

## **Nondiscrimination In Employment**

BP 4030

Personnel

Purpose

To prevent discriminatory harassment in the work place and educational environment.

Policy Statement

The San Bernardino City Unified School District is committed to providing all employees and students a working and learning environment that is free of discrimination, harassment, intimidation, and bullying in accordance with applicable state and federal laws. This nondiscriminatory working and learning environment is for the benefit of all district employees (non-supervisory, supervisors and management) and students. All employees are expected to fully comply with this policy. Additionally, non-employees who have contact with the district's employees or students during working or educational hours are expected to conduct themselves in accordance with this policy. Absolutely no one is authorized to engage in conduct prohibited by this policy.

In keeping with this commitment to a nondiscriminatory working environment, the district maintains a strict policy prohibiting sexual harassment, discrimination, harassment, intimidation, and bullying or harassment based on age over forty, race or ethnicity, ethnic group identification, color, actual or perceived sex, religion, national origin, ancestry, medical condition (cancer and genetic characteristics)\*, marital status, physical or mental disability, sexual orientation, gender\*\*, personal or family genetic information, or family care and medical leave entitlement in accordance with applicable state and federal laws. It is also prohibited to discriminate on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics. This policy prohibits all forms of discriminatory harassment through any means, including nonverbal, verbal (including derogatory comments, slurs, propositions, teasing, jokes or taunts), physical (including gestures, touching, obstructing or otherwise interfering with a person's movement) or visual (including leering, cartoons, drawings, magazines, notes, letters or posters).

This policy prohibits all conduct by which an employee or student because of race or ethnicity, ethnic group identification religion, color, national origin, ancestry, physical disability, mental disability, medical condition (cancer or genetic characteristics)\*, marital status, age (40 and above), sex, sexual orientation, gender\*\*, personal or family genetic information, on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics or family care and medical leave entitlement, is subjected to unwelcome, offensive, intimidating, oppressive or otherwise interfering harassment or is subject to any discrimination, harassment, intimidation, or bullying thereof on district property or district/school related activities. This includes discrimination, harassment, intimidation, or bullying based on the actual or perceived characteristics as specified above. This policy applies to all acts related to school activity or school attendance occurring within a school under the jurisdiction of the Superintendent of the school district. Students and employees will not be excluded on the basis of actual or perceived sex, sexual

orientation, gender, age, ethnic group identification, race or ethnicity, ancestry, national origin, religion, color, mental or physical disability, personal or family genetic information, or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics from participation in any educational program, curricular or extracurricular, including all sports and other activities, denied the benefits of participation, or subjected to harassment or other forms of discrimination, harassment, intimidation, or bullying in such programs or employment.

Medical Condition is defined, in accordance with the California Fair Employment and Housing Act, as any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer or genetic characteristics.

Gender is defined as the person's actual sex, or the perception of the person's sex, and includes the perception of the person's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated or stereo typically with that person's assigned sex at birth. The district may require persons to comply with reasonable workplace appearance, grooming, and dress standards consistent with state and federal law, provided that persons are allowed to appear or dress consistently with their gender identity.

"Bullying" means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:

1. Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property,
2. Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.
3. Causing a reasonable pupil to experience substantial interference with his or her academic performance.
4. Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

An electronic act means the transmission of a communication, including, but not limited to, a message, text, sound, or image, or a post on a social network Internet Web site, by means of an electronic device, including, but not limited to, a telephone, wireless telephone or other wireless communication device, computer, or pager.

A reasonable pupil means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.

### Sexual Harassment

All of the foregoing apply to complaints of sexual harassment. For the purpose of clarification, prohibited sexual harassment includes but is not limited to unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal, visual or physical conduct of a sexual nature where:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic status or progress;
2. Submission to, or rejection of, such conduct by an individual is used as the basis of employment or educational decisions affecting the individual;
3. Such conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance or creating an intimidating, hostile, or offensive working or educational environment; or
4. Submission to, or rejection of the conduct by the individual regarding benefits and services, honors, programs, or activities available at or through the district or its sites.

Examples of prohibited harassing acts:

1. Unwelcome sexual advances or sexual propositions
2. Kidding, teasing, or joking of a sexual nature or of other protected bases delineated above
3. Graphic commentary about an individual's body, sexual prowess or sexual deficiencies
4. Derogatory or demeaning comments about anyone's gender in general or gender identity or expression, epithets, slurs or jokes about one's race or ethnicity, color, national origin, religious creed, physical or mental disability, age (40 and over), sex, gender identity or expression, sexual orientation, or marital status
5. Leering or staring at someone
6. Unwelcome suggestive or insulting sounds such as whistles, kissing sounds, howling, or sucking noises
7. Touching, patting, pinching, stroking, squeezing, tickling or brushing against another's body
8. Displaying offensive objects, pictures, calendars, cartoons, magazines, videotapes, audio recordings or literature which are sexual in nature
9. Unwelcome use of sexually degrading language or innuendoes
10. Obscene gestures

