

## Students

BP 5145.3(a)

### **NONDISCRIMINATION/HARRASSMENT**

This policy shall apply to all acts constituting unlawful discrimination or harassment related to school activity or to school attendance occurring within a district school, and to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school.

The Governing Board desires to provide a safe school environment that allows all students equal access to and opportunities in the district's academic, extracurricular, and other educational support programs, services, and activities. The Board prohibits, at any district school or school activity, unlawful discrimination, including discriminatory harassment, intimidation, and bullying, targeted at any student by anyone, based on the student's actual or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or association with a person or group with one or more of these actual or perceived characteristics.

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*

*(cf. 5131 - Conduct)*

*(cf. 5131.2 - Bullying)*

*(cf. 5137 - Positive School Climate)*

*(cf. 5145.7 - Sexual Harassment)*

*(cf. 5145.9 - Hate-Motivated Behavior)*

*(cf. 5146 - Married/Pregnant/Parenting Students)*

*(cf. 6164.6 - Identification and Education under Section 504)*

Unlawful discrimination, including discriminatory harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also occurs when prohibited conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.

Unlawful discrimination also includes disparate treatment of students based on one of the categories above with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services.

The Board also prohibits any form of retaliation against any individual who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a complaint, or investigates or participates in the investigation of a complaint or report alleging unlawful discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

## **NONDISCRIMINATION/HARRASSMENT**

The Superintendent or designee shall facilitate students' access to the educational program by publicizing the district's nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. In addition, the Superintendent or designee shall post the district's policies prohibiting discrimination, harassment, intimidation, and bullying and other required information on the district's web site in a manner that is easily accessible to parents/guardians and students, in accordance with law and the accompanying administrative regulation.

The Superintendent or designee shall provide training and/or information on the scope and use of the policy and complaint procedures and take other measures designed to increase the school community's understanding of the requirements of law related to discrimination. The Superintendent or designee shall regularly review the implementation of the district's nondiscrimination policies and practices and, as necessary, shall take action to remove any identified barrier to student access to or participation in the district's educational program. The Superintendent or designee shall report the findings and recommendations to the Board after each review.

*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 1330 - Use of Facilities)*  
*(cf. 4131 - Staff Development)*  
*(cf. 4231 - Staff Development)*  
*(cf. 4331 - Staff Development)*  
*(cf. 6145 - Extracurricular and Cocurricular Activities)*  
*(cf. 6145.2 - Athletic Competition)*  
*(cf. 6164.2 - Guidance/Counseling Services)*

Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, all complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students.

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline, which may include suspension or expulsion when the behavior is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall be subject to disciplinary action, up to and including dismissal.

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 4119.21/4219.21/4319.21 - Professional Standards)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 5144 - Discipline)*  
*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

## **NONDISCRIMINATION/HARRASSMENT**

*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*

*(cf. 5145.2 - Freedom of Speech/Expression)*

### **Record-Keeping**

The Superintendent or designee shall maintain a record of all reported cases of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, to enable the district to monitor, address, and prevent repetitive prohibited behavior in district schools.

*(cf. 3580 - District Records)*

#### *Legal Reference:*

##### EDUCATION CODE

200-262.4 Prohibition of discrimination

48900.3 Suspension or expulsion for act of hate violence

48900.4 Suspension or expulsion for threats or harassment

48904 Liability of parent/guardian for willful student misconduct

48907 Student exercise of free expression

48950 Freedom of speech

48985 Translation of notices

49020-49023 Athletic programs

49060-49079 Student records

51500 Prohibited instruction or activity

51501 Prohibited means of instruction

60044 Prohibited instructional materials

##### CIVIL CODE

1714.1 Liability of parents/guardians for willful misconduct of minor

##### GOVERNMENT CODE

11135 Nondiscrimination in programs or activities funded by state

##### PENAL CODE

422.55 Definition of hate crime

422.6 Crimes, harassment

##### CODE OF REGULATIONS, TITLE 5

432 Student record

4600-4670 Uniform complaint procedures

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

794 Sections 504 of Rehabilitation Act of 1973

##### UNITED STATES CODE, TITLE 42

2000d-2000e-17 Title VI and Title VII Civil Rights Act of 1964, as amended

2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964

6101-6107 Age Discrimination Act of 1975

12101-12213 Title II equal opportunities for individuals with disabilities

##### CODE OF FEDERAL REGULATIONS, TITLE 28

## **NONDISCRIMINATION/HARRASSMENT**

### *Legal Reference (continued):*

*35.107 Nondiscrimination on basis of disability; complaints*

*CODE OF FEDERAL REGULATIONS, TITLE 34*

*99.31 Disclosure of personally identifiable information*

*100.3 Prohibition of discrimination on basis of race, color or national origin*

*104.7 Designation of responsible employee for Section 504*

*104.8 Notice*

*106.8 Designation of responsible employee for Title IX*

*106.9 Notification of nondiscrimination on basis of sex*

*110.25 Prohibition of discrimination based on age*

### *COURT DECISIONS*

*Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567*

*Flores v. Morgan Hill Unified School District, (2003) 324 F.3d 1130*

### *Management Resources:*

#### *CSBA PUBLICATIONS*

*Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students against Sex Discrimination, March 2017*

#### *CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS*

*Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018*

#### *FIRST AMENDMENT CENTER PUBLICATIONS*

*Public Schools and Sexual Orientation: A First Amendment Framework for Finding Common Ground, 2006*

#### *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*

*Resolution Agreement Between the Arcadia Unified School District, U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, (2013) OCR 09- 12-1020, DOJ 169-12C-70*

*Dear Colleague Letter: Harassment and Bullying, October 2010*

*Notice of Non-Discrimination, Fact Sheet, August 2010*

*U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PUBLICATIONS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, August 2003*

#### *WEB SITES*

*CSBA: <http://www.csba.org>*

*California Department of Education: <http://www.cde.ca.gov>*

*California Safe Schools Coalition: <http://www.casafeschools.org>*

*California Office of the Attorney General: <http://oag.ca.gov>*

*First Amendment Center: <http://www.firstamendmentcenter.org>*

*U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>*