

## Regulation 4030: Nondiscrimination In Employment

Status: DRAFT

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

All allegations of discrimination in employment, including those involving an employee, job applicant, intern, volunteer, or other person contracted to provide services to the district shall be investigated and resolved in accordance with procedures specified in this administrative regulation.

The district designates the position identified below as its coordinator for nondiscrimination in employment (coordinator) to organize and manage the district's efforts to comply with state and federal nondiscrimination laws and to answer inquiries regarding the district's nondiscrimination policies. The coordinator may be contacted at:

Assistant Superintendent  
855 Lenzen Avenue  
(408) 535-6000  
UniformComplaint@sjsud.org

### Measures to Prevent Discrimination

To prevent unlawful discrimination, harassment, and retaliation in district employment, the Superintendent or designee shall implement the following measures:

1. Display in a prominent and accessible location at every work site where the district has employees, and post electronically in a conspicuous location on computers for employee use, up-to-date California Civil Rights Department (CRD) posters on the prohibition of workplace discrimination and harassment, the rights of transgender employees, and the rights and obligations of employees who are pregnant, have a related medical condition, or are recovering from childbirth (Government Code 12950; 2 CCR 11013, 11023, 11049)
2. Publicize the district's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, by: (5 CCR 4960; 34 CFR 100.6, 106.8)
  - a. Including them in each announcement, bulletin, or application form that is used in employee recruitment
  - b. Posting them in all district schools and offices, including staff lounges and other prominent locations
  - c. Posting them on the district's web site and providing easy access to them through district-supported social media, when available
3. Disseminate the district's nondiscrimination policy and administrative regulation to all employees by one or more of the following methods: (2 CCR 11023)
  - a. Printing and providing a copy to all employees, with an acknowledgment form for each employee to sign and return
  - b. Sending a copy via email with an acknowledgment return form
  - c. Posting a copy on the district intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies
  - d. Discussing the policy and regulation with employees upon hire and/or during a new hire orientation session
  - e. Any other way that ensures employees receive and understand the policy
4. Provide to employees a handbook which contains information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to employees who believe they have been the victim of any discriminatory or harassing behavior

5. Provide training regarding the district's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made

The district may also provide bystander intervention training to employees which includes information and practical guidance on how to recognize potentially problematic behaviors and which may motivate them to take action when they observe such behaviors. The training and education may include exercises to provide employees with the skills and confidence to intervene as appropriate and to provide them with resources they can call upon that support their intervention. (Government Code 12950.2)

6. Periodically review the district's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure district compliance with law
7. For any district facility where 10 percent of employees have a language other than English as their spoken language, translate the policy into every language spoken by at least 10 percent of the workforce (2 CCR 11023)

### **Complaint Procedure**

Complaints of sexual harassment shall be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures if the alleged conduct meets the definition of sexual harassment pursuant to 34 CFR 106.30.

Any other complaint alleging unlawful discrimination or harassment shall be addressed in accordance with the following procedures:

1. **Notice and Receipt of Complaint:** A complainant may inform a direct supervisor, another supervisor, the coordinator, the or Superintendent. The complainant's direct supervisor may be bypassed in filing a complaint when the supervisor is the subject of the complaint.

The complainant may first attempt to resolve the situation informally with the complainant's supervisor before filing a written complaint.

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the coordinator, whether or not the complainant files a written complaint.

The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, any available evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

2. **Investigation Process:** The coordinator shall initiate an impartial investigation of an allegation of discrimination or harassment within five business days of receiving notice of the alleged discriminatory or harassing behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The coordinator shall meet with the complainant to describe the district's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The coordinator shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. The coordinator shall also inform the parties that the investigation will be kept confidential to the extent possible, but that some information may be disclosed as necessary to conduct an effective investigation.

If the coordinator determines that a detailed fact-finding investigation is necessary, the investigation shall begin immediately. As part of this investigation, the coordinator should interview the complainant, the person accused, and other persons who could be expected to have relevant information.

The coordinator shall track and document the progress of the investigation to ensure reasonable progress and shall inform the parties as necessary.

