it, without more, is insufficient to prevent that conduct from occurring again. Inappropriate behavior must be reported so the DCSS has an opportunity to put a stop to that conduct and take appropriate corrective action. If you perceive your supervisor as a source of the harassment, you still have the obligation to

prevent and correct his or her conduct by reporting it to the EEO Officer or to that supervisor's chain of command. It is the responsibility of all employees to prevent harassment and the only way the DCSS can prevent it effectively is if those subjected to it come forward immediately.

### DEPARTMENT COMPLAINT PROCEDURE

All complaints of sexual harassment or retaliation must be reported as soon as possible, but no later than 365 days after the occurrence, in order to ensure a timely and fair resolution at the lowest level. The DCSS complaint form can be obtained by downloading it from the DCSS Intranet Web site under the Equal Employment Opportunity link, or by contacting the EEO Office at 464-5018.

Individuals may also file a complaint, either separately or concurrently (within each agency's regulatory timeframe), with the Department of Fair Employment and Housing, or the United States Equal Employment Opportunity Commission.

Note: Intentionally filing a false complaint of sexual harassment against an innocent party, may, in and of itself, constitute sexual harassment or defamation.

### INFORMATION

Additional information or questions regarding this policy or reporting a sexual harassment complaint should be directed to the DCSS EEO Officer at (916) 464-5018.

### APPLICABILITY

This policy is applicable to all employees of the DCSS including those employed in part-time, intermittent, limited-term and non-testing classifications, which includes contracted student assistants and personal services contractors.

### EFFECTIVE DATE

This policy is to remain in effect until rescinded by an executive level office, i.e. Governor's Office, or department director. For questions regarding this policy, please contact the Administrative Policy and Procedure Unit at 464-3877.