Information Sheet – 12/12/17 - Board of Trustees Meeting

TO: Board of Trustees Item 8.1

FROM: Celli Coeville

DATE: December 6, 2017

RE: Policy Revision BP 0410 Nondiscrimination in District Programs and Activities

The CSBA sample Board Policy 0410, Nondiscrimination in District Programs and Activities has been updated to reflect a new law which prohibits the use of any racially derogatory or discriminatory school or athletic team names, mascots or nicknames. The revised policy also adds language regarding the use of uniform complaint procedures to investigate and resolve any allegation of unlawful discrimination, expands the means by which notice of the district's nondiscrimination policy will be distributed. The revision also reflects the district's requirement to post specified information regarding Title IX on our website and adds the district's responsibility to make our website accessible to individuals with disabilities.

I have attached the CSBA sample policy followed by the Jefferson School District policy.

Recommendation: Adopt Board Policy as presented

CSBA Sample

Board Policy

Nondiscrimination In District Programs And Activities

BP 0410

Philosophy, Goals, Objectives and Comprehensive Plans

Note: Government Code 11138 mandates districts to adopt rules and regulations to ensure that district programs and activities are free from unlawful discrimination. In accordance with various provisions of state and federal law, discrimination in education programs and activities is unlawful when it is based on certain actual or perceived characteristics of an individual. Education Code 220 prohibits discrimination based on race or ethnicity, nationality, sex, sexual orientation, gender, gender identity, gender expression, religion, or any other characteristic contained in the definition of hate crimes in Penal Code 422.55. Government Code 11135 prohibits discrimination based on all the foregoing characteristics and on age, disability, and an individual's genetic information. Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-7) prohibits discrimination on the basis of race, color, and national origin. Title IX (20 USC 1681-1688) prohibits discrimination on the basis of sex. The Americans with Disabilities Act (ADA) (42 USC 12101-12213) and Section 504 of the Rehabilitation Act of 1973 (29 USC 794) prohibit discrimination on the basis of disability. For policy language protecting students against discrimination and harassment, see BP/AR 5145.3 - Nondiscrimination/Harassment and BP/AR 5145.7 - Sexual Harassment.

Note: Education Code 260 and 5 CCR 4900-4965 require the Governing Board to monitor district compliance with these state and federal laws. The federal laws are enforced by the Office for Civil Rights of the U.S. Department of Education, and the California Department of Education may investigate complaints regarding discrimination pursuant to 5 CCR 4600-4687.

Note: Similarly, Government Code 12940 provides protections for employees, job applicants, unpaid interns, and volunteers against unlawful discrimination and harassment. For policy language addressing these protections as they relate to volunteers, see BP 1240 - Volunteer Assistance, and in relation to employees, unpaid interns, and job applicants, see BP 4030 - Nondiscrimination in Employment.

The Governing Board is committed to providing equal opportunity for all individuals in education. District programs, activities, and practices shall be free from unlawful discrimination, including discrimination against an individual or group based on race, color, ancestry, nationality, national origin, ethnic group identification, age, religion, marital, pregnancy, or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; a perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

(cf. 1240 - Volunteer Assistance)
(cf. 4030 - Nondiscrimination in Employment)

(cf. 4032 - Reasonable Accommodation)
(cf. 4033 - Lactation Accommodation)
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)
(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)
(cf. 5131.2 - Bullying)
(cf. 5145.3 - Nondiscrimination/Harassment)
(cf. 5145.7 - Sexual Harassment)
(cf. 5146 - Married/Pregnant/Parenting Students)
(cf. 6145 - Extracurricular and Cocurricular Activities)
(cf. 6145.2 - Athletic Competition)
(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)
(cf. 6164.6 - Identification and Education Under Section 504)
(cf. 6178 - Career Technical Education)
(cf. 6200 - Adult Education)

Note: Education Code 221.2-221.3 (the California Racial Mascot Act), as added by AB 30 (Ch. 767, Statutes of 2015), declare the use of racially derogatory or discriminatory school or athletic team names, mascots, or nicknames in public schools to be contrary to an equal education and specifically prohibit public schools from using the term "Redskins" as a school or athletic team name, mascot, or nickname beginning January 1, 2017. The following paragraph expands this prohibition to include any racially derogatory or discriminatory athletic team name, mascot, or nickname and may be revised to reflect district practice.

District programs and activities shall also be free of any racially derogatory or discriminatory school or athletic team names, mascots, or nicknames.

Note: Pursuant to Education Code 221.5, a district is required to permit a student to participate in sex-segregated school programs and activities, including athletic teams and competitions, and to use facilities consistent with the student's gender identity, regardless of his/her gender as listed on his/her educational records. See BP/AR 5145.3 - Nondiscrimination/Harassment. For further information, see CSBA's policy brief Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students and its Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Sex Discrimination.

