

RESOLUTION NO. 2019-07

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT
ESTABLISHING POLICIES FOR BOARD MEMBER
SEXUAL HARASSMENT PREVENTION TRAINING**

WHEREAS, the Board of Directors of the Phelan Piñon Hills Community Services District finds as follows:

A. The Phelan Piñon Hills Community Services District ("the District") is a public agency organized and operating as a community services district pursuant to California Government Code Section 61000 et seq.

B. The District is governed by an elected Board of Directors ("the Board") whose activities are subject to the requirements of California law.

C. Since 2005, Assembly Bill 1825 has required all public employers such as the District to provide two hours of sexual harassment prevention training to all supervisory employees within six months of assuming a supervisory position and again at least every two years.

D. Effective January 1, 2019, Senate Bill 1343 expanded these statutory requirements to mandate that existing nonsupervisory employees undergo one hour of sexual harassment training by January 1, 2020. Thereafter, the District must provide one hour of sexual harassment prevention training to all nonsupervisory employees within six months of assuming a nonsupervisory position and again at least every two years.

E. Additionally, pursuant to Government Code Section 53237 et seq., all members of the Board are required to receive at least two hours of sexual harassment prevention training and education within the first six months of taking office, and again at least every two years thereafter, since Board members receive compensation from the District.

F. The District maintains a zero-tolerance harassment, discrimination, retaliation, and bullying policy for its employees pursuant to the terms and conditions of the District's Employee Personnel Manual, including, but not limited to, Sections 7.5 and 7.6 thereof (which are attached hereto as "Exhibit A" and "Exhibit B" and are incorporated herein by this reference).

G. The purpose of this Resolution is to establish a District policy with respect to sexual harassment prevention training for its Board members that is similar in nature to the statutory provisions of Assembly Bill 1825 and Senate Bill 1343 (which have been codified as Government Code Section 12950.1) and California Government Code Section 53237 et seq.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS of the Phelan Piñon Hills Community Services District as follows:

Section 1. **SEXUAL HARASSMENT TRAINING.**

1.1 **Requirement.**

1.1.1. **Service Prior To Effective Date.** Each Board member in District service as of the effective date of this Resolution must participate in a program of providing at least two hours of interactive, in-person, classroom training and education regarding sexual harassment no later than six months from the effective date hereof. Thereafter, each Board member must participate in such training at least once every two years.

1.1.2. **Service On Or After Effective Date.** Each Board member who commences service with the District on or after the effective date of this Resolution must participate in a program of providing at least two hours of interactive, in-person, classroom training and education regarding sexual harassment no later than six months from the first day of service with the District. Thereafter, each Board member must participate in such training at least once every two years.

1.2. **Content.** The training and education program required by Section 1.1 of this Resolution shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against, and the prevention and correction of, sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing District Board Members in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers and educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

Section 2. **COMPLIANCE WITH POLICIES.**

Each member of the Board shall comply with all of the zero-tolerance harassment, discrimination, retaliation, and bullying policies set forth herein, as may be amended from time to time.

Section 3. **REVIEW OF RESOLUTION.**

At times deemed appropriate by the Board, the Board shall review this Resolution to determine its effectiveness and the necessity its for continued operation. The District's General Manager shall report to the Board on the operation of this Resolution and make any recommendations deemed appropriate, including proposals to amend this Resolution. Upon

conclusion of its review, the Board may take any action it deems appropriate concerning this Resolution.

Section 4. **SEVERABILITY.**

If any provision of this Resolution, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are declared to be severable.

Section 5. **EFFECTIVE DATE.**

The provisions of this Resolution shall supersede Resolution No. 2018-03, adopted by the Board on February 7, 2018, and shall take effect immediately upon adoption.

Adopted this 1st day of May, 2019.

AYES: Brandon, Hoffman, Johnson, Philips, Roberts

NOES:

ABSTAIN:

ABSENT:



President, Board of Directors

ATTEST:



Secretary

7.5 PROHIBITION OF DISCRIMINATION, HARASSMENT & RETALIATION

The Phelan Piñon Hills Community Services District (“District”) has zero tolerance for discrimination, harassment, and retaliation, and is committed to maintaining a work environment that is pleasant, professional, and free from intimidation, hostility, or other offensive conduct that might interfere with work performance. Harassment of any sort – verbal, physical, or visual – will not be tolerated. This includes sexual harassment as well as harassment based on an employee’s status in a protected class. These classes include age, sex or gender (including pregnancy, child birth, breastfeeding or related medical conditions), genetic information or characteristics, gender identity, gender expression, race, color, ancestry, national origin, religion, creed, marital status, military and veteran status, sexual orientation, political belief, physical or mental disability, medical condition, and any other status protected by federal or state law. This policy also prohibits unlawful harassment based on the perception that someone has those characteristics. This policy covers all individuals in the workplace, including full-time and part-time employees, independent contractors, volunteers, interns, Board Members, and anyone else performing work for the District (for ease, referred to collectively herein as “employees”).

