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5145.3 BP - Nondiscrimination/Harassment

Students

Board Policy No. 5145.3

Policy approved: September 6, 2018

Policy Revised: Feb. 8, 2024

Nondiscrimination/Harassment

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, 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, and to all acts of the Governing Board and the Superintendent in enacting policies and procedures that govern the district.

The Board desires to provide a welcoming, safe, and supportive 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.

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.

Because unlawful discrimination may occur when disciplining students, including suspension and expulsion, the Superintendent or designee shall ensure that staff enforce discipline rules fairly, consistently and in a non-discriminatory manner, as specified in Board Policy and Administrative Regulation 5144 - Discipline, Board Policy and Administrative Regulation 5144.1 - Suspension and Expulsion/Due Process, and Administrative Regulation 5144.2 - Suspension and Expulsion/Due Process (Students With Disabilities).

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.

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 website in a manner that is easily accessible to parents/guardians and students, in accordance with law and the accompanying administrative regulation. (Education Code 234.1, 234.6)

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.

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.

All allegations of unlawful discrimination in district programs and activities shall be brought, investigated, and resolved in accordance with Board Policy 1312.3 - Uniform Complaint Procedures.

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.

Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State Code

5 CCR 432, Student records

5 CCR 4600-4670, Uniform complaint procedures

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

financial assistance

Civ. Code 1714.1, Liability of parent or guardian for act of willful misconduct by a minor

Education Code

Ed. Code 200-262.4, Prohibition of discrimination

Ed. Code 48900.3, Suspension or expulsion for act of hate violence

Ed. Code 48900.4, Suspension or expulsion for harassment, threats, or intimidation

Ed. Code 48904, Liability of parent/guardian for willful student misconduct

Ed. Code 48907, Exercise of free expression; time, place and manner rules and regulations

Ed. Code 48950, Speech and other communication

Ed. Code 48985, Notices to parents in language other than English

Ed. Code 49020-49023, Athletic programs

Ed. Code 49060-49079, Student records

Ed. Code 51204.5, Social sciences instruction; contributions of specified groups

Ed. Code 51500, Prohibited instruction or activity

Ed. Code 51501, Nondiscriminatory subject matter

Ed. Code 60010, Instructional materials; definition

Ed. Code 60040-60052, Requirements for instructional materials

Gov. Code 11135, Prohibition of discrimination

Pen. Code 422.55, Definition of hate crime

Pen. Code 422.6, Crimes; harassment

Federal Code

20 USC 1681-1688, Title IX of the Education Amendments of 1972; discrimination based on sex

28 CFR 35.107, Nondiscrimination on basis of disability; complaints

29 USC 794, Rehabilitation Act of 1973; Section 504

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

34 CFR 104.7, Section 504; Designation of responsible employee and adoption of grievance procedures

34 CFR 104.8, Notice of Nondiscrimination on the Basis of Handicap

34 CFR 106.45, Grievance process for formal complaints of sexual harassment

34 CFR 106.8, Designation of coordinator; dissemination of policy, and adoption of grievance procedures

34 CFR 110.25, Prohibition of discrimination based on age

34 CFR 99.31, Disclosure of personally identifiable information

42 USC 12101-12213, Americans with Disabilities Act

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

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

42 USC 6101-6107, Age Discrimination Act of 1975

Management Resources

34 CFR 106.30, Discrimination on the basis of sex; definitions

CA Office of the Attorney General Publication, 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

California Department of Education Publication, California Longitudinal Pupil Achievement Data System (CALPADS)

Update FLASH #158: Guidance for Changing a Student's Gender in CALPADS, July 2019

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

Court Decision, Flores v. Morgan Hill Unified School District, (2003, 9th Cir.) 324 F.3d 1130

CSBA Publication, Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools, October

2022

U.S DOE, Office for Civil Rights Publication, Resolution Agreement Between the Arcadia USD, US Dept of Ed, OCR, &

the US DOJ, CRD (2013) OCR 09-12-1020, DOJ 169-12C-70

U.S. Dept. of Health & Human Services Publication, Guidance to Federal Financial Assistance Recipients Regarding

Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, August 2013

U.S. DOE & U.S. DOJ Civil Rights Divisions Pub, Dear Colleague Letter: Resource on Confronting Racial

Discrimination in Student Discipline, May 2023

U.S. DOE Publication, Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary

and Secondary Schools, May 2023

U.S. DOE, Office for Civil Rights Publication, Enforcement of Title IX of the Education Amendments of 1972 With

Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock

v. Clayton County, June

2021

U.S. DOE, Office for Civil Rights Publication, Dear Colleague Letter: Addressing Discrimination Against Jewish Students, May 2023

U.S. DOE, Office for Civil Rights Publication, U.S. Department of Education Toolkit: Creating Inclusive and

Nondiscriminatory School Environments for LGBTQI+ Students, June 2023

U.S. DOE, Office for Civil Rights Publication, Questions and Answers on the Title IX Regulations on Sexual Harassment,

June 2022

U.S. DOE, Office for Civil Rights Publication, Supporting Students with Disabilities and Avoiding the Discriminatory Use

of Student Discipline under Section 504 of the Rehabilitation Act of 1973, July 2022

U.S. DOE, Office for Civil Rights Publication, Dear Colleague Letter: Race and School Programming, August 2023

U.S. DOE, Office for Civil Rights Publication, Examples of Policies and Emerging Practices for Supporting Transgender