Consensual sexual relationships:

Romantic or sexual relationship of any employee with elementary or secondary students is clearly prohibited pursuant to state molestation laws concerning adults and children. Romantic or sexual relations between an adult student and faculty member or between a subordinate employee and his/her superior can raise "serious concerns" where there may be a conflict of interest and abuse of power. Such relations may lead to favoritism of a student or subordinate employee with whom the teacher or superior is sexually involved and where such favoritism adversely affects other students and/or employees

1. Unwanted neck or shoulder massage

2. Spreading rumors about a person's sexuality
3. Graffiti about a person's sexuality
4. Letters, notes, telephone calls, e-mail or materials of a sexual nature
5. Stalking a person
6. Attempted or actual sexual assault
7. Making or threatening reprisals after a negative response to sexual advances
8. Impeding or blocking of one's movement
9. Repeatedly asking out a person who is not interested

#### Enforcement

Disciplinary action up to and including termination will be promptly taken against any employee (non-supervisory, supervisor or manager) if it becomes known to management that such person has engaged in conduct prohibited by this policy.

#### No Retaliation

No employee or student shall be retaliated against, in any manner, for reporting conduct which he/she believes to be a violation of this policy, for participating in an investigation of a possible violation of this policy, or for using the district's Complaint Procedure.

Retaliation against anyone reporting or perceived to have reported sexual harassment behavior is prohibited. Any retaliatory conduct shall be considered a serious violation of this policy and shall be independent of whether a complaint of sexual harassment is substantiated. Moreover, encouraging others to engage in retaliatory conduct also violates this policy.

Examples of prohibited retaliation:

1. Unfair grading
2. Unfair evaluation
3. Unfair assignment
4. Public or private ridicule
5. Oral or written threats
6. Intimidation
7. Destruction of property

## 8. Further harassment

### Complaints

Individuals who have been subjected to discriminatory harassment have an obligation to immediately report the incident or incidents to their immediate supervisor or the district's Affirmative Action Director, who is also the district's Title IX Coordinator. Complaints alleging failure to comply with applicable state and federal laws and regulations and/or alleging discrimination, harassment, intimidation, or bullying will be processed in accordance with the district's Uniform Complaint Policy and Procedure and in accordance with the procedures set out in 5 CCR [4600-4687](#). Copies of the district's complaint procedures shall be available free of charge. The district's Affirmative Action Office shall have available information on the rules and procedures for reporting charges of sexual harassment and pursuing available remedies.

The procedure set forth pursuant to the district's Uniform Complaint Policy and Procedure does not deny the right of any individual to pursue other avenues of remedy under the jurisdiction of any state or federal law.

The confidentiality of the reporting or complaining party will be observed provided it does not interfere with the district's ability to investigate or take corrective action and shall remain confidential, as appropriate.

School personnel who witness acts of discrimination, harassment, intimidation, or bullying based on actual or perceived characteristics, as specified in this policy, are required to take immediate steps to intervene when safe to do so.

### Notifications

Pursuant to Educational Code 231.5, a copy of this policy will be displayed in a prominent location in the main administrative building or other areas of the school site or campus. A prominent location is a location or those locations in the main administrative building or other areas where notices regarding the district's rules, regulations, procedures, and standards of conduct are posted including offices, staff lounge and pupil government meeting rooms.

Also, a copy of this policy will be provided to each person employed by the school district at the beginning of the first quarter or semester of the school year, or at the time that a new employee is hired. A copy of the district's written policy on sexual harassment shall appear in any publication of the district that sets forth the comprehensive rules, regulations, procedures and standards of conduct for the district.

Site administrators or immediate supervisors who receive a sexual harassment incident report from any employee, non-employee or the public are required to submit a report to the Affirmative Action Office in order for the Affirmative Action Office to maintain a record of complaints. Also any bullying incident report covered under this policy shall be reported to the Affirmative Action Office to maintain a record of complaints and their resolution.

### Training

By January 1, 2006, and every two years thereafter, the Superintendent or designee shall ensure that supervisory employees receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment. All newly hired or promoted supervisory employees shall receive training within six months of their assumption of the supervisory position. (Government Code [12950.1](#))

The district's training and education program for supervisory employees shall include information and practical guidance regarding the federal and state statutory law on the prohibition against and the prevention and correction of sexual harassment and the remedies available to the victims of sexual harassment in employment. The training shall also include practical examples aimed at instructing supervisors in the prevention of harassment discrimination, harassment, intimidation, or bullying and retaliation. (Government Code [12950.1](#))

The district's Affirmative Action Director or designee is responsible for ensuring school district compliance with the requirement of Chapter 5.3 (commencing with Section 4900) of Division 1 of Title 5 of the California Code of Regulations and Chapter 2 (commencing with Section 200).

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

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 SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

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