The workplace is not limited to District property but also includes anywhere District business is conducted or any business-related function, including social events, takes place.

The District will make every reasonable effort to ensure that all concerned are familiar with these policies and are aware that any complaint in violation of such policies will be investigated and resolved appropriately. Any employee who has questions or concerns about these policies should talk with their supervisor or with the Human Resources Manager.

These policies should not, and may not, be used as a basis for excluding or separating individuals of any protected class from participating in business or work-related social activities or discussions. In other words, no one should make the mistake of engaging in discrimination or exclusion to avoid allegations of harassment. The law and the policies of the District prohibit disparate treatment on the basis of sex or any other protected class, with regard to terms, conditions, privileges and perquisite requirements of employment. The prohibitions against harassment, discrimination and retaliation are intended to complement and further those policies, not to form the basis of an exception to them.

7.5.1 Equal Employment Opportunity

The District is committed to maintaining an equal opportunity employment policy and discrimination-free workplace. The District makes employment decisions on the basis of merit and business needs. The District prohibits unlawful discrimination based on age, sex, or gender (including pregnancy, childbirth, breastfeeding, or related medical conditions), genetic information or characteristics, gender identity, gender expression, race, color, ancestry, national origin, religion, creed, marital status, military or veteran status, sexual orientation, political belief, physical or mental disability, medical condition, or on any other basis prohibited by federal, state, and/or local laws.

Exhibit A

The District furthers the principles of employment equality by seeking talented and competent persons who are suited for a specific position by reason of training, experience, character, personality, intelligence, and general ability. The District does not consider a person's age, sex, or gender (including pregnancy, childbirth, breastfeeding, or related medical conditions), genetic information or characteristics, gender identity, gender expression, race, color, ancestry, national origin, religion, creed, marital status, military or veteran status, sexual orientation, political belief, physical or mental disability, medical condition, or on any other basis prohibited by federal, state, and/or local laws.

The District takes all personnel actions, including promotions, disciplinary measures, and termination, without regard to an individual's legally protected status.

7.5.2 Accommodation Under the ADA and FEHA

The District is committed to complying with applicable laws, including the Americans with Disabilities Act (ADA) and Fair Employment Housing Act (FEHA), ensuring equal employment opportunities to qualified individuals with a disability, and will reasonably accommodate an employee or applicant for the known physical or mental disability if the employee or applicant is otherwise qualified to safely perform all the essential functions of the position.

Any applicant or employee who requires an accommodation in order to perform the essential functions of the job should contact the Human Resources Manager to discuss the need for an accommodation. The District will engage in a timely, good-faith interactive process to determine a reasonable accommodation, if any, in response to a request for accommodation by the employee or applicant with a disability. The District will also initiate an interactive process when it becomes aware of the possible need for accommodation through a third party, or by observation, or because the employee has exhausted leave benefits under applicable federal, state, or District leave provisions.

An interactive, good-faith communication process is a timely, individualized process in which management and the employee discuss the need for accommodation, and what reasonable accommodation can be offered. The District may require the employee to provide documentation from a medical professional of the disability and need for accommodation. A medical professional may also be involved in the interactive process in order to evaluate what accommodation would allow the employee to perform the job safely and effectively. If no reasonable accommodation exists that would not cause the District undue hardship, then the District may not be able to provide the employee with an accommodation.

7.5.3 Description of Sexual Harassment

Sexual harassment includes unwelcome sexual advances, request for sexual favors, or other unwanted verbal or physical contact of a sexual nature.

Sexual harassment crosses age and gender boundaries and can occur between any two or more employees, regardless of their status. Among other perceived unconventional situations, sexual harassment may involve two women or two men. Harassment exists on a continuum, and need not involve overt sexual advances or physical conduct to constitute prohibited behavior. For instance, harassment may occur when an employee shows sexually suggestive pictures to another employee. A picture will be presumed to be sexually suggestive if it depicts a person who is not fully clothed or in clothes that are not suited to the workplace, or if the person is in a sexual position or performing a sexual act. Sexual harassment need not be motivated by a sexual desire.