When necessary to carry out the investigation or to protect employee safety, the coordinator may discuss the

complaint with the Superintendent or designee, district legal counsel, or the district's risk manager.

The coordinator shall also determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed in order to prevent further incidents. The coordinator shall ensure that such interim measures do not constitute retaliation.

3. **Written Report on Findings and Remedial/Corrective Action:** No more than 30 business days after receiving the complaint, the coordinator shall conclude the investigation and prepare a written report of the findings. This timeline may be extended for good cause. If an extension is needed, the coordinator shall notify the parties and explain the reasons for the extension.

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the report shall also include any corrective action(s) that have been or will be taken to address the behavior, provide appropriate options for remedial actions and resolutions for the complainant, and ensure that retaliation or further discrimination or harassment is prevented. The report shall be presented to the Superintendent or designee.

A summary of the findings shall be presented to the complainant and the person accused.

4. **Appeal to the Governing Board:** The complainant or the person accused may appeal any findings to the Board within 10 business days of receiving the written report of the coordinator's findings. The Superintendent or designee shall provide the Board with all information presented during the investigation. Upon receiving an appeal, the Board shall schedule a hearing as soon as practicable. Any complaint against a district employee shall be addressed in closed session in accordance with law. The Board shall render its decision within 10 business days.

The Board may appoint a hearing panel to review the complaint and previous decisions and make recommendations to the Board. The panel shall hear the appeal and render its decision within 10 working days of such an appointment.

The Board may uphold the Superintendent's decision without hearing the complaint.

## Other Remedies

In addition to filing a discrimination or harassment complaint with the district, a person may file a complaint with either CRD or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

1. For filing a complaint with CRD alleging a violation of Government Code 12940-12952, within three years of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960 (Government Code 12960)
2. For filing a complaint with EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)
3. For filing a complaint with EEOC after first filing a complaint with CRD, within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by CRD, whichever is earlier (42 USC 2000e-5)

Harassment is discrimination in the form of unwelcome conduct based on a person's 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, or other attributes listed in the district's nondiscrimination policy (BP 4030).

Prohibited discriminatory harassment of an individual may include but is not limited to the following:

1. Slurs, epithets, threats or verbal abuse
2. Derogatory or degrading comments, descriptions, drawings, pictures or gestures

3. Unwelcome jokes, stories, teasing or taunting

4. Any other verbal, written, visual or physical conduct directed at an individual that:

a. Adversely affects his/her employment opportunities, or

b. Has the purpose or effect of unreasonably interfering with his/her work performance or creating an intimidating, hostile or offensive work environment

Discriminatory harassment is unlawful when it is a condition of continued employment, or the conduct is so severe or pervasive that it unreasonably interferes with the conditions of employment and creates an intimidating, hostile, or offensive work environment.

Any employee or job applicant who feels that he/she has been or is being discriminated against or harassed should immediately contact his/her supervisor, the nondiscrimination coordinator or the Superintendent in order to obtain procedures for reporting a complaint. Such complaints shall be filed in accordance with AR 4031 – Complaints Concerning Discrimination in Employment. An employee may bypass his/her supervisor when the supervisor is the alleged offender or he/she is uncomfortable discussing it with the supervisor.

The district Coordinator for Nondiscrimination in Employment is the following:

Assistant Superintendent of Human Resources

San Jose Unified School District

Human Resources Department

855 Lenzen Avenue

San Jose, CA 95126

(408) 535-6139

(cf. 4031 – Complaints Concerning Discrimination in Employment)

(cf. 4119.11/4219.11/4319.11 – Sexual Harassment)

Any supervisor who receives a complaint of discrimination or harassment shall immediately notify the nondiscrimination coordinator or the Superintendent, who shall ensure that the complaint is appropriately investigated and responded to according to district policy and applicable law.

District policy strictly prohibits retaliation against a complainant or participant in the complaint process.

The Superintendent or designee shall ensure that annual training is provided to all employees regarding prohibited discrimination and harassment in the workplace and that the district's policies are posted prominently and distributed to all staff as required by law.

