

Policy 4030: Nondiscrimination In Employment

Status: DRAFT

Original Adopted Date: 09/20/2001 | Last Revised Date: 04/10/2014

Discrimination and Harassment Prohibited

It is the policy of the The Governing Board is determined to provide a safe, positive work environment where all district employees and job applicants are assured of full and equal employment access and opportunities, and are free protection from discrimination and harassment and intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with the law. Consistent with For purposes of this policy, the Board prohibits discrimination against and harassment of district employees including and job applicants, interns, volunteers, and persons who contracted with the district to provide services, as applicable. at any district site or activity on the basis of actual or perceived race, religion, color, national origin, ancestry, ethnicity, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran status, parental status, gender, gender identity, gender expression, sex, or sexual orientation.

{cf. 0410 – Nondiscrimination in District Programs and Activities}

{cf. 1312.3 – Uniform Complaint Procedures}

{cf. 4031 – Complaints Concerning Discrimination in Employment}

{cf. 4032 – Reasonable Accommodation}

{cf. 4033 – Lactation Accommodation}

{cf. 4119.11/4219.11/4319.11 – Sexual Harassment}

{cf. 4119.41/4219.41/4319.41 – Employees with Infectious Disease}

{cf. 4154/4254/4354 – Health and Welfare Benefits}

{cf. 5145.7 – Sexual Harassment}

No district employee shall be discriminated against or harassed by any coworker, supervisor, manager, or other person with whom the employee comes in contact in the course of employment, on the basis of the employee's actual or perceived race, color, ancestry, national origin, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran or military status, sex, sexual orientation, gender, gender identity, gender expression, or association with a person or group with one or more of these actual or perceived characteristics.

Employers are also prohibited from discrimination against employees or job applicants on the basis of reproductive health decision-making, defined as a person's decision to use or access a particular drug, device, product, or medical service for reproductive health. (Government Code 12926, 12940)

The district shall not inquire into any employee's immigration status nor discriminate against an employee on the basis of immigration status, unless there is clear and convincing evidence that the district is required to do so in order to comply with federal immigration law. (2 CCR 11028)

Discrimination in employment based on the characteristics listed above is prohibited in all areas of employment and in all employment-related practices, including the following:

1. Hiring, compensation, terms, conditions, and other privileges of employment
2. Taking of adverse employment actions such as termination or denial of employment, promotion, job assignment, or training
3. Unwelcome conduct, whether verbal, physical, or visual, that is so severe or pervasive as to adversely affect an employee's employment opportunities or that has the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive work environment
4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code 12940 or 2 CCR

11006-11086, such as:

- a. Sex discrimination based on an employee's pregnancy, childbirth, breastfeeding, or any related medical condition or on an employee's gender, gender expression, or gender identity, including transgender status
- b. Religious creed discrimination based on an employee's religious belief or observance, including religious dress or grooming practices, or based on the district's failure or refusal to use reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement
- c. Requiring medical or psychological examination of a job applicant or making an inquiry into whether a job applicant has a mental or physical disability or a medical condition or as to the severity of any such disability or condition, without the showing of a job-related need or business necessity
- d. Failure to make reasonable accommodation for the known physical or mental disability of an employee or to engage in a timely, good faith, interactive process with an employee who has requested such accommodations in order to determine the effective reasonable accommodations, if any, to be provided to the employee
- e. Requiring an applicant or employee to disclose information relating to the employee's reproductive health decision-making

For purposes of this policy, prohibited discrimination includes taking an adverse employment action against a person, or unequal treatment in compensation, terms, conditions, or other privileges of employment based on any of the prohibited categories of discrimination listed above. An adverse action includes, for example, a termination or denial in promotion, job assignment, or training.

Discrimination because of religion includes any disparate treatment based on the person's religious dress or grooming practices or any conflict between the person's religious belief, observance, or practice and an employment requirement.