Students, May 2016

Website, CSBA District and County Office of Education Legal Services

Website, First Amendment Center

Website, California Office of the Attorney General

Website, California Safe Schools Coalition

Website, CSBA

Website, California Department of Education

Website, U.S. Department of Education, Office for Civil Rights

Cross References

0410, Nondiscrimination In District Programs And Activities

0415, Equity

0450, Comprehensive Safety Plan

0450, Comprehensive Safety Plan

0470, COVID-19 Mitigation Plan

1114, District-Sponsored Social Media

1114, District-Sponsored Social Media

1240, Volunteer Assistance

1240, Volunteer Assistance

1312.1, Complaints Concerning District Employees

1312.1, Complaints Concerning District Employees

1312.2, Complaints Concerning Instructional Materials

1312.2, Complaints Concerning Instructional Materials

1312.2-E(1), Complaints Concerning Instructional Materials

1312.3, Uniform Complaint Procedures

1312.3, Uniform Complaint Procedures

1312.3-E(1), Uniform Complaint Procedures

1312.3-E(2), Uniform Complaint Procedures

1312.4, Williams Uniform Complaint Procedures

1312.4-E(1), Williams Uniform Complaint Procedures

1312.4-E(2), Williams Uniform Complaint Procedures

1313, Civility

1340, Access To District Records

1340, Access To District Records

3515.4, Recovery For Property Loss Or Damage

3515.4, Recovery For Property Loss Or Damage

3530, Risk Management/Insurance

3530, Risk Management/Insurance

3553, Free And Reduced Price Meals

3553, Free And Reduced Price Meals

3580, District Records

3580, District Records

4112.6, Personnel Files

4112.9, Employee Notifications

4112.9-E(1), Employee Notifications

4118, Dismissal/Suspension/Disciplinary Action

4118, Dismissal/Suspension/Disciplinary Action

4119.21, Professional Standards

4119.21-E(1), Professional Standards

4119.23, Unauthorized Release Of Confidential/Privileged Information

4131, Staff Development

4212.6, Personnel Files

4212.9, Employee Notifications

4212.9-E(1), Employee Notifications

4218, Dismissal/Suspension/Disciplinary Action

4218, Dismissal/Suspension/Disciplinary Action

4219.21, Professional Standards

4219.21-E(1), Professional Standards

4219.23, Unauthorized Release Of Confidential/Privileged Information

4231, Staff Development

4312.6, Personnel Files

4312.9, Employee Notifications

4312.9-E(1), Employee Notifications

4319.21, Professional Standards

4319.21-E(1), Professional Standards

4319.23, Unauthorized Release Of Confidential/Privileged Information

4331, Staff Development

5000, Concepts And Roles

5030, Student Wellness

5111, Admission

5111, Admission

5113.1, Chronic Absence And Truancy

5113.1, Chronic Absence And Truancy

5113.12, District School Attendance Review Board

5113.12, District School Attendance Review Board

5116.2, Involuntary Student Transfers

5125, Student Records

5125, Student Records

5125.1, Release Of Directory Information

5125.1, Release Of Directory Information

5125.1-E(1), Release Of Directory Information

5125.3, Challenging Student Records

5131, Conduct

5131.2, Bullying

5131.2, Bullying

5131.5, Vandalism And Graffiti

5132, Dress And Grooming

5132, Dress And Grooming

5137, Positive School Climate

5138, Conflict Resolution/Peer Mediation

5141.22, Infectious Diseases

5141.22, Infectious Diseases

5141.27, Food Allergies/Special Dietary Needs

5141.27, Food Allergies/Special Dietary Needs

5141.4, Child Abuse Prevention And Reporting

5141.4, Child Abuse Prevention And Reporting

5141.52, Suicide Prevention

5141.52, Suicide Prevention

5144, Discipline

5144, Discipline

5144.1, Suspension And Expulsion/Due Process

5144.1, Suspension And Expulsion/Due Process

5144.2, Suspension And Expulsion/Due Process (Students With Disabilities)

5145.12, Search And Seizure

5145.12, Search And Seizure

5145.2, Freedom Of Speech/Expression

5145.2, Freedom Of Speech/Expression

5145.6, Parent/Guardian Notifications

MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT

Mountain View, California

5145.6-E(1), Parent/Guardian Notifications

5145.7, Sexual Harassment

5145.7, Sexual Harassment

5145.71, Title IX Sexual Harassment Complaint Procedures

5145.71-E(1), Title IX Sexual Harassment Complaint Procedures

5145.9, Hate-Motivated Behavior

5146, Married/Pregnant/Parenting Students

6142.1, Sexual Health And HIV/AIDS Prevention Instruction

6142.1, Sexual Health And HIV/AIDS Prevention Instruction

6142.8, Comprehensive Health Education

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6143, Courses Of Study

6143, Courses Of Study

6144, Controversial Issues

6145, Extracurricular And Cocurricular Activities

6145, Extracurricular And Cocurricular Activities

6145.2, Athletic Competition

6145.2, Athletic Competition

6153, School-Sponsored Trips

6153, School-Sponsored Trips

6159.4, Behavioral Interventions For Special Education Students

6161.1, Selection And Evaluation Of Instructional Materials

6161.1, Selection And Evaluation Of Instructional Materials

6161.1-E(1), Selection And Evaluation Of Instructional Materials

6161.11, Supplementary Instructional Materials

6163.1, Library Media Centers

6163.4, Student Use Of Technology

6163.4-E(1), Student Use Of Technology

6164.2, Guidance/Counseling Services

6173.1, Education For Foster Youth

6173.1, Education For Foster Youth

7110, Facilities Master Plan