San Bernardino County Superintendent of Schools Procedure 4030.1

NONDISCRIMINATION IN EMPLOYMENT PROCEDURES

All complaints alleging discrimination in employment, as defined in the accompanying policy 4030 – Nondiscrimination in Employment Policy, shall be investigated and resolved in accordance with procedures specified in this administrative procedure. However, complaints alleging sexual harassment, under Title IX shall be investigated and resolved in accordance with the procedures specified in Administrative Procedure 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Allegations that do not fall within the scope of Title IX will be reviewed under another applicable SBCSS procedure.

The Superintendent designates the position identified below as its Coordinator for Nondiscrimination in Employment ("Coordinator") to organize and manage the Superintendent's efforts to comply with state and federal nondiscrimination laws and to answer inquiries regarding the Superintendent's nondiscrimination policies. The Coordinator may be contacted at:

SBCSS Assistant Superintendent, Human Resources
760 E. Brier Drive San Bernardino, CA 92408
909-386-9572
Suzanne.Hernandez@sbcss.net

Measures to Prevent Discrimination

To prevent unlawful discrimination, harassment, and retaliation in Superintendent employment, the Superintendent or designee shall implement the following measures:

1. Display in a prominent and accessible location at every work site where the Superintendent has employees, and post electronically in a conspicuous location on computers for employee use, up-to-date California Civil Rights Department (CRD) posters on the prohibition of workplace discrimination, harassment, and retaliation, the rights of transgender employees, and the rights and obligations of employees who are pregnant, have a related medical condition, or are recovering from childbirth. (Government Code 12950; 2 CCR 11013, 11023, 11049)

2. Publicize the Superintendent's nondiscrimination policy and procedure, including the complaint procedures and the coordinator's contact information, by: (Education Code 234.1; 5 CCR 4960; 34 CFR 100.6, 106.8)

    a. Including them in each announcement, bulletin, or application form that is used in employee recruitment

b. Posting them in all Superintendent buildings, including staff lounges and other prominent locations

c. Posting them on the Superintendent's website and providing easy access to them through Superintendent-supported social media, when available

3. Disseminate the Superintendent's nondiscrimination policy and administrative procedure to all employees by one or more of the following methods: (2 CCR 11023)

   a. Printing and providing a copy to all employees, with an acknowledgment form for each employee to sign and return

   b. Sending a copy via email with an acknowledgment return form

   c. Posting a copy on the Superintendent intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies

   d. Discussing the policy and procedure with employees upon hire and/or during a new hire orientation session

   e. Any other way that ensures employees receive and understand the policy

4. Provide to employees notice that contains information clearly describing the Superintendent's nondiscrimination policy, procedures for filing a complaint, and resources available to employees who believe they have been the victim of any discriminatory, harassing, or retaliatory behavior.

5. Provide training regarding the Superintendent's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made. The Superintendent may also provide bystander intervention training to employees that includes information and practical guidance on how to recognize potentially problematic behaviors, and which may motivate them to take action when they observe such behaviors. The training and education may include exercises to provide employees with the skills and confidence to intervene as appropriate and to provide them with resources they can call upon that support their intervention. (Government Code 12950.2)

6. Periodically review the Superintendent's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure Superintendent compliance with law.

7. For any Superintendent location where 10 percent of Superintendent employees have a language other than English as their spoken language, translate the policy into every language spoken by at least 10 percent of the workforce (2 CCR 11023)

Complaint Procedure

Any complaint alleging unlawful discrimination or harassment covered by this administrative procedure and accompanying Superintendent policy shall be addressed in accordance with the following procedures:

1. Notice and Receipt of Complaint: A complainant may inform a direct supervisor, another supervisor, the Coordinator, the Superintendent or, if available, a complaint hotline or an ombudsman. The complainant's direct supervisor may be bypassed in filing a complaint when the supervisor is the subject of the complaint.

   The complainant may first attempt to resolve the situation informally with the complainant's supervisor before filing a complaint.

   A supervisor or manager who has received information about an incident of discrimination, harassment, or retaliation or has observed such an incident, shall report it to the Coordinator, whether or not the complainant files a complaint.

   The complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, any available evidence of the discrimination, harassment, or retaliation and any other pertinent information which may assist in investigating and resolving the complaint.

2. Investigation Process: The Coordinator shall initiate an impartial investigation of an allegation of discrimination, harassment, or retaliation within five business days of receiving notice of the alleged discriminatory, harassing, or retaliatory behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

   The Coordinator shall meet with the complainant to describe the Superintendent's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The Coordinator shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. The Coordinator shall also inform the parties that the investigation will be kept confidential to the extent possible, but that some information may be disclosed as necessary to conduct an effective investigation.

   If the Coordinator determines that a detailed fact-finding investigation is necessary, the investigation shall begin immediately. As part of this investigation, the Coordinator or designated investigator should interview the complainant, respondent, and other persons who could be expected to have relevant information.

   The coordinator shall track and document the progress of the investigation to ensure reasonable progress and shall inform the parties as necessary.

   When necessary to carry out the investigation or to protect employee safety, the Coordinator may discuss the complaint with the Superintendent or designee,

Superintendent legal counsel, or the Superintendent's risk manager.

The Coordinator shall also determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed in order to prevent further incidents. The Coordinator shall ensure that such interim measures do not constitute retaliation.

3. Written Report on Findings and Remedial/Corrective Action: No more than 20 business days after receiving the complaint, the Coordinator or designated investigator shall conclude the investigation and prepare a written report of the findings. This timeline may be extended by the Coordinator for good cause. If an extension is needed, the Coordinator shall notify the parties and explain the reasons for the extension.

   The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination, harassment, or retaliation occurred, the report shall also include any corrective action(s) that have been or will be taken to address the behavior, provide appropriate options for remedial actions and resolutions for the complainant, and ensure that retaliation or further discrimination or harassment is prevented. The report shall be presented to the Superintendent or designee.

   A summary of the findings shall be presented to the complainant and the person accused.

4. Appeal to the Superintendent: The complainant or any of the person(s) accused may appeal any findings to the Superintendent within 10 business days of receiving the written report of the investigation findings. The Coordinator or designee shall provide the Superintendent with all information presented during the investigation and the Superintendent shall schedule a hearing as soon as practicable. The Superintendent shall render a decision within 10 business days

Other Remedies

In addition to filing a discrimination, harassment, or retaliation complaint with the Superintendent, a person may file a complaint with either CRD or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

For filing a complaint with CRD alleging a violation of Government Code 12940-12952, within three years of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960 (Government Code 12960)

1. For filing a complaint with EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)

2. For filing a complaint with EEOC after first filing a complaint with CRD, within 180 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by CRD, whichever is earlier (42 USC 2000e-5)

An employee may also file a complaint with the Wage and Hour Division of the U.S.

Department of Labor for an alleged violation of the PUMP Act and/or EEOC for failure to provide reasonable accommodations pursuant to the Pregnant Workers Fairness Act. (29 USC 218c, 218d, 42 USC 2000gg-2)

Additionally, an employee may file a complaint with the Labor Commissioner at the California Department of Industrial Relations for any alleged violation of Labor Code 1030-1034. (Labor Code 1034)

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