

Policy 5145.3: Nondiscrimination/Harassment

Status: DRAFT

Original Adopted Date: 09/20/2001 | **Last Revised Date:** 01/18/2024 | **Last Reviewed Date:** 01/18/2024

This policy shall apply to all acts constituting unlawful discrimination or harassment related to school activity or to school attendance occurring within San José Unified, a school under the jurisdiction of the local educational agency, and to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school, and to all acts of the Governing Board of San José Unified, and the Superintendent, and the County Superintendent of Schools in enacting policies and procedures that govern the district.

Purpose

The Governing Board desires to provide a welcoming, safe, and supportive school environment that allows all students equal access to and opportunities in the district's academic, extracurricular, and other educational support programs, services, and activities. The Board condemns hate motivated behavior and works to ensure that the rights enshrined in federal, state, and local law are upheld throughout the district so that all students, staff, and community members know their rights and know they are safe and welcomed.

The Board prohibits, at any district school or school activity, unlawful discrimination, including discriminatory harassment, intimidation, and bullying, targeted at any student by anyone, based on the student's actual or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other legally protected status or association with a person or group with one or more of these actual or perceived characteristics.

The Board shall promote the healthy development and safety of all students by maximizing inclusion and social integration while minimizing exclusion and stigmatization.

Prohibited Discrimination

Unlawful discrimination, including discriminatory harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also occurs when prohibited conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.

Unlawful discrimination also includes disparate treatment of students based on one of the categories above with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services.

Because unlawful discrimination may occur when disciplining students, including suspension and expulsion, the Superintendent or designee shall ensure that staff enforce discipline rules fairly, consistently and in a non-discriminatory manner, as specified in Board Policy and Administrative Regulation 5144 - Discipline, Board Policy and Administrative Regulation 5144.1 - Suspension and Expulsion/Due Process, and Administrative Regulation 5144.2 - Suspension and Expulsion/Due Process (Students With Disabilities).

Prohibited Retaliation

Retaliation is an act of discrimination, coercion, intimidation or threat against a person for the purpose of interfering with the exercise of a protected right, such as making a complaint, testifying, assisting, or participating in an investigation in any matter. The District also prohibits any form of retaliation against any individual who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a complaint, or investigates or participates in the investigation of a complaint or report alleging unlawful discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

Complaint Procedures

The Board is committed to fostering an environment of inclusivity and respect for all members of San José Unified's diverse community. The Board prioritizes cultural humility in addressing complaints of discrimination or harassment

and recognizes that every individual brings unique experiences and perspectives shaped by their culture, background, and identity. The Board desires to approach any complaints with openness, empathy, and a willingness to learn. The Board recognizes the importance of respecting the privacy of individuals involved in complaints and is committed to respecting that privacy during investigations of complaints of discrimination, as defined above, to the extent possible under the law.

The Board also prohibits any form of retaliation against any individual who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a complaint, or investigates or participates in the investigation of a complaint or report alleging unlawful discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

The Superintendent or designee shall facilitate students' access to the educational program by publicizing the district's nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. In addition, the Superintendent or designee shall post the district's policies prohibiting discrimination, harassment, intimidation, and bullying and other required information on the district's website in a manner that is easily accessible to parents/guardians and students, in accordance with law and the accompanying administrative regulation. (Education Code 234.1, 234.6) (Education Code 234.1, 234.6)

The Superintendent or designee shall provide training and/or information on the scope and use of the policy and complaint procedures and take other measures designed to increase the school community's understanding of the requirements of law related to discrimination. The Superintendent or designee shall regularly review the implementation of the district's nondiscrimination policies and practices and, as necessary, shall take action to remove any identified barrier to student access to or participation in the district's educational program. The Superintendent or designee shall report the findings and recommendations to the Board after each review.

Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, all complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students. Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequences or discipline, which may include suspension or expulsion when the behavior is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall be subject to disciplinary action, up to and including dismissal.

All allegations of unlawful discrimination in district programs and activities shall be brought, investigated, and resolved in accordance with Board Policy 1312.3 - Uniform Complaint Procedures. All complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and immediate action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students, regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements. ¶

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline as defined in Board Policy and Administrative Regulation 5144 . Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall be subject to disciplinary action up to and including dismissal.

Record-Keeping

The Board hereby designates the following position as Coordinator for Nondiscrimination, including Title IX complaints:

Director, Student Services
855 Lenzen Avenue
San Jose, CA 95126
(408) 535-6000
UniformComplaint@sjusd.org

Transgender Policy

As stated above, the Board prohibits discrimination on the basis of gender, gender identity and gender expression.

Gender is defined as a person's actual sex or perceived sex and includes a person's perceived identity, appearance or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with a person's assigned sex at birth.

Gender expression is defined as a person's gender-related appearance and behavior, whether or not stereotypically associated with the person's assigned sex at birth.