Discrimination based on the sex of an employee or job applicant includes any disparate treatment based on the person's pregnancy, childbirth, breastfeeding, or any related medical conditions. (Government Code 12926, 12940)

Harassment consists of any unwelcome verbal, physical, or visual conduct that is based on any of the prohibited categories of discrimination listed above and that is so severe or pervasive that it adversely affects an individual's employment opportunities, has the purpose or effect of unreasonably interfering with the individual's work performance, or creates an intimidating, hostile, or offensive work environment.

The Board also prohibits retaliation against any district employee who opposes any discriminatory employment practice by the district or its employees, agents, or representatives, or job applicant who complains, reports an incident, testifies, assists, or in any way participates in the district's complaint process procedures instituted pursuant to this policy. No employee who requests accommodation for any protected characteristic listed in this policy shall be subjected to any punishment or sanction, regardless of whether the request was granted. (Government Code 12940; 2 CCR 11028)

No employee shall, in exchange for a raise or bonus or as a condition of employment or continued employment, be required to sign a release of the employee's claim or right to file a claim against the district or a nondisparagement agreement or other document that has the purpose or effect of preventing the employee from disclosing information about harassment, discrimination, or other unlawful acts in the workplace, including any conduct that the employee has reasonable cause to believe is unlawful. (Government Code 12964.5)

Complaints concerning employment discrimination, harassment, or retaliation shall immediately be investigated in accordance with procedures specified in the accompanying administrative regulation.

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment, including harassment of an employee by a nonemployee, shall report the incident to the Superintendent or designated district coordinator as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately.

The Superintendent or designee shall use all appropriate means to reinforce the district's nondiscrimination policy, including providing training and information to employees about how to recognize harassment, discrimination, or other prohibited conduct, how to respond appropriately, and components of the district's policies and regulations regarding discrimination. The Superintendent or designee shall regularly review the district's employment practices and, as necessary, shall take action to ensure district compliance with the nondiscrimination laws.

Any district employee who engages in prohibited discrimination, harassment, or retaliation or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in such behavior in violation of this policy shall be subject to disciplinary action up to and including dismissal.

The district shall maintain and preserve all applications, personnel, membership, or employment referral records and files for at least four years after the records are initially created or received or, for an applicant or a terminated employee, for four years after the date the employment action was taken. However, when the district is notified that a complaint has been filed with the California Civil Rights Department, records related to the employee involved shall be maintained and preserved until the later of the first date after the time for filing a civil action has expired or the first date after the complaint has been fully and finally disposed of and all administrative proceedings, civil actions, appeals, or related proceedings have been terminated. (Government Code 12946)

Any district employee who permits prohibited discrimination or harassment may be subject to disciplinary action up to and including dismissal. A district employee may be deemed to have permitted prohibited discrimination or harassment if he/she fails to report an observed incident of possible discrimination and/or harassment, whether or not the victim complains.

{cf. 4117.4 Dismissal}

{cf. 4118 – Suspension/Disciplinary Action}

{cf. 4119.11/4219.11/4319.11 – Sexual Harassment}

{cf. 4218 – Dismissal/Suspension/Disciplinary Action}

{cf. 4318 – Suspension/Disciplinary Action}

Reporting Discrimination and Harassment

The Board designates the following position the district's Coordinator for Nondiscrimination in Employment ("Coordinator"):

Assistant Superintendent of Human Resources

San Jose Unified School District

Human Resources Department

855 Lenzen Avenue

San Jose, CA 95126

(408) 535-6139

Any employee or job applicant who believes that he/she has been or is being discriminated or retaliated against, or harassed in violation of district policy should, as appropriate, immediately contact his/her supervisor, the Coordinator, or the Superintendent who shall advise the employee or applicant about the district's procedures for filing, investigating, and resolving any such complaint.

Complaints regarding employment discrimination or harassment shall immediately be investigated in accordance with AR 4031 – Complaints Concerning Discrimination in Employment.

{cf. 4031 – Complaints Concerning Discrimination in Employment}

Training and Notifications

The Superintendent or designee shall provide training to staff about how to recognize harassment and discrimination, how to respond appropriately, and components of the district's policies and regulations regarding discrimination.