The law defines two categories of sexual harassment. The first category, "quid pro quo," occurs when one employee offers or hints they will give another employee some kind of benefit or improvement in working conditions (e.g., a raise or promotion, guarantee of continued employment, better office space or work assignments, etc.) in exchange for that employee's satisfaction of a sexual demand or submission to sexually harassing conduct. The second category, "hostile work environment," occurs when unwelcome sexual advances, requests for sexual favors, or verbal or other conduct creates an intimidating or offensive working environment. The law prohibits any form of sexual harassment that impairs an employee's working ability or emotional well-being at work. Even if the conduct does not rise to the level prohibited by law, the District will not tolerate it.

7.5.4 Description of Other Workplace Harassment

Harassment on the basis of any other protected characteristic is also strictly prohibited. Under this policy, harassment is verbal, written or physical conduct that denigrates or shows hostility or aversion toward an individual because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, disability, marital status, citizenship, genetic information, or any other characteristic protected by law, or that of his or her relatives, friends or associates, and that has the purpose or effect of creating an intimidating, hostile or offensive work environment, has the purpose or effect of unreasonably interfering with an individual's work performance, or otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and written or graphic material that denigrates or shows hostility or aversion toward an individual or group that is placed on walls or elsewhere on the employer's premises or circulated in the

Exhibit A

workplace, on company time or using company equipment by e-mail, phone (including voice messages), text messages, social networking sites or other means.

7.5.5 Individuals and Conduct Covered

These policies apply to all applicants, employees, and Board Members, whether related to conduct engaged in by fellow employees or by someone not directly connected to the District (e.g., an outside vendor, consultant or customer).

Conduct prohibited by these policies is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings and business-related social events.

7.5.6 Reporting Harassment, Discrimination or Retaliation

7.5.6.1 Responsibility for Reporting Harassment

All District employees, and particularly supervisors, have a responsibility for keeping the District's work environment free of harassment. Any employee who becomes aware of an incident of harassment, whether by witnessing the incident or being told of it, must report it to his or her supervisor or the Human Resources Manager. Employees must report an incident even if they are asked not to by the person who experienced the harassment, or by anyone else. Employees are never required to report an incident of harassment to the individual they believe is responsible for the harassment and may make a report to another supervisor or manager.

If you believe you have been harassed in the course of your work for the District, you may confront the harasser and ask them to stop, and the District will not permit any retaliation for doing so. While the District encourages you to communicate directly with the harasser and make it clear that the harasser's behavior is unacceptable, you are not required to do so. It is essential, however, to report the conduct immediately, even if you are not sure whether the conduct rises to the level of harassment under the law or this policy.

7.5.6.2 Reporting Procedure

The District encourages the prompt reporting of complaints or concerns so that rapid and constructive action can be taken before relationships become irreparably strained. Therefore, while no fixed reporting period has been established, early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment.

Exhibit A

Verbal and anonymous report will be accepted, but may limit the investigation that can be accomplished.

False and malicious complaints of harassment, discrimination or retaliation (as opposed to complaints that, even if erroneous, are made in good faith) may be the subject of appropriate disciplinary action.

- 7.5.6.2.1 Complaints Against Board Members or the General Manager
Employees, managers, or supervisors who believe they have been the victims of conduct prohibited by this policy, or who have been made aware of or witnessed such conduct, by a Board Member or the General Manager, should discuss their concern with the Human Resources Manager. The Human Resources Manager will then notify the Board President and the District's Board Counsel. If the complaint is against the Board President, the Vice President will be notified in lieu of the Board President.

The Board President will authorize the Human Resources Manager to obtain outside legal counsel to investigate the complaint and make a report to the District's Board Counsel and Board President who will then take appropriate action.

In the event the Board determines that censure or other action is warranted, the General Manager or accused Board Member shall be provided with written charges and be afforded due process, as the circumstances require.

- 7.5.6.2.2 Complaints Not Against Board Members or the General Manager
Employees, managers, or supervisors who believe they have been the victims of conduct prohibited by this policy, or who have been made aware of or witnessed such conduct, by individuals not listed in section 7.5.6.1, shall notify the Human Resources Manager or General Manager who will conduct an investigation and take appropriate action.

- 7.5.7 Investigation of Harassment, Discrimination, or Retaliation
All reported incidents of prohibited harassment, discrimination, or retaliation will be investigated in a prompt, effective, thorough, and objective manner that provides all parties with appropriate due process and reaches reasonable conclusions based on the evidence collected. The investigation will be completed and a determination regarding the reported harassment will be communicated to both the complainant and the accused harasser.

