

Policy 4219.1: Civil And Legal Rights

Status: ADOPTED

Original Adopted Date: 03/01/2004 | **Last Revised Date:** 08/01/2026 | **Last Reviewed Date:** 08/01/2026

CSBA NOTE: The following policy may be revised to reflect district practice. Though employees generally have the same constitutional and statutory rights as other citizens, there are situations in which the district may limit some of those rights.

The Governing Board believes that the personal life of an employee is not an appropriate concern of the district, except as it may directly relate to the performance of the employee's duties.

CSBA NOTE: When disciplining an employee, the district is required to consider and analyze all of the surrounding facts and circumstances within the parameters of any applicable constitutional or legal framework.

In *Johnson v. Poway Unified School District*, the Ninth Circuit Court of Appeals found that a district could direct a teacher not to post large banners with quotations that appeared to promote a religious viewpoint, even though the quotations were taken from instructional materials. Because the speech occurred in the teacher's classroom, the court held that it was part of the employee's role as a teacher and, thus, could be regulated by the district. In contrast, in *Dodge v. Evergreen School District*, the Ninth Circuit Court of Appeals held that a principal inappropriately reprimanded a teacher who brought (but did not wear) a hat with a presidential campaign slogan on it to an on-site professional development session because (1) the expression was as a private citizen on a national political campaign, which was a matter of public concern and (2) the fact that some employees in attendance took offense did not create the type of substantial disruption necessary to justify limiting the teacher's right to free speech. Additionally, in *Kennedy v. Bremerton School District*, the U.S. Supreme Court found that a district football coach did not coerce students to pray when the employee knelt at midfield after games to offer a quiet personal prayer and rejected the district's argument that any visible religious conduct by a teacher or coach amounted to impermissible coercion on students. The Court concluded that the coach was acting in a private capacity and not in the capacity of an employee of the district because the prayer was offered during a time when school employees were free to attend to personal matters.

Because employee discipline, especially with respect to suspension and dismissal, involves complex legal considerations, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or the district's legal counsel, accordingly.

District employees may engage in private, personal activities, including the exercise of their religious, political, cultural, social or other beliefs or activities, during personal time such as when employees are not on duty or engaged in the supervision or instruction of students.

CSBA NOTE: The following paragraph provides for the right to privacy of district employees pursuant to Article 1, Section 1 of the California Constitution. Additionally, Education Code 49091.24 authorizes teachers to refuse to submit to district surveys or evaluations concerning certain personal beliefs as stated below.

The district shall make no inquiry concerning the personal values, attitudes, and beliefs of district employees or their sexual orientation or political or religious affiliations, beliefs, or opinions except when authorized by law. Additionally, no district employee shall be required to provide critical appraisals of other individuals with whom the employee has a familial relationship. However, the district reserves the right to access any publicly available information about any employee.

CSBA NOTE: Education Code 48907 gives students the right to exercise freedom of speech and of the press and requires that districts adopt reasonable rules and regulations concerning the time, place, and manner for students to engage in those activities. For more information on student free speech, see BP/AR 5145.2 - Freedom of Speech/Expression. Additionally, Education Code 48950 prohibits a district from disciplining any high school student solely for the student's speech or other communication which would be protected by either the U.S. or California Constitution if engaged in outside of school campus. Both of these statutes prohibit disciplining an employee who acts to protect a student engaged in conduct authorized under these provisions.

No employee shall be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a student engaged in conduct authorized under Education Code 48907 or 48950.

CSBA NOTE: When investigating an allegation of employee misconduct, the district may need to consider whether a search of the employee's desk, files, or other district-provided equipment, such as a computer or cell phone, is warranted. Additionally, the district may direct employees to search their personal accounts, devices, and records for district-related documents or information.

Policy 4219.1: Civil And Legal Rights

Status: ADOPTED

Original Adopted Date: 04/12/2017 | **Last Reviewed Date:** 04/12/2017

The Board of Education believes that the personal life of an employee is not an appropriate concern of the district, except as it may directly relate to the employee's performance of his/her duties.

An employee's personal beliefs and activities, including religious, political, cultural, social, or other beliefs or activities, or lack thereof, shall not be grounds for disciplinary action against the employee, provided that the beliefs or activities do not violate law, Board policy, or administrative regulation.

