

## **PERSONNEL: GENERAL**

### **Nondiscrimination In Employment**

The Governing Board desires to provide a positive work environment where employees and job applicants are assured of equal access and opportunities and are free from harassment in accordance with law. The Board prohibits district employees from discriminating against or harassing any other district employee or job applicant on the basis of the person's actual or perceived race, religious creed, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, military and veteran status, gender, gender identity, gender expression, sex, or sexual orientation.

(cf. [0410](#) - Nondiscrimination in District Programs and Activities)

(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)

Prohibited discrimination consists of the taking of any adverse employment action against a person, including termination or denial of promotion, job assignment, or training, or in discriminating against the person in compensation, terms, conditions, or other privileges of employment based on any of the prohibited categories of discrimination listed above.

The prohibition against discrimination based on the religious creed of an employee or job applicant includes any discrimination 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. The prohibition against discrimination based on the sex of an employee or job applicant shall include any discrimination 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 or job applicant who complains, testifies, assists, or in any way participates in the district's complaint procedures instituted pursuant to this policy.

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.

(cf. [4118](#) - Dismissal/Suspension/Disciplinary Action)

(cf. [4218](#) - Dismissal/Suspension/Disciplinary Action)

The following position is designated as Coordinator for Nondiscrimination in Employment:

Assistant Superintendent of Human Resources

1376 Piedmont Road, San Jose, CA 95132

(408) 923-1856

Any employee or job applicant who believes that he/she has been or is being discriminated against or harassed in violation of district policy should, as appropriate, immediately contact his/her supervisor, the Assistant Superintendent of Human Resources, 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)

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment shall report the incident to the Coordinator or Superintendent as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately.

Training and Notifications

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

(cf. [4131](#)- Staff Development)

(cf. [4231](#)- Staff Development)

(cf. [4331](#)- Staff Development)

The Superintendent or designee shall regularly publicize, within the district and in the community, the district's nondiscrimination policy and the availability of complaint procedures. Such publication shall be included in each announcement, bulletin, or application form that is used in employee recruitment. (34 CFR [100.6](#), [106.9](#))

The district's policy shall be posted in all district schools and offices including staff lounges. (5 CCR [4960](#))

Legal Reference:

EDUCATION CODE

[200-262.4](#) Prohibition of discrimination

CIVIL CODE

[51.7](#) Freedom from violence or intimidation

GOVERNMENT CODE

[11135](#) Unlawful discrimination

[12900-12996](#) Fair Employment and Housing Act

PENAL CODE

[422.56](#) Definitions, hate crimes

CODE OF REGULATIONS, TITLE 2

7287.6 Terms, conditions and privileges of employment

CODE OF REGULATIONS, TITLE 5

[4900-4965](#) Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

[1681-1688](#) Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 29

[621-634](#) Age Discrimination in Employment Act

[794](#) Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

[2000d-2000d-7](#) Title VI, Civil Rights Act of 1964, as amended

2000e-2000e-17 Title VII, Civil Rights Act of 1964, as amended

2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008

2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964

6101-6107 Age discrimination in federally assisted programs

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

[35.101-35.190](#) Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34

[100.6](#) Compliance information

[104.7](#) Designation of responsible employee for Section 504

[104.8](#) Notice

[106.8](#) Designation of responsible employee and adoption of grievance procedures

[106.9](#) Dissemination of policy

[110.1-110.39](#) Nondiscrimination on the basis of age

COURT DECISIONS

Thompson v. North American Stainless LP, (2011) 131 S.Ct. 863

Shephard v. Loyola Marymount, (2002) 102 Cal.App.4th 837

Management Resources:

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Notice of Non-Discrimination, August 2010

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Questions and Answers: Religious Discrimination in the Workplace, 2008

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

U.S. Equal Employment Opportunity Commission: <http://www.eeoc.gov>

Policy 4116.1 Adopted:	March 8, 1973
Revised Policy 4116.1 Adopted:	November 21, 1974
Renumbered, Revised Policy Adopted:	July 28, 1983
Revised Policy Adopted:	November 17, 2015