In order to implement this policy, the following shall be applied:

Names and Pronouns

A student or their parents may request that the student be addressed by a name and pronoun corresponding to the student's gender identity asserted at school. Students are not required to obtain a court ordered name and/or gender change or otherwise change their official records as a prerequisite to being addressed by the name and pronoun of their choice that corresponds to their gender identity. The requested name and pronoun shall be included in the district's database in addition to the student's legal name, in order to inform staff of the name and pronoun to be used when addressing the student. Information regarding the student's preferred name should also be cross-referenced in their cumulative file and registration card, and may be included on the student's identification card. Students or parents requesting a change to the name and/or pronoun used in the District's records as provided in this paragraph shall be advised of the District's policies regarding use and dissemination of pupil records.

Official Records

The district maintains mandatory permanent pupil records which includes the legal name of the pupil, as well as the pupil's gender. The district shall change a student's official records to reflect a change in legal name or gender upon receipt of documentation that the pupil's legal name and/or gender have been changed pursuant to California legal requirements.

Restroom Accessibility

Schools may maintain separate restroom facilities for male and female students. A student shall be permitted to use restroom facilities consistent with their gender identity, irrespective of the gender identity listed on the student's official records. A student or their parents may also request that the student be permitted to use a single stall bathroom where one is available. The use of either the restroom that corresponds to the student's gender identity or a single stall bathroom shall be a matter of choice for the student, and no student shall be compelled to use either of these options.

Locker Room Accessibility

Schools may maintain separate locker room facilities for male and female students. A student shall be permitted to use locker room facilities consistent with their gender identity, irrespective of the gender identity listed on the student's official records. A student or their parents may also request that other accommodations be made to afford the student additional privacy while changing clothes, including, for example, use of a restroom, office, or screened-off area or implementation of a separate schedule for changing; these accommodations shall be considered on a case-by-case basis. The use of a locker room corresponding to the student's gender identity asserted at school shall not be compelled, nor shall it be denied.

Dress Codes

Students shall be permitted to dress in accordance with their gender identity asserted at school, within the constraints of the dress codes adopted by the District and/or their school site.

Sports and Physical Education Classes

Transgender and gender non-conforming students shall be provided the same opportunity to participate in sports and physical education as other students. A student shall be permitted to participate in sex-segregated physical education activities, athletic teams and competitions, consistent with their gender identity, irrespective of the gender identity listed on the student's official records. All students participating in extra-curricular sports and activities shall comply with all requirements for such participation, including supplying all required forms and releases.

Gender Segregation in Other Areas

In any other circumstances where students are separated by gender in school activities (e.g., class discussions), students shall be permitted to participate in accordance with their gender identity asserted at school. Parents may

request that other accommodations be made for their student when participating in overnight field trips and/or sex education instruction.

Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, to enable the district to monitor, address, and prevent repetitive prohibited behavior in district schools.

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

	Description
5 CCR 432	Student records
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 48900.3	Suspension or expulsion for act of hate violence
Ed. Code 48900.4	Suspension or expulsion for harassment, threats, or intimidation
Ed. Code 48904	Liability of parent/guardian for willful student misconduct
Ed. Code 48907	Exercise of free expression; time, place, and manner rules and regulations
Ed. Code 48950	Speech and other communication
Ed. Code 48985	Notices to parents in language other than English
Ed. Code 49020-49023	Athletic programs
Ed. Code 49060-49079	Student records
Ed. Code 51204.5	Social sciences instruction; contributions of specified groups
Ed. Code 51500	Prohibited instruction or activity
Ed. Code 51501	Nondiscriminatory subject matter
Ed. Code 60010	Instructional materials; definition
Ed. Code 60040-60052	Requirements for instructional materials
Gov. Code 11135	Prohibition of discrimination
Pen. Code 422.55	Definition of hate crime
Pen. Code 422.6	Crimes; harassment

Federal References

	Description
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
28 CFR 35.107	Nondiscrimination on basis of disability; complaints
29 USC 794	Rehabilitation Act of 1973; Section 504
34 CFR 100.3	Prohibition of discrimination on basis of race, color or national origin
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 106.45	Grievance process for formal complaints of sexual harassment

Federal References

34 CFR 106.8	Designation of coordinator; dissemination of policy, and adoption of grievance procedures
34 CFR 110.25	Prohibition of discrimination based on age
34 CFR 99.31	Disclosure of personally identifiable information
42 USC 12101-12213	Americans with Disabilities Act
42 USC 2000d-2000e-17	Title VI and Title VII Civil Rights Act of 1964, as amended
42 USC 2000h-2-2000h-6	Title IX of the Civil Rights Act of 1964
42 USC 6101-6107	Age Discrimination Act of 1975