The district shall make no inquiry concerning the personal values, attitudes, and beliefs of district employees or their sexual orientation or political or religious affiliations, beliefs, or opinions except when authorized by law. In addition, no district employee shall be required to provide critical appraisals of other individuals with whom the employee has a familial relationship. However, the district reserves the right to access any publicly available information about any employee.

No employee shall be disciplined or retaliated against solely for acting to protect a student engaged in conduct authorized under Education Code 48907 or 48950.

When necessary to protect the health, welfare, or safety of students and staff, school officials may search district property under an employee's control.

Whistleblower Protection

An employee shall have the right to disclose to a Board member, a school administrator, a member of the County Board of Education, County Superintendent of Schools, or the Superintendent of Public Instruction any improper governmental activity by the district or a district employee that violates state or federal law, is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. When the employee has reasonable cause to believe that the information discloses a violation of state or federal statute or a violation of or noncompliance with a state or federal rule or regulation, he/she has the right to disclose such information to a government or law enforcement agency or to refuse to participate in any such activity. (Education Code 44112, 44113; Labor Code 1102.5)

The Superintendent or designee shall prominently display in lettering larger than size 14 point type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline maintained by the office of the California Attorney General. (Labor Code 1102.8)

No employee shall use or attempt to use his/her official authority or influence to intimidate, threaten, coerce, or command another employee for the purpose of interfering with that employee's right to disclose improper governmental activity. (Education Code 44113)

An employee who has disclosed improper governmental activity and believes that he/she has subsequently been subjected to acts or attempted acts of reprisal shall file a written complaint in accordance with the district's complaint procedures. After filing a complaint with the district, the employee may also file a copy of the complaint with local law enforcement and/or seek civil law remedies against the supervisor or administrator who retaliated or attempted to retaliate against him/her, in accordance with Education Code 44114.

Protection Against Liability

No employee shall be liable for harm caused by his/her act or omission when he/she is acting within the scope of employment or district responsibilities; when the employee's act or omission is in conformity with federal or state law, district policy, or administrative regulation; or when the employee's act or omission is in furtherance of an effort to control, discipline, expel, or suspend a student or to maintain order or control in the classroom or school.

The protection against liability shall not apply when:

1. The employee acted with willful or criminal misconduct, gross negligence, recklessness, or a conscious, flagrant indifference to rights or safety of the individual harmed.
2. The employee caused harm by operating a motor vehicle or other vehicle requiring license or insurance.
3. The employee was not properly licensed, if required, by state law for such activities.

The determination of whether such searches are legally justified is complex and depends on whether the employee has a reasonable expectation of privacy in the items to be searched and whether the search is reasonable at its inception. Given the legal complexities, it is recommended that CSBA District and County Office of Education Legal Services or district legal counsel be consulted prior to a search and that employees conducting searches receive appropriate instruction as to how the search is to be conducted.

As permitted by law, the district may conduct a search of district property under an employee's control and may direct the employee to search the employee's personal accounts, devices, and records for district-related documents or information.

Whistleblower Protection

CSBA NOTE: Education Code 44110-44114, the Reporting by School Employees of Improper Governmental Activities Act, and Labor Code 1102.5 provide "whistleblower protection" to employees who refuse to be a party to, or who report, noncompliance with a state or federal law or regulation.

Whistleblower protection does not cover employees when they speak out within their employment setting on matters related to their official duties. In *Garcetti v. Ceballos*, the U.S. Supreme Court held that when public employees speak out in the workplace about work-related issues, they may be subject to employee discipline since they are not speaking as citizens for First Amendment purposes. However, employees have the right to speak out as concerned citizens outside of the work environment. To the extent that the employee's speech is on an issue subject to whistleblower protection, the protections provided to employees by the whistleblower statutes would be applicable.

It is recommended that districts with questions regarding whistleblower protections and related requirements consult CSBA's District and County Office of Education Legal Services or district legal counsel.