The Superintendent or designee shall regularly publicize, within the district and in the community, the district's nondiscrimination policy and the availability of the complaint procedures including in announcements, bulletins, or application forms used in employee recruitment. (34 CFR 100.6, 106.9)

(cf. 4131 – Staff Development)

(cf. 4231 – Staff Development)

(cf. 4331 – Staff Development)

The district's policy shall be posted prominently in all district schools, campuses, and administrative buildings, including staff lounges and student government meeting rooms. (5 CCR 4960)

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References

2 CCR 11006-11086

Description

[Discrimination in employment](#)

2 CCR 11023

[Harassment and discrimination prevention and correction](#)

2 CCR 11024

[Required training and education on harassment based on sex, gender identity and expression, and sexual orientation](#)

2 CCR 11027-11028

[National origin and ancestry discrimination](#)

5 CCR 4900-4965

[Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance](#)

CA Constitution Article 1, Section 1

[Inalienable rights](#)

Civ. Code 51.7

[Freedom from violence or intimidation](#)

Ed. Code 200-262.4

[Prohibition of discrimination](#)

Gov. Code 11135

[Prohibition of discrimination](#)

Gov. Code 12900-12996

[Fair Employment and Housing Act](#)

Gov. Code 12940-12952

[Unlawful employment practices](#)

Gov. Code 12960-12976

[Unlawful employment practices; complaints](#)

Pen. Code 422.56

[Definitions; hate crimes](#)

Federal References

20 USC 1681-1688

[Title IX of the Education Amendments of 1972; discrimination based on sex](#)

28 CFR 35.101-35.190

[Americans with Disabilities Act](#)

29 USC 621-634

[Age Discrimination in Employment Act](#)

29 USC 794

[Rehabilitation Act of 1973; Section 504](#)

34 CFR 100.6

[Title VI; Compliance information](#)

34 CFR 104.7

[Section 504; Designation of responsible employee and adoption of grievances procedures](#)

34 CFR 104.8

[Notice of Nondiscrimination on the Basis of Handicap](#)

34 CFR 106.8

[Designation of coordinator; dissemination of policy, and adoption of grievance procedures](#)

34 CFR 110.1-110.39

[Nondiscrimination on the basis of age](#)

42 USC 12101-12213

[Americans with Disabilities Act](#)

42 USC 2000d-2000d-7

[Title VI, Civil Rights Act of 1964](#)

42 USC 2000e-2000e-17

[Title VII, Civil Rights Act of 1964, as amended](#)

42 USC 2000ff-2000ff-11	Genetic Information Nondiscrimination Act of 2008
42 USC 2000h-2-2000h-6	Title IX of the Civil Rights Act of 1964
42 USC 6101-6107	Age discrimination in federally assisted programs
Executive Order 11246	“Know Your Rights: Workplace Discrimination is Illegal” poster
U.S. Constitution, First Amendment	Free exercise, free speech, and establishment clauses

Management Resources References

CA Civil Rights Department Publication
CA Civil Rights Department Publication
CA Civil Rights Department Publication
CA Civil Rights Department Publication
CA Civil Rights Department Publication
Court Decision
Court Decision
Court Decision
U.S. DOE Office for Civil Rights Publication
U.S. Equal Employment Opportunity Comm Publication
U.S. Equal Employment Opportunity Comm Publication
U.S. Equal Employment Opportunity Comm Publication
Website
Website
Website
Website
Website

Description

Family Care and Medical Leave and Pregnancy Disability Leave
California Law Prohibits Workplace Discrimination and Harassment
Transgender Rights in the Workplace
Harassment Prevention Guide for California Employers
Your Rights and Obligations as a Pregnant Employee
Kennedy v. Bremerton (2022) 142 S.Ct. 2407
Shephard v. Loyola Marymount (2002) 102 Cal.App. 4th 837
Thomson v. North American Stainless LP (2011) 62 U.S. 170
Notice of Non-Discrimination, August 2010
Know Your Rights: Workplace Discrimination is Illegal, October 2022
Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999
EEOC Compliance Manual
U.S. Department of Labor, Office of Federal Contract Compliance Program
CSBA District and County Office of Education Legal Services
California Civil Rights Department
U.S. Department of Education, Office for Civil Rights
U.S. Equal Employment Opportunity Commission