Management Resources References

	Description
34 CFR 106.30	Discrimination on the basis of sex; definitions
CA Office of the Attorney General Publication	Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018
California Department of Education Publication	California Longitudinal Pupil Achievement Data System (CALPADS) Update FLASH #158: Guidance for Changing a Student's Gender in CALPADS, July 2019
Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130
CSBA Publication	Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools, October 2022
U.S. DOE, Office for Civil Rights Publication	Resolution Agreement Between the Arcadia USD, US Dept of Ed, OCR, & the US DOJ, CRD (2013) OCR 09-12-1020, DOJ 169-12C-70
U.S. Department of Education Publication	Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools, May 2023
U.S. Dept. of Health & Human Services Publication	Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, August 2013
U.S. DOE & U.S. DOJ Civil Rights Divisions Pub	Dear Colleague Letter: Resource on Confronting Racial Discrimination in Student Discipline, May 2023
U.S. DOE, Office for Civil Rights Publication	Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County, June 2021
U.S. DOE, Office for Civil Rights Publication	Dear Colleague Letter: Addressing Discrimination Against Jewish Students, May 2023
U.S. DOE, Office for Civil Rights Publication	U.S. Department of Education Toolkit: Creating Inclusive and Nondiscriminatory School Environments for LGBTQI+ Students, June 2023
U.S. DOE, Office for Civil Rights Publication	Questions and Answers on the Title IX Regulations on Sexual Harassment, June 2022
U.S. DOE, Office for Civil Rights Publication	Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973
U.S. DOE, Office for Civil Rights Publication	Dear Colleague Letter: Race and School Programming, August 2023
U.S. DOE, Office for Civil Rights Publication	Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016
Website	CSBA District and County Office of Education Legal Services
Website	First Amendment Center
Website	California Office of the Attorney General

Management Resources References

Website	California Safe Schools Coalition
Website	CSBA
Website	California Department of Education
Website	U.S. Department of Education, Office for Civil Rights

Cross References

	Description
0410	Nondiscrimination In District Programs And Activities
0415	Equity
0415	Equity
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1240	Volunteer Assistance
1240	Volunteer Assistance
1312.1	Complaints Concerning District Employees
1312.1	Complaints Concerning District Employees
1312.1-E PDF(1)	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
1312.2	Complaints Concerning Instructional Materials
1312.2	Complaints Concerning Instructional Materials
1312.2-E PDF(1)	Complaints Concerning Instructional Materials
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.4	Williams Uniform Complaint Procedures
1312.4-E PDF(1)	Williams Uniform Complaint Procedures
1340	Access To District Records
1340	Access To District Records
3515.4	Recovery For Property Loss Or Damage
3515.4	Recovery For Property Loss Or Damage
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3553	Free And Reduced Price Meals
3553	Free And Reduced Price Meals
3580	District Records
3580	District Records
4112.6	Personnel Files
4112.6	Personnel Files
4112.9	Employee Notifications
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.21	Professional Standards

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[Unauthorized Release Of Confidential/Privileged Information](#)
[Staff Development](#)
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[Personnel Files](#)
[Personnel Files](#)
[Employee Notifications](#)
[Dismissal/Suspension/Disciplinary Action](#)
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[Involuntary Student Transfers](#)
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[Student Records](#)
[Student Records](#)
[Release Of Directory Information](#)
[Release Of Directory Information](#)
[Challenging Student Records](#)
[Conduct](#)
[Bullying](#)
[Bullying](#)
[Vandalism And Graffiti](#)
[Dress And Grooming](#)
[Dress And Grooming](#)
[Positive School Climate](#)

Cross References**Description**

5141.22	Infectious Diseases
5141.22	Infectious Diseases
5141.4	Child Abuse Prevention And Reporting
5141.4	Child Abuse Prevention And Reporting
5141.52	Suicide Prevention
5141.52	Suicide Prevention
5144	Discipline
5144	Discipline
5144.1	Suspension And Expulsion/Due Process
5144.1	Suspension And Expulsion/Due Process
5144.2	Suspension And Expulsion/Due Process (Students With Disabilities)
5145.12	Search And Seizure
5145.12	Search And Seizure
5145.2	Freedom Of Speech/Expression
5145.2	Freedom Of Speech/Expression
5145.6	Parent/Guardian Notifications
5145.6-E PDF(1)	Parent/Guardian Notifications
5145.7	Sexual Harassment
5145.7	Sexual Harassment
5145.71	Title IX Sexual Harassment Complaint Procedures
5145.9	Hate-Motivated Behavior
5146	Married/Pregnant/Parenting Students
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.8	Comprehensive Health Education
6143	Courses Of Study
6143	Courses Of Study
6144	Controversial Issues
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6145	Extracurricular And Cocurricular Activities
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6145.2	Athletic Competition
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6145.2-E PDF(1)	Athletic Competition
6153	School-Sponsored Trips
6153	School-Sponsored Trips
6159.4	Behavioral Interventions For Special Education Students
6161.1	Selection And Evaluation Of Instructional Materials
6161.1	Selection And Evaluation Of Instructional Materials
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