

All Personnel**NONDISCRIMINATION IN EMPLOYMENT**

The Governing Board is determined to provide a safe, positive environment where all District employees are assured of full and equal employment, access and protection from harassment and 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 the District to provide services, as applicable. No district 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, religious creed, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran or military 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.

Employers are also prohibited from discrimination against employees or job applicants on the basis of reproductive health decision making, defined as a person's decision to use or access a particular drug, device, product, or medical service for reproductive health. (Government Code 12926, 12940)

The district 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 the district is required to do so in order 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. Hiring, compensation, terms, conditions, and other privileges of employment
2. Taking of adverse employment actions such as termination or 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 employee's work performance or creating an intimidating, hostile, or offensive work environment
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.

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- b. Religious creed discrimination based on an employee's religious belief or religious dress or grooming practices or based on the district's failure or refusal to use reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement.
- c. Requiring medical or psychological examination of a job applicant or making 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
- 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
- e. Requiring an applicant or employee to disclose information relating to the employee's reproductive health decision-making

The Board also prohibits retaliation against any district employee who opposes any discriminatory employment practice by the district or its employees, agents, or representatives or who complains, reports an incident, testifies, assists, or in any way participates in the district'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 discrimination or harassment or continued employment, be required to sign a release of the employee's claim or right to file a claim against the district or a nondisparagement agreement or other document that has the purpose or effect of preventing the employee from disclosing information about harassment, discrimination, or other unlawful acts in the workplace, including any conduct that the employee has reasonable cause to believe is unlawful. (Government Code 12964.5)

Complaints concerning employment discrimination, retaliation, or harassment shall immediately be investigated in accordance with AR 4031 – Complaints Concerning Discrimination in Employment.

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 Superintendent or designated district coordinator as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately.

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The Superintendent or designee shall use all appropriate means to reinforce the district's nondiscrimination policy, including providing training and information to employees about how to recognize harassment, discrimination, or the prohibited conduct, how to respond appropriately, and components of the district's policies and regulations regarding discrimination.

The Superintendent or designee shall regularly review the district's employment practices and, as necessary, shall take action to ensure district compliance with the nondiscriminatory laws.

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.

The district shall maintain and preserve all applications, personnel, membership, or employment referral records and files for at least four years after the records are initially created or received or, for an applicant or a terminated employee, for four years after the date the employment action was taken. However, when the district is notified that a complaint has been filed with the California Civil Rights Department, records related to the employee involved shall be maintained and preserved until the later of the first date after the time for filing a civil action has expired or the first date after the complaint has been fully and finally disposed of and all administrative proceedings, civil actions, appeals, or related proceedings have been terminated. (Government Code 12946)

Legal References:

EDUCATION CODE

200-262.4 Prohibition of discrimination

STATE

2 CCR 11006-11086 Discrimination in employment

2 CCR 11023 Harassment and discrimination prevention and correction

2 CCR 11024 Required training and education on harassment based on sex, gender identity and expression, and sexual orientation

2 CCR 11027-11028 National origin and ancestry discrimination

5 CCR 4900-4965 Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance

CA Constitution Article 1, Section 1 Inalienable rights

CIVIL CODE

51.7 Freedom from violence or intimidation

GOVERNMENT CODE

11135 Unlawful Discrimination

12900-12996 Fair Employment and Housing Act

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12940-12952 Unlawful employment practices

Gov. Code 12960-12976 Unlawful employment practices; complaints

PENAL CODE

422.56 Definitions, hate crimes

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 29

621-634 et seq. Age Discrimination in Employment Act

794 Rehabilitation Act of 1973; Section 504

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

2000d & 2000e et seq. Title VI & 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

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

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 Compliance information

104.6 Designation of responsible employee for Section 504

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

Kennedy v. Bremerton (2022) 142 S.Ct. 2407

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

MANAGEMENT RESOURCES

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

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 Hardships under the Americans with Disabilities Act, October 2002

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

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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>

WESTMINSTER SCHOOL DISTRICT

Westminster, California

Policy Adopted: January 17, 1991
Revised: December 3, 1992
Revised: January 6, 1994
Revised: February 14, 2013
Revised: September 14, 2023