Annually, the Superintendent or designee shall review district programs and activities to ensure the removal of any derogatory or discriminatory name, image, practice, or other barrier that may unlawfully prevent an individual or group in any of the protected categories stated above from accessing district programs and activities. He/she shall take prompt, reasonable actions to remove any identified barrier. The Superintendent or designee shall report his/her findings and recommendations to the Board after each review.

(cf. 1330 - Use of Facilities)

All allegations of unlawful discrimination in district programs and activities shall be investigated and resolved in accordance with the procedures specified in AR 1312.3 - Uniform Complaint

Procedures.

(cf. 1312.3 - Uniform Complaint Procedures)

Note: Many nondiscrimination laws and regulations contain a notification requirement. For example, pursuant to 34 CFR 104.8 and 106.9, a district that receives federal aid is required to take "continuing steps" to notify students, parents/guardians, employees, employee organizations, and applicants for admission and employment that it does not discriminate on the bases of disability and sex in its educational programs or activities. In addition, Education Code 221.61, as added by SB 1375 (Ch. 655, Statutes of 2016), requires that, on or before July 1, 2017, districts must post specified information relating to Title IX on their web sites. To ensure consistent implementation of the laws, the same notification requirement should be adopted for all the protected categories as provided in the following paragraph.

Pursuant to 34 CFR 104.8 and 34 CFR 106.9, the Superintendent or designee shall notify students, parents/guardians, employees, employee organizations, applicants for admission and employment, and sources of referral for applicants about the district's policy on nondiscrimination and related complaint procedures. Such notification shall be included in each announcement, bulletin, catalog, handbook, application form, or other materials distributed to these groups and, as applicable, to the public. As appropriate, such notification shall be posted in district schools and offices, including staff lounges, student government meeting rooms, and other prominent locations and shall be posted on the district's web site and, when available, district-supported social media.

(cf. 1113 - District and School Web Sites)
(cf. 1114 - District-Sponsored Social Media)
(cf. 4112.9/4212.9/4312.9 - Employee Notifications)
(cf. 5145.6 - Parental Notifications)

Note: Pursuant to Education Code 48985, when 15 percent or more of students enrolled in a school speak a single primary language other than English, all notices and reports sent to the parents/guardians of these students must also be written in the primary language and may be answered by the parent/guardian in English or the primary language. In addition, 20 USC 6311 and 6312 require that districts receiving Title I funds provide parent/guardian notices in an understandable and uniform format and, to the extent practicable, in a language that parents/guardians understand.

The district's nondiscrimination policy and related informational materials shall be published in a format that parents/guardians can understand. In addition, when 15 percent or more of a school's students speak a single primary language other than English, those materials shall be translated into that other language.

Access for Individuals with Disabilities

***Note: Pursuant to the ADA and its implementing regulations, 28 CFR 35.150 and 35.151, district facilities must be accessible to and usable by individuals with disabilities. Compliance

methods may include equipment redesign, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, and alteration of existing facilities and construction of new facilities. In achieving compliance, a district need not make structural changes to existing facilities if other methods are effective and the district can demonstrate that the structural change would result in a fundamental alteration in the nature of the activity or an undue financial or administrative burden. However, pursuant to 28 CFR 35.151, all newly constructed facilities must comply with the 2010 ADA Standards for Accessible Designs issued by the U.S. Department of Justice.***

Note: In addition, pursuant to 28 CFR 35.136, a district must permit an individual with a disability to be accompanied by a service animal on district premises when, without the animal's assistance, the individual with a disability will not be able to access or participate in a district program or activity. For language addressing this mandate, see AR 6163.2 - Animals at School. Districts with questions about compliance with the ADA should consult with legal counsel as appropriate.

District programs and facilities, viewed in their entirety, shall be in compliance with the Americans with Disabilities Act (ADA) and any implementing standards and/or regulations. When structural changes to existing district facilities are needed to provide individuals with disabilities access to programs, services, activities, or facilities, the Superintendent or designee shall develop a transition plan that sets forth the steps for completing the changes.

(cf. 6163.2 - Animals at School)
(cf. 7110 - Facilities Master Plan)
(cf. 7111 - Evaluating Existing Buildings)

Note: Pursuant to 28 CFR 35.130 and 35.160, the ADA requires districts to provide services and aids to ensure that a disabled individual is not excluded from participation or denied a benefit, service, or program on the basis of a disability. However, if the district can show that providing such aids and services would fundamentally alter the nature of the function, program, or meeting or would be an undue burden, then the district need not provide them.

