

Policy 4030: Nondiscrimination In Employment

Status: ADOPTED

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CSBA NOTE: The following Board policy and accompanying administrative regulation are mandated pursuant to 2 CCR 11023. The California Fair Employment and Housing Act (FEHA) (Government Code 12900-12996) prohibits districts and district employees from harassing or discriminating against employees and job applicants on the basis of actual or perceived race, color, ancestry, national origin, age, religious creed, marital status, pregnancy, reproductive health decision-making, physical or mental disability, medical condition, genetic information, veteran or military status, sex, sexual orientation, gender, gender identity, or gender expression. Pursuant to Government Code 12940, these protections apply to employees, job applicants, persons who serve in an unpaid internship or other limited-duration program to gain unpaid work experience, volunteers, and independent contractors.

Additionally, protections are available under various provisions of federal law, including Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-7), Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17), the Pregnant Workers Fairness Act (42 USC 2000gg-2000gg-6), Title IX of the Education Amendments of 1972 (20 USC 1681-1688), the Americans with Disabilities Act (42 USC 12101-12213), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and the Genetic Information Nondiscrimination Act (42 USC 2000ff-2000ff-11).

The U.S. Equal Employment Opportunity Commission's (EEOC) April 2024, "Enforcement Guidance on Harassment in the Workplace," provides for components of an effective anti-harassment policy, including that the policy (1) defines what conduct is prohibited, (2) is widely disseminated, (3) is comprehensible to employees, (4) requires supervisors to report harassment when they are aware of it, (5) offers multiple avenues for reporting harassment, enabling employees to contact someone other than their harasser, (6) clearly identifies who complaints can be made to, including contact information, and (7) explains the complaint process, including anti-retaliation and confidentiality protections.

For policy addressing sex discrimination and sex-based harassment of and by employees, see BP/AR 4119.11 - Sex Discrimination and Sex-Based Harassment, and for language regarding Title IX sex discrimination, including sex-based harassment, complaint procedures, see AR/E(1) 4119.12/4219.12/4319.12 -Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

The Governing Board is determined to provide a safe, positive environment where all district employees are assured of full and equal employment access and opportunities, protection from harassment and intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. For purposes of this policy, employees include job applicants, interns, volunteers, and persons who contracted with the district to provide services, as applicable.

CSBA NOTE: 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that discrimination on the basis of sex for the purpose of Title IX includes sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status.

No district employee shall be discriminated against or harassed by any coworker, supervisor, manager, or other person with whom the employee comes in contact in the course of employment, on the basis of the employee's actual or perceived race; color; ancestry; national origin; age; religious creed; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery; parental, family, or marital status; physical or mental disability; medical condition; genetic information; veteran or military status; sex; sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; or association with a person or group with one or more of these actual or perceived characteristics.

CSBA NOTE: Government Code 12940 includes reproductive health decision-making as a characteristic for which employment discrimination is prohibited. Pursuant to Government Code 12926(y) "reproductive health decision-making" includes a person's decision to use or access a particular drug, device, product, or medical service for reproductive health.

Employers are also prohibited from discrimination against employees or job applicants on the basis of reproductive health decision-making, defined as a person's decision to use or access a particular drug, device, product, or medical service for reproductive health. (Government Code 12926, 12940)

CSBA NOTE: 2 CCR 11028 prohibits inquiry into an employee's immigration status or discrimination on the basis of such status, unless the district provides clear and convincing evidence that such inquiry is necessary to comply with

federal immigration law. Districts should consult CSBA's District and County Office of Education Legal Services or district legal counsel as necessary.