An employee shall have the right to disclose to a Board member, a school administrator, a member of the County Board of Education, the County Superintendent of Schools, or the Superintendent of Public Instruction any improper governmental activity by the district or a district employee that violates state or federal law, is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. When the employee has reasonable cause to believe that the information discloses a violation of state or federal statute or a violation of or noncompliance with a state or federal rule or regulation, the employee has the right to disclose such information to a government or law enforcement agency or to refuse to participate in any such activity. (Education Code 44112, 44113; Labor Code 1102.5)

CSBA NOTE: In *Brown v. City of Inglewood*, the California Supreme Court held that elected officials are not considered "employees" eligible for whistleblower protections under Labor Code 1102.5.

For purposes of whistleblower protection, a Board member is not considered to be an employee.

CSBA NOTE: Pursuant to Labor Code 1102.8, a district is required to prominently display a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline, in lettering at least 15 point type. Labor Code 98.11 requires the Labor Commissioner's Office to create a model list of employees' rights and responsibilities under the whistleblower laws that complies with the requirements of Labor Code 1102.8, and provides that a district will be deemed in compliance with the posting requirement of Labor Code 1102.8 if it posts the model list created by the Labor Commissioner's Office. The accompanying exhibit is a copy, without the original formatting, of the model list created by the Labor Commissioner's Office, which can be viewed and downloaded directly from the website of the Labor Commissioner's Office.

The Superintendent or designee shall prominently display in lettering of at least 15 point type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline maintained by the office of the California Attorney General. (Labor Code 1102.7, 1102.8)

No employee shall use or attempt to use official authority status or influence to intimidate, threaten, coerce, or command, or attempt to intimidate, threaten, coerce, or command, another employee for the purpose of interfering with that employee's right to disclose improper governmental activity. (Education Code 44113)

CSBA NOTE: An employee may be liable for an action in civil damages for interfering with the right of another employee to disclose an improper governmental action. In *Hartnett v. Crosier*, a California appellate court ruled that "management employees" could also be held liable for their acts of retaliation committed when acting in a supervisory role.

An employee who has disclosed improper governmental activity and believes that acts or attempted acts of reprisal have subsequently occurred shall file a written complaint in accordance with the district's complaint procedures.

After filing a complaint with the district, the employee may also file a copy of the complaint with local law enforcement and/or seek civil law remedies against the supervisor or administrator who retaliated or attempted to retaliate against the employee, in accordance with Education Code 44114.

Protection Against Liability

CSBA NOTE: 20 USC 7941-7948 limit the liability of teachers, principals, and other school personnel who maintain discipline and/or ensure safety when harm is caused while they are acting within the scope of their employment. The law also applies to Governing Board members. For more information on legal protections for Board members, see BB 9260 - Legal Protection. The following section is made applicable to all employees.

No employee shall be liable for harm caused by the employee's act or omission when acting within the scope of employment or district responsibilities, the employee's act or omission is in conformity with federal, state, and local laws, district policy, or administrative regulation, and the employee's act or omission is in furtherance of an effort to control, discipline, expel, or suspend a student or to maintain order or control in the classroom or school. (20 USC 7946)

The protection against liability shall not apply when: (20 USC 7946)

1. The employee acted with willful or criminal misconduct, gross negligence, recklessness, or a conscious, flagrant indifference to rights or safety of the individual harmed
 2. The employee caused harm by operating a motor vehicle or other vehicle requiring license or insurance
 3. The employee was not properly licensed, if required, by state law for such activities
 4. The employee was found by a court to have violated a federal or state civil rights law
 5. The employee was under the influence of alcohol or any drug at the time of the misconduct
 6. The misconduct constituted a crime of violence pursuant to 18 USC 16 or an act of terrorism for which the employee has been convicted in a court
 7. The misconduct involved a sexual offense for which the employee has been convicted in a court
 8. The misconduct occurred during background investigations, or other actions, involved in the employee's hiring
-

4. The employee was found by a court to have violated a federal or state civil rights law.
 5. The employee was under the influence of alcohol or any drug at the time of the misconduct.
 6. The misconduct constituted a crime of violence pursuant to 18 USC 16 or an act of terrorism for which the employee has been convicted in a court.
 7. The misconduct involved a sexual offense for which the employee has been convicted in a court.
 8. The misconduct occurred during background investigations, or other actions, involved in the employee's hiring.
-