Note: In addition, Government Code 54953.2 requires that all Board meetings meet the protections of the ADA and implementing regulations (28 CFR 35.160 and 36.303). In effect, the district must ensure that such meetings are accessible to persons with disabilities and that, upon the request of any person with a disability, disability-related accommodations, such as auxiliary aids and services, are made available.

Note: A U.S. Department of Justice technical assistance publication, Accessibility of State and Local Government Websites to People with Disabilities, affirms that the ADA applies to district-sponsored web sites. Examples of technical standards for web site accessibility are available from the World Wide Web Consortium, California Department of Education's standards for state web sites, and other sources; see BP 1113 - District and School Web Sites.

The Superintendent or designee shall ensure that the district provides appropriate auxiliary aids and services when necessary to afford individuals with disabilities equal opportunity to

participate in or enjoy the benefits of a service, program, or activity. These aids and services may include, but are not limited to, qualified interpreters or readers, assistive listening devices, assistive technologies or other modifications to increase accessibility to district and school web sites, note takers, written materials, taped text, and Braille or large print materials. Individuals with disabilities shall notify the Superintendent or principal if they have a disability that requires special assistance or services. Reasonable notification should be given prior to a school-sponsored function, program, or meeting.

(cf. 6020 - Parent Involvement)
(cf. 9320 - Meetings and Notices)
(cf. 9322 - Agenda/Meeting Materials)

Note: Pursuant to 28 CFR 35.107, a district that has 50 or more employees is required to designate at least one employee to coordinate the district's efforts to comply with the ADA. The designated employee could be the same individual or position responsible for the district's compliance with state and federal laws and regulations governing educational programs as identified in the district's uniform complaint procedures. The following paragraph, which identifies the person or position identified in the AR 1312.3 - Uniform Complaint Procedures as the responsible employee, may be modified if the district chooses to designate another person or position.

The individual identified in AR 1312.3 - Uniform Complaint Procedures as the employee responsible for coordinating the district's response to complaints and for complying with state and federal civil rights laws is hereby designated as the district's ADA coordinator. He/she shall receive and address requests for accommodation submitted by individuals with disabilities, and shall investigate and resolve complaints regarding their access to district programs, services, activities, or facilities.

_____
(title or position)

_____
(address)

_____
(telephone number)

_____
(email)

Legal Reference:
EDUCATION CODE
200-262.4 Prohibition of discrimination
48985 Notices to parents in language other than English
51007 Legislative intent: state policy
GOVERNMENT CODE
11000 Definitions

11135 Nondiscrimination in programs or activities funded by state
11138 Rules and regulations
12900-12996 Fair Employment and Housing Act
54953.2 Brown Act compliance with Americans with Disabilities Act
PENAL CODE
422.55 Definition of hate crime
422.6 Interference with constitutional right or privilege
CODE OF REGULATIONS, TITLE 5
4600-4687 Uniform complaint procedures
4900-4965 Nondiscrimination in elementary and secondary education programs
UNITED STATES CODE, TITLE 20
1400-1482 Individuals with Disabilities in Education Act
1681-1688 Discrimination based on sex or blindness, Title IX
2301-2415 Carl D. Perkins Vocational and Applied Technology Act
6311 State plans
6312 Local education agency plans
UNITED STATES CODE, TITLE 29
794 Section 504 of the Rehabilitation Act of 1973
UNITED STATES CODE, TITLE 42
2000d-2000d-7 Title VI, Civil Rights Act of 1964
2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended
2000h-2000h-6 Title IX
12101-12213 Americans with Disabilities Act
CODE OF FEDERAL REGULATIONS, TITLE 28
35.101-35.190 Americans with Disabilities Act
36.303 Auxiliary aids and services
CODE OF FEDERAL REGULATIONS, TITLE 34
100.1-100.13 Nondiscrimination in federal programs, effectuating Title VI
104.1-104.39 Section 504 of the Rehabilitation Act of 1973
106.1-106.61 Discrimination on the basis of sex, effectuating Title IX, especially:
106.9 Dissemination of policy

Management Resources:
CSBA PUBLICATIONS
Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Sex Discrimination, July 2016
Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014
Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011
CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PUBLICATIONS
California Law Prohibits Workplace Discrimination and Harassment
U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS
Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016
Dear Colleague Letter: Title IX Coordinators, April 2015
Dear Colleague Letter: Harassment and Bullying, October 2010
Dear Colleague Letter: Electronic Book Readers, June 29, 2010

