CACHE COUNTY
SCHOOL DISTRICT

Cache County School District

Policy Series 5000: Support Services

5365 P1

Discriminatory Harassment

Section 1 - Definitions

"Civil Rights Violation" means bullying, cyber-bullying, or hazing that is targeted at a student or employee upon the students' or employees' identification as part of any group protected from discrimination under the following federal laws:

1. Title VI of the Civil Rights Act of 1964, including discrimination on the basis of race, color, or national origin;
2. Title IX of the Education Amendments of 1972, including discrimination on the basis of sex; or
3. Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, including discrimination on the basis of disability;

"Discrimination" means the practice of unfairly treating a person or group of people differently from other people or groups of people on a basis of race, color, national origin, [religion], sex, including sexual orientation or gender identity, or disability.

"Discriminatory Harassment" means harassment based on a person's race, color, national origin, religion, sex, including sexual orientation or gender identity, or disability. Discriminatory harassment that denies a person access to education programs or activities may also constitute a civil rights violation.

"Discriminatory Language" means slurs, epithets, phrases, nicknames, expressions, labels, name calling or any similar language that have a history of being discriminatory or are often used in a derogatory way, targeted at a protected class, regardless of whether the speaker intended the language to be discriminatory.

"**Harassment- and Discrimination- Free Learning Environment"** means a learning environment in which a student is treated fairly regardless of the student's characteristics including, but not limited to race, color, national origin, religion or sex, including sexual orientation or gender identity, or disability, and in which a student's ability to participate in or benefit from the services, activities, or opportunities offered is not limited to or interfered with by conduct that is physically threatening, harmful, or humiliating.

Sexual Harassment: Addressed in Sexual Harassment Policy

Section 2 - Prohibitions

The District prohibits discrimination and discriminatory harassment. Students and employees in the District shall not be subject to discrimination or discriminatory harassment, excluded from participation in, or denied the benefits of school programs or activities on the basis of an individual's actual or perceived characteristics, including race, color, national origin, sex, disability, religion, gender identity, sexual orientation, or other physical or mental attributes or conformance or failure to conform with stereotypes. The District prohibits discrimination and discriminatory harassment on school property, at school activities, or off campus if the conduct has a strong nexus to school.

> ***Title VI of the Civil Rights Act of 1964*** *states: "No person in the Unites States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Protections include providing equity in educational opportunities for minority students as well as for students who have limited proficiency in English."*
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> ***The Title IX of the Education Amendments of 197****2 states: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Schools may not retaliate against any person for opposing an unlawful educational practice or policy, or made charges, testified or participated in any complaint action under Title IX. All districts and charter schools must have a designated Title IX coordinator with their contact information prominently posted in visible areas of the schools, including handbooks, and on the school's website to ensure protections to students who are being discriminated based on their sex."*
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> ***Section 504*** *is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the United States Department of Education. "No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial assistance."*

Student Expressions

Expression of personal beliefs by a student participating in school-directed curricula or activities may not be prohibited or penalized unless the expression constitutes discriminatory harassment

or discriminatory language as defined above, which unreasonably interferes with order or discipline, threatens the well-being of persons, or violates concepts of civility or propriety appropriate to the school setting. School administrators may regulate student expressions that constitute discriminatory harassment or discriminatory language for legitimate educational purposes. Free expression of voluntary religious practice or freedom of speech by students during discretionary time, (non-instructional time during which a student is free to pursue personal interests), shall not be denied unless the expression has caused, or is reasonably likely to cause, a substantial disruption. An expression may cause a substantial disruption if the expression:

1. unreasonably interferes with the ability of school officials to maintain order and discipline;
2. unreasonably endangers persons or property;
3. violates concepts of civility or propriety appropriate to the school setting;
4. is vulgar, offensive, lewd and indecent;
5. promotes illegal activities.

The District will promptly investigate all allegations of discrimination and discriminatory harassment, according to the procedures outlined and a substantiated charge of discriminatory harassment will result in disciplinary action. The District is committed to working with students and parents to prevent all discrimination and discriminatory harassment and provide equal access to educational programs and a safe learning environment for all students.

