

**NONDISCRIMINATION IN EMPLOYMENT**

The Merced County Office of Education (MCOE) is determined to provide a safe, positive environment where all MCOE employees are assured of full and equal employment access and opportunities, protection from harassment or intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. For purposes of this policy, employees include job applicants, interns, volunteers, and persons who contracted with MCOE to provide services, as applicable.

*(cf. 1240 - Volunteer Assistance)*  
*(cf. 3312 - Contracts)*  
*(cf. 3600 - Consultants)*  
*(cf. 4111/4211/4311 - Recruitment and Selection)*

No MCOE 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, military and veteran 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.

*(cf. 0410 - Nondiscrimination in MCOE Programs and Activities)*

The MCOE 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 it is necessary 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. Discrimination in hiring, compensation, terms, conditions, and other privileges of employment

*(cf. 4151/4251/4351 - Employee Compensation)*  
*(cf. 4154/4254/4354 - Health and Welfare Benefits)*

2. Taking of an adverse employment action, such as termination or the 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 individual's work performance or creating an intimidating, hostile, or offensive work environment

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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

*(cf. 4033 - Lactation Accommodation)*  
*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*

- b. Religious creed discrimination based on an employee's religious belief or observance, including their religious dress or grooming practices, or based on the MCOE's failure or refusal to use reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement.

*(cf. 4119.22/4219.22/4319.22 - Dress and Grooming)*

- c. Requirement for a medical or psychological examination of a job applicant, or 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

*(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)*

- 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

*(cf. 4032 - Reasonable Accommodation)*

The MCOE also prohibits retaliation against any MCOE employee who opposes any discriminatory employment practice by the MCOE or its employees, agents, or representatives or who complains, testifies, assists, or in any way participates in MCOE's complaint process pursuant to this policy. No employee who requests an 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 any document that releases the employee's right to file a claim against the MCOE or to disclose information about harassment or other unlawful employment practices. (Government Code 12964.5)

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Complaints concerning employment discrimination, harassment, or retaliation shall immediately be investigated in accordance with procedures specified in the accompanying 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 County Superintendent or designated MCOE coordinator as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately. The MCOE shall protect any employee who does report such incidents from retaliation.

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

Any MCOE 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 and shall be subject to disciplinary action, up to and including dismissal.

*(cf. 4118 - Suspension/Disciplinary Action)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

*Legal Reference:*

- EDUCATION CODE
- 200-262.4 Prohibition of discrimination
- CIVIL CODE
- 51.7 Freedom from violence or intimidation
- GOVERNMENT CODE
- 11135 Unlawful discrimination
- 11138 Rules and regulations
- 12900-12996 Fair Employment and Housing Act
- 12940-12952 Unlawful employment practices
- 12960-12976 Unlawful employment practices; complaints
- PENAL CODE
- 422.56 Definitions, hate crimes
- CODE OF REGULATIONS, TITLE 2
- 11006-11086 Discrimination in employment
- 11013 Recordkeeping

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- 11019 Terms, conditions and privileges of employment*
- 11023 Harassment and discrimination prevention and correction*
- 11024 Sexual harassment training and education*
- 11027-11028 National origin and ancestry discrimination*
- CODE OF REGULATIONS, TITLE 5
- 4900-4965 Nondiscrimination in elementary and secondary education*
- 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*
- Shepard v. Loyola Marymount (2002) 102 CalApp.4th 837*

*Management Resources:*

- CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PUBLICATIONS
- California Law Prohibits Workplace Discrimination and Harassment, December 2014*
- Transgender Rights in the Workplace*
- Workplace Harassment Guide for California Employers*
- Your Rights and Obligations as a Pregnant Employee*
- U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS
- EEOC Compliance Manual*
- Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999*
- U.S. DEPARTMENT OF EDUCATION, OFFICE OF CIVIL RIGHTS PUBLICATIONS
- Notice of Non-Discrimination, August 2010*
- 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 Adopted: 10/8/2008;

Revised: 10/27/10, 12/14/11, 12/12/12, **MERCED COUNTY OFFICE OF EDUCATION**  
1/22/14, 1/27/16, 8/22/18, 8/28/19 Merced California