Notice of Non-Discrimination, January 1999
Protecting Students from Harassment and Hate Crime, January 1999
Nondiscrimination in Employment Practices in Education, August 1991
U.S. DEPARTMENT OF JUSTICE PUBLICATIONS
2010 ADA Standards for Accessible Design, September 2010
Accessibility of State and Local Government Websites to People with Disabilities, June 2003
WORLD WIDE WEB CONSORTIUM PUBLICATIONS
Web Content Accessibility Guidelines, December 2008
WEB SITES
CSBA: http://www.csba.org
California Department of Education: http://www.cde.ca.gov
California Department of Fair Employment and Housing: http://www.dfeh.ca.gov
Safe Schools Coalition: http://www.casafeschools.org
Pacific ADA Center: http://www.adapacific.org
U.S. Department of Education, Office for Civil Rights: http://www.ed.gov/about/offices/list/ocr
U.S. Department of Justice, Civil Rights Division, Americans with Disabilities Act: http://www.ada.gov
U.S. Equal Employment Opportunity Commission: http://www.eeoc.gov
World Wide Web Consortium, Web Accessibility Initiative: http://www.w3.org/wai

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NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES

The Board of Trustees is committed to equal opportunity for all individuals in education. District programs and activities shall be free from discrimination based on gender, race, color, religion, ancestry, national origin, ethnic group, marital or parental status, physical or mental disability, sexual orientation or the perception of one or more of such characteristics. The Board shall promote programs which ensure that discriminatory practices are eliminated in all district activities.

(cf. 4030 - Nondiscrimination in Employment)
(cf. 4032 - Reasonable Accommodation)
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)
(cf. 5145.3 - Nondiscrimination/Harassment)
(cf. 5145.7 - Sexual Harassment)
(cf. 5146 - Married/Pregnant/Parenting Students)
(cf. 6145.2 - Athletic Competition)
(cf. 6164.4 - Identification of Individuals for Special Education)
(cf. 6164.6 - Identification and Education under Section 504)
(cf. 6178 - Career Technical Education)
(cf. 6200 - Adult Education)

District programs and facilities, viewed in their entirety, shall be readily accessible to and usable by individuals with disabilities. In addition, new construction and alterations to facilities existing before January 26, 1992, shall be accessible when viewed in their entirety.

The Superintendent or designee shall ensure that the district provides auxiliary aids and services where necessary to afford individuals with disabilities equal opportunity to participate in or enjoy the benefits of a service, program or activity. These aids and services may include, but are not limited to, qualified interpreters or readers, assistive listening devices, notetakers, written materials, taped text, and Braille or large print materials.

(cf. 5124 - Communication with Parents/Guardians)

Individuals with disabilities shall notify the Superintendent or principal if they have a disability that requires special assistance or services. Reasonable notification should be given prior to the school-sponsored function, program or meeting.

(cf. 9320 - Meetings and Notices)

NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES (continued)

The Superintendent or designee shall notify students, parents/guardians, employees, employee organizations and applicants for admission and employment, and sources of referral for applicants about the district's policy on nondiscrimination. Such notification shall be included in each announcement, bulletin, catalog, application form or other recruitment materials distributed to these groups. (34 CFR 104.8, 106.9)

The Superintendent or designee shall also provide information about related complaint procedures.

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 4031 - Complaints Concerning Discrimination in Employment)
To the extent possible, the district's nondiscrimination policy shall be published in the individual's primary language.

(cf. 5145.6 - Parental Notifications)

Legal Reference:

<u>EDUCATION CODE</u>
200-262.4 Prohibition of discrimination
<u>GOVERNMENT CODE</u>
11000 Definitions
11138 Rules and regulations
11342 Administrative regulations and rulemaking, definitions
12900-12996 Fair Employment and Housing Act
<u>PENAL CODE</u>
422.6 Interference with constitutional right or privilege
<u>UNITED STATES CODE, TITLE 20</u>
1400-1487 Individuals with Disabilities in Education Act
1681-1688 Discrimination based on sex or blindness, Title IX
2301-2471 Carl D. Perkins Vocational and Applied Technology Act

<u>UNITED STATES CODE, TITLE 29</u>
794 Section 504 of the Rehabilitation Act of 1973
<u>UNITED STATES CODE, TITLE 42</u>
2000d-2000d-7 Title VI, Civil Rights Act of 1964
2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended
2000h-2000h-6 Title IX
12101-12213 Americans with Disabilities Act

NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES (continued)

Legal Reference (continued):

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
100.1-100.13 Nondiscrimination in federal programs, effectuating Title VI
104.1-104.39 Section 504 of the Rehabilitation Act of 1973
106.1-106.61 Discrimination on the basis of sex, effectuating Title IX, especially:
106.9 Dissemination of policy

Management Resources:

OFFICE OF CIVIL RIGHTS
Notice of Non-Discrimination, January, 1999
OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
Protecting Students from Harassment and Hate Crime, January, 1999