School administrators must address student expressions on a case-by-case basis to determine whether the student expression constitutes protected speech or whether it constitutes a substantial disruption or discriminatory harassment. Before prohibiting a particular expression, school administrators must demonstrate facts that might reasonably lead them to forecast substantial disruption of or material interference with school activities, or an infringement on the rights of other students on the basis of discriminatory harassment.

Any limitation under this policy, which addresses Utah Code Sections 53G-10-203 and 53G-10-205 on student expression, practice, or conduct shall be by the least restrictive means necessary to satisfy the school's interests in fulfilling curriculum objectives or to satisfy the requirement that educators take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that the educator knew or should have known may result in a hostile, intimidating, abusive, offensive, or oppressive environment.

Examples of Prohibited Conduct

<u>Discrimination</u>**:**

The unjust or prejudicial treatment of different individuals on the grounds of race, age, or sex, including sexual orientation or gender identity. The following are examples of discrimination. This is not an exhaustive or comprehensive list and is not intended to cover all acts of discrimination:

1. Disproportionate discipline based on a student's race, color, national origin, sex, including sexual orientation or gender status, or disability;
2. Denying students with a disability access to a free appropriate public education (FAPE);
3. Assigning students of a particular race, color, national origin, sex, sexual orientation, gender identity, or disability to an inadequate or less adequate building, facility, bus, program, class, project, teachers, activity, school, or grouping of any kind;
4. Providing less adequate facilities for female athletes versus male athletes or for male athletes versus female athletes;
5. Providing less options for sports for female athletes versus male athletes or for male athletes versus female athletes;
6. Providing less funding for sports for female athletes versus male athletes or for male athletes versus female athletes;
7. Denying access to facilities for individuals with disabilities, including access to written and spoken language;
8. Denying privileges or opportunities to students based on a student's race, color, national origin, sex, including sexual orientation and gender status.

Discriminatory Harassment**:**

Harassment based on a person's race, skin color, national origin, sex, including sexual orientation or gender identity, or disability. Discriminatory harassment that denies a person access to education programs or activities may also constitute a civil rights violation. The following are examples of discriminatory harassment. This is not an exhaustive or comprehensive list and is not intended to cover all acts of discriminatory harassment:

1. Threatening or intimidating conduct directed at a student because of the student's race, color, religion, sex, national origin, physical or mental disability;
2. Use of discriminatory language, when targeted at a student or group of students, including epithets, slurs, negative stereotype, name calling, verbal abuse, derogatory comments, degrading descriptions, and hostile acts which are based upon a student's race, color, religion, sex (including sexual orientation and gender identification) national origin, physical or mental disability;
3. Verbal, written, or graphic material containing comments or stereotypes aimed at degrading students or members of protected classes;
4. Aggressive conduct towards a student motivated by race, color, religion, sex, national origin, physical or mental disability, or other classification protected by law;
5. Graffiti containing offensive or derogatory language, symbols, or pictures in the context any of the legally protected classifications;

6. Any unwelcome communication (whether written, verbal, or sent by electronic or other means) that is offensive or degrading and motivated by a student's race, color, religion, sex, national origin, physical or mental disability, or other classification protected by law;
7. Jokes, notes, stories, drawings or pictures, gestures, or the display or distribution of offensive or degrading material based upon any of the legally protected classifications;
8. Displaying words, pictures, or symbols on clothing that are offensive or degrading based upon any of the legally protected classifications;
9. Engaging in any of the foregoing types of discriminatory or harassing behavior outside of school or outside of school-related activities and events, but which materially disrupt the educational environment at school;
10. Mocking someone's speech, clothes, hairstyle, customs on the basis of race, color, religion, national origin, sex, or disability or other classification protected by law.

Discriminatory Language:
Slurs, epithets, phrases, nicknames, expressions, labels, name-calling or any similar language that have a history of being discriminatory or are often used in a derogatory way, targeted at a protected class, regardless of whether the speaker intended the language to be discriminatory.