Exhibit A

All reports of harassment will be investigated with due regard for the privacy of everyone involved. Confidentiality will be maintained to the extent possible, however absolute confidentiality cannot be guaranteed because disclosure of some information may be required as part of the investigation, consistent with due process requirements or as required by law. Any employee found to have engaged in harassment will be subject to appropriate disciplinary action up to and including termination. The District will also take any additional action necessary to appropriately remedy the situation. Retaliation will not be permitted. No adverse employment action will be taken against any employee making good faith report of alleged harassment, no matter the result of the investigation.

If a party to a complaint does not agree with its resolution, that party may appeal to the District's General Manager or Board of Directors.

In addition to the investigation conducted by the District, the California Department of Fair Employment and Housing (DFEH) investigate and may prosecute complaints of workplace harassment. Whenever an employee thinks they have been harassed or retaliated against for complaining about harassment, that employee may file a complaint with the DFEH within one year from the date of the incident.

7.5.8 Prohibition of Retaliation

The District prohibits any Board Member or employee from retaliating in any way against anyone who has made a harassment complaint, raised any concern about harassment, or participated in a harassment investigation. Retaliation is not limited to adverse employment actions, but may also include chastisement, derogatory or insulting remarks, social ostracism, or any other conduct intended to punish the employee or deter employees from reporting harassment or cooperating in investigations. The District will investigate any complaint of retaliation and will take immediate and appropriate disciplinary action if retaliation has occurred. Complaints of retaliation should be reported and will be investigated according to the same procedure as harassment complaints.

7.5.9 Harassment Prevention Training Requirement

All employees and all Board Members are required to attend two hours of live, in-person, harassment prevention training every two years, or more frequently at the discretion of the District. In addition, at its discretion, District management may require any employee to attend harassment prevention training at any time.

7.6 PROHIBITION OF BULLYING

The purpose of this policy is to communicate to all employees, including supervisors, managers and Board of Directors, that the Phelan Piñon Hills Community Services District ("District") will not in any instance tolerate bullying behavior. Employees found in violation of this policy will be disciplined, up to and including termination. Bullying should be reported following the District's Grievance Procedure in Section 8.2 of this Manual.

7.6.1 Definition

The District defines bullying as repeated inappropriate behavior, either direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment. Such behavior violates the District's Code of Conduct.

7.6.2 Examples

Bullying may be intentional or unintentional. However, it must be noted that when an allegation of bullying is made, the intention of the alleged bully is irrelevant, and will not be given consideration when meting out discipline. As in sexual harassment, it is the effect of the behavior on the individual that is important. The District considers the following types of behavior examples of bullying:

- Verbal bullying: Slandering, ridiculing or maligning a person or his or her family; persistent name calling that is hurtful, insulting or humiliating; using a person as butt of jokes; abusive and offensive remarks.
- Physical bullying: Pushing, shoving, kicking, poking, tripping, assault or threat of physical assault, damage to a person's work area or property
- Gesture bullying: Nonverbal threatening gestures; glances that can convey threatening messages.
- Exclusion: Socially or physically excluding or disregarding a person in work-related activities.

In addition, the following examples may constitute or contribute to evidence of bullying in the workplace:

- Persistent singling out of one person.
- Shouting or raising voice at an individual in public or in private.
- Using verbal or obscene gestures.
- Not allowing the person to speak or express himself or herself (i.e., ignoring or interrupting).
- Personal insults and use of offensive nicknames.
- Public humiliation in any form.
- Constant criticism on matters unrelated or minimally related to the person's job performance or description.
- Ignoring or interrupting an individual at meetings.
- Public reprimands.

Exhibit B

- Repeatedly accusing someone of errors that cannot be documented.
- Deliberately interfering with mail and other communications.
- Spreading rumors and gossip regarding individuals.
- Encouraging others to disregard a supervisor's instructions.
- Manipulating the ability of someone to do his or her work (e.g., overloading, underloading, withholding information, assigning meaningless tasks, setting deadlines that cannot be met, giving deliberately ambiguous instructions).
- Inflicting menial tasks not in keeping with the normal responsibilities of the job.
- Taking credit for another person's ideas.
- Refusing reasonable requests for leave in the absence of work-related reasons not to grant leave.
- Deliberately excluding an individual or isolating him or her from work-related activities, such as meetings.
- Unwanted physical contact, physical abuse or threats of abuse to an individual or an individual's property (defacing or marking up property).