Cross References

0410
1113
1113
1240
1240
1312.1
1312.1
1312.1-E PDF(1)
1312.3
1312.3
3312
3530

Description

Nondiscrimination In District Programs And Activities
District And School Websites
District And School Websites
Volunteer Assistance
Volunteer Assistance
Complaints Concerning District Employees
Complaints Concerning District Employees
Complaints Concerning District Employees - Cde Legal Advisory Lo: 4-93 Procedures For Parents Or Guardians Of Students To Identify And Report Child Abuse Committed At A School Site By A School District Employee Or Other Person
Uniform Complaint Procedures
Uniform Complaint Procedures
Contracts
Risk Management/Insurance

3530	Risk Management/Insurance
3580	District Records
3580	District Records
4000	Concepts And Roles
4032	Reasonable Accommodation
4032-E PDF(1)	Reasonable Accommodation
4033	Lactation Accommodation
4111	Recruitment And Selection
4111.2	Legal Status Requirement
4111.2	Legal Status Requirement
4112.4	Health Examinations
4112.4	Health Examinations
4112.6	Personnel Files
4112.6	Personnel Files
4112.8	Employment Of Relatives
4112.9	Employee Notifications
4114	Transfers
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.1	Civil And Legal Rights
4119.11	Sexual Harassment
4119.11	Sexual Harassment
4119.22	Dress And Grooming
4119.23	Unauthorized Release Of Confidential/Privileged Information
4119.41	Employees With Infectious Disease
4131	Staff Development
4131	Staff Development
4144	Complaints
4144	Complaints
4151	Employee Compensation
4154	Health And Welfare Benefits
4154	Health And Welfare Benefits
4161.5	Military Leave
4161.8	Family Care And Medical Leave
4161.8	Family Care And Medical Leave
4161.8-E PDF(1)	Family Care And Medical Leave
4211	Recruitment And Selection
4211.2	Legal Status Requirement
4211.2	Legal Status Requirement
4212.4	Health Examinations
4212.4	Health Examinations

4212.4-E PDF(1)	Health Examinations - Healt Examinations
4212.6	Personnel Files
4212.6	Personnel Files
4212.8	Employment Of Relatives
4212.9	Employee Notifications
4218	Dismissal/Suspension/Disciplinary Action
4219.1	Civil And Legal Rights
4219.11	Sexual Harassment
4219.11	Sexual Harassment
4219.23	Unauthorized Release Of Confidential/Privileged Information
4219.41	Employees With Infectious Disease
4231	Staff Development
4231	Staff Development
4244	Complaints
4244	Complaints
4251	Employee Compensation
4254	Health And Welfare Benefits
4254	Health And Welfare Benefits
4261.5	Military Leave
4261.8	Family Care And Medical Leave
4261.8	Family Care And Medical Leave
4261.8-E PDF(1)	Family Care And Medical Leave
4311	Recruitment And Selection
4311.2	Legal Status Requirement
4311.2	Legal Status Requirement
4312.4	Health Examinations
4312.4	Health Examinations
4312.6	Personnel Files
4312.6	Personnel Files
4312.8	Employment Of Relatives
4312.9	Employee Notifications
4319.1	Civil And Legal Rights
4319.11	Sexual Harassment
4319.11	Sexual Harassment
4319.23	Unauthorized Release Of Confidential/Privileged Information
4319.41	Employees With Infectious Disease
4331	Staff Development
4344	Complaints
4351	Employee Compensation
4354	Health And Welfare Benefits
4354	Health And Welfare Benefits

4361.5	Military Leave
4361.8	Family Care And Medical Leave
4361.8	Family Care And Medical Leave
4361.8-E PDF(1)	Family Care And Medical Leave
9000	Role Of The Board
9321	Closed Session