Section 3 - Reporting and Investigation Procedures

Reporting
The following options are available to complainants of discriminatory harassment, or for individuals who witness such acts:

1. Seek to resolve issue directly with the respondent (for minor incidents only);
2. Seek to resolve issues through administrative personnel (required for repeated or moderate incidents);
3. Submit a formal complaint with the district compliance officer who will initiate an investigation (required for severe incidents).

All students, parents/guardians/families, and school staff have a responsibility to help keep their school safe. (If you see something, say something.) A report of discriminatory harassment must include the name of the person accused of harassment, a description of the incident or incidents, and an approximate date, time, and location of the incident.

1. A student target of discrimination or discriminatory harassment should inform their teacher or any of their school's administrators.
2. A parent, guardian, teacher, or any other individual who is aware of discrimination or discriminatory harassment at school should inform school administration.
3. A school teacher or administrator to whom a complaint is made or who otherwise becomes aware of an incident of discrimination or discriminatory harassment shall, as soon as is reasonably possible, report it to the principal or their designee.

4. An employee target of discrimination or discriminatory harassment should inform his/her supervisor or any district administrator.

A complaint does not have to be in writing in order to begin an investigation, but students, parents/guardians/families, and school staff are encouraged to submit written complaints to ensure the school administrator is adequately informed of all details relevant to the complaint. Complaints may also be submitted through the SafeUT application.

School staff members to whom a complaint of discriminatory harassment is made will, as soon as is reasonably possible after receiving the complaint, report it to school administration. An anonymous report of harassment may be filed, but may limit the investigation the administrator can conduct and will not result in formal disciplinary action against anyone. Allegations of past harassment will be investigated to the extent that information and witnesses are still available to investigate.

Investigation
The district will investigate all complaints of discrimination or discriminatory harassment and will take appropriate action to stop violations, prevent recurrence, and remedy any effects of violations. The principal/supervisor or designee, to whom a complaint of discrimination or discriminatory harassment is reported, shall promptly investigate the complaint. The principal will notify the appropriate district administrator immediately after an initial investigation. To the extent permitted by federal and state law, District policies and confidentiality and privacy rights, and to assure the integrity of the investigation and corrective action, the parent(s) or legal guardian(s) of a student perpetrator or target may be involved in the process of responding to and resolving conduct prohibited by this policy.
See Policy 9350, Procedure 2: General Investigation Procedure for School Administrators

Parental/Guardian Notification
Pursuant to Utah Code, each school administrator who finds that an incident discrimination or discriminatory harassment has occurred shall notify the parent(s)/guardian(s) of each student involved. Likewise, each school administrator shall notify the parent(s)/guardian(s) of any student who threatens to commit suicide. Notification will be made as soon as reasonably possible, but no later than 24 hours from the time the report of discriminatory harassment was made.

The school administrator who notifies parents/guardians/families under this section shall keep an incident report which includes a record verifying that notification was provided to the parents/guardians/families of each student involved. The administrator's record of notification must include the date and time of notification, manner of notification (phone call, in-person meeting, etc.), and an indication of the type of incident. The incident report may be disclosed to

the parents/guardians and/or students involved, but it may not be disclosed to any other person or entity except when required by a valid court order as provided in Utah Code.

Documentation of Support Actions
Administrators must take prompt and effective action steps reasonably calculated to address the discriminatory harassment and to prevent the behavior from recurring. Support actions taken by administrators on behalf of students involved (both respondents and complainants) should be documented in the incident report.

Section 4 - Restorative and Disciplinary Guidelines

Any student who engages in discriminatory harassment as described herein, is in violation of this policy and shall be subject to disciplinary action. Consequences should be firm, fair, and correspond to the severity of the infraction. A continuum of consequences should be utilized along with implementing positive behavioral interventions and support strategies. Disciplinary action may include, but is not limited to: suspension; expulsion; exclusion from, or loss of participation in extracurricular activities; alternative educational placement; and/or referral to law enforcement authorities for criminal acts. In imposing such discipline, all facts and circumstances of the incident(s) shall be taken into account. Formal disciplinary action may not be based solely on an anonymous report of discriminatory harassment. Disciplinary due process procedures shall be followed as set forth in applicable District policies.