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**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

2 CCR 11023

2 CCR 11024

2 CCR 11027-11028

5 CCR 4900-4965

#### Description

[Discrimination in employment](#)

[Harassment and discrimination prevention and correction](#)

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

[National origin and ancestry discrimination](#)

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

CA Constitution Article 1, Section 1  
Civ. Code 51.7  
Ed. Code 200-262.4  
Gov. Code 11135  
Gov. Code 12900-12996  
Gov. Code 12940-12952  
Gov. Code 12960-12976  
Pen. Code 422.56

### **Federal References**

20 USC 1681-1688  
28 CFR 35.101-35.190  
29 USC 621-634  
29 USC 794  
34 CFR 100.6  
34 CFR 104.7  
34 CFR 104.8  
34 CFR 106.8  
34 CFR 110.1-110.39  
42 USC 12101-12213  
42 USC 2000d-2000d-7  
42 USC 2000e-2000e-17  
42 USC 2000ff-2000ff-11  
42 USC 2000h-2-2000h-6  
42 USC 6101-6107  
Executive Order 11246  
U.S. Constitution, First Amendment

### **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

[Inalienable rights](#)  
[Freedom from violence or intimidation](#)  
[Prohibition of discrimination](#)  
[Prohibition of discrimination](#)  
[Fair Employment and Housing Act](#)  
[Unlawful employment practices](#)  
[Unlawful employment practices; complaints](#)  
[Definitions; hate crimes](#)

### **Description**

[Title IX of the Education Amendments of 1972; discrimination based on sex](#)  
[Americans with Disabilities Act](#)  
[Age Discrimination in Employment Act](#)  
[Rehabilitation Act of 1973; Section 504](#)  
[Title VI; Compliance information](#)  
[Section 504; Designation of responsible employee and adoption of grievances procedures](#)  
[Notice of Nondiscrimination on the Basis of Handicap](#)  
[Designation of coordinator; dissemination of policy, and adoption of grievance procedures](#)  
[Nondiscrimination on the basis of age](#)  
[Americans with Disabilities Act](#)  
[Title VI, Civil Rights Act of 1964](#)  
[Title VII, Civil Rights Act of 1964, as amended](#)  
[Genetic Information Nondiscrimination Act of 2008](#)  
[Title IX of the Civil Rights Act of 1964](#)  
[Age discrimination in federally assisted programs](#)  
["Know Your Rights: Workplace Discrimination is Illegal" poster](#)  
[Free exercise, free speech, and establishment clauses](#)

### **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](#)

U.S. Equal Employment Opportunity Comm  
Publication

[Enforcement Guidance: Vicarious Employer Liability for Unlawful  
Harassment by Supervisors, June 1999](#)

U.S. Equal Employment Opportunity Comm  
Publication

[EEOC Compliance Manual](#)

Website

[U.S. Department of Labor, Office of Federal Contract Compliance Program](#)

Website

[CSBA District and County Office of Education Legal Services](#)

Website

[California Civil Rights Department](#)

Website

[U.S. Department of Education, Office for Civil Rights](#)

Website

[U.S. Equal Employment Opportunity Commission](#)

### **Cross References**

### **Description**

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[Nondiscrimination In District Programs And Activities](#)

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[District And School Websites](#)

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[District And School Websites](#)

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[Volunteer Assistance](#)

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[Volunteer Assistance](#)

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[Complaints Concerning District Employees](#)

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[Complaints Concerning District Employees](#)

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[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](#)

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[Uniform Complaint Procedures](#)

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[Uniform Complaint Procedures](#)

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[Contracts](#)

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[Risk Management/Insurance](#)

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[District Records](#)

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[District Records](#)

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[Concepts And Roles](#)

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[Reasonable Accommodation](#)

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[Recruitment And Selection](#)

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[Legal Status Requirement](#)

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[Health Examinations](#)

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[Employee Notifications](#)

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4119.23	<a href="#">Unauthorized Release Of Confidential/Privileged Information</a>
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