Any employee who engages in discriminatory, as described herein, is in violation of this policy and shall be subject to disciplinary action, up to and including employment termination. Consequences should be firm, fair and correspond to the severity of the infraction. Professionally licensed employees may be referred to the Utah Professional Practices Advisory Commission (UPPAC), along with any and all evidence for investigation and possible disciplinary action against professional licensing. Criminal acts will also result in referral to law enforcement authorities. Disciplinary due process procedures shall be followed as set forth in applicable District policies.

When considering restorative approaches to stop discriminatory harassment school administrators will consider the severity of discriminatory harassment, which may include one or more of the three levels described below. If conduct is clearly offensive only one incident may be necessary to establish harassment:

1. <u>Level One - Generalized Harassment</u>: Includes intentional or unintentional behavior directed at an entire group or an individual, which is based on demeaning or derisive stereotypes, and impacts the learning environment. Examples of generalized discriminatory harassment include the use of discriminatory language with one another

without intent to intimidate or harass. Administrators will immediately address the discriminatory harassment with all students engaging in discriminatory harassment, and will teach students why the conduct is prohibited. Administrators may consider additional restorative measures as appropriate.

2. Level Two - Individually Targeted Harassment: Includes intentional, non-criminal behavior which is targeted at an individual or particular members of a group, which can be verbal, physical, or visual that is so pervasive that it in addition to the impact on the learning environment, it also adversely affects the individual student's ability to participate in or benefit from the services, activities, or opportunities offered because of conduct that is physically threatening, harmful, or humiliating. Students found in violation of this policy are subject to discipline in accordance with the Student Discipline policy. A student participating in extracurricular activities who is found to be in violation of the policy may be suspended from participation in the activity or removed from the activity altogether. A student removed from participation in an extracurricular activity is not entitled to due process. Throughout all investigations of allegations under this policy, the standard of proof shall be a preponderance of the evidence. Students who are subject to discipline under this policy may appeal the discipline in accordance with the Student Discipline policy.

3. Level Three - Criminal Harassment: Harassing behavior which violates state or federal criminal statutes. Examples include criminal harassment, criminal assault, sexual assault, rape, criminal mischief, stalking, arson, or trespass. All acts of discriminatory harassment that constitute criminal activity will be promptly reported to law enforcement and are subject to compliance procedures from the U.S. Department of Education, Office of Civil Rights.

Section 5 - Dissemination of Policy and Education and Training

Dissemination of Policy

This policy shall be posted on the District's website and may also be published in student registration materials, student and employee handbooks, parent/guardian information guides, and other appropriate school publications, as directed by the District. Each school employee, student 8 years or older, and parents must acknowledge through signature receipt of this policy.

Education and Training

Cache County School District recognizes the importance of educating its employees and students regarding the prevention of discrimination and discriminatory harassment. To this end, the

District will provide ongoing training and education in this area. Notice of this policy will be distributed and annual training will be conducted for employees and students of the District.

Training shall provide strategies for employees and students regarding:

1. How to recognize and be aware discriminatory harassment;
2. How bullying, cyber-bullying, retaliation, and abusive conduct are different from discrimination and may occur separately from each other or in combination;
3. How bullying, cyber-bullying, hazing, retaliation, and abusive conduct are prohibited based upon the students' or employees' actual or perceived characteristics, including race, color, national origin, sex, disability, religion, gender identity, sexual orientation, or other physical or mental attributes or conformance or failure to conform with stereotypes.

The training shall include information on various examples of discriminatory harassment or discriminatory language, as well as how bullying may constitute discriminatory harassment and may be a civil rights violation.

Prior to any employee, student, or volunteer coach participating in a District-sponsored athletic program (curricular or extracurricular) or an extracurricular student club or activity, a student, coach, or advisor shall participate in prevention training.

The District shall provide annual training to all new students and employees and shall provide refresher training for all such involved students and employees at least once every three (3) years.

Training curriculum outlines, training schedules, and participant lists or signatures shall be maintained by the District or each school, as applicable, and provided to the Utah State Office of Education upon request.