The district shall not inquire into any employee's immigration status nor discriminate against an employee on the basis of immigration status, unless there is clear and convincing evidence that such inquiry is necessary to comply with federal immigration law. (2 CCR 11028)

CSBA NOTE: Pursuant to Government Code 12954, as amended by SB 700 (Ch. 408, Statutes of 2023), the district may not discriminate against an employee in termination, or any term or condition of employment, or otherwise penalize a person, based on the person's use of cannabis when off the job or away from the workplace. However, Government Code 12954 does not interfere with the district's right to maintain drug-free schools or to prohibit employees from possessing, being impaired by, or using cannabis while at work. Government Code 12954 also does not preempt state or federal laws requiring applicants to be tested for controlled substances as a condition of employment or to applicants in the building and construction trades or for positions requiring a federal background investigation. Districts with questions about employee cannabis use or screening should consult CSBA's District and County Office of Education Legal Services or district legal counsel. Also see BP 4111 - Recruitment and Selection, AR 4112.5 - Criminal Record Check, BP/AR 4118 - Dismissal/Suspension/Disciplinary Action, and BP/AR 4218 - Dismissal/Suspension/Disciplinary Action.

Unless otherwise provided for in law, the district may not discriminate against an employee, including an applicant for employment, in any term or condition of employment, or otherwise penalize a person, including termination, based on the person's use of cannabis off the job and away from the workplace, or on a drug screening which finds that the person has nonpsychoactive cannabis metabolites in the applicant's hair, blood, urine, or other bodily fluid. However, the district retains the right to maintain drug-free schools or prohibit employees from possessing, being impaired by, or using cannabis while on the job. (Government Code 12954)

CSBA NOTE: The following items illustrate unlawful discriminatory practices as specified in Government Code 12940.

Labor Code 1197.5 prohibits the payment of different wage rates to employees for similar work based on sex, race, or ethnicity and prohibits the use of prior salary history by itself to justify any disparity in compensation under the bona fide factor exception. Labor Code 1197.5, as amended by SB 497 (Ch. 612, Statutes of 2023), creates a rebuttable presumption in favor of the employee's claim if a district retaliates against an employee within 90 days of the specified protected activity.

Discrimination in employment based on the characteristics listed above is prohibited in all areas of employment and in all employment-related practices, including the following:

1. Hiring, compensation, terms, conditions, and other privileges of employment

CSBA NOTE: When disciplining an employee, the district must ensure that all the surrounding facts and circumstances are considered and analyzed within the parameters of any applicable constitutional or legal framework.

In *Kennedy v. Bremerton School District*, the U.S. Supreme Court held that the district could not discipline an employee for non-coercive religious conduct while the employee was acting as a private citizen. Also see BP 4118 - Dismissal/Suspension/Disciplinary Action, 4218 - Dismissal/Suspension/Disciplinary Action, and BP 4119.1/4219.1/4319.1 - Civil and Legal Rights.

In *Groff v. DeJoy*, the U.S. Supreme Court held that Title VII's protections against religious discrimination require an employer who denies an employee's religious accommodation to show that the burden of granting the accommodation would result in substantial increased costs in relation to the conduct of its particular business.

EEOC's April 2024, "Enforcement Guidance on Harassment in the Workplace," notes that while Title VII requires districts to accommodate an employee's sincerely held religious belief, districts are also responsible for protecting employees against unlawful harassment, including harassment motivated by religion. EEOC's guidance suggests that in order to address the dual obligations under Title VII, a district should accommodate an employee's sincerely held religious practice, unless doing so would create a hostile work environment.

In May 2023, the U.S. Department of Education issued, "Guidance on Constitutionally Protected Prayer and Religious Expression in Public Schools," which includes the extent to which prayer in public schools is legally protected, constitutional principles that relate to religious expression in general, and requirements under federal and state laws relevant to prayer and religious expression. The guidance states that, "Nothing in the

First Amendment, however, converts the public schools into religion-free zones, or requires students, teachers, or other school officials to leave their private religious expression behind at the schoolhouse door." The guidance also states that employees may pray when they are not acting in their official capacity and the prayer does not result in any coercion of students.

Employee discipline, especially with respect to suspension and dismissal, involves complex legal considerations and districts are advised to consult CSBA's District and County Office of Education Legal Services or district legal counsel, accordingly.

2. Taking adverse employment actions such as termination or denial of employment, promotion, job assignment, or training
3. Unwelcome conduct, whether verbal, physical, or visual, that is offensive and so severe or pervasive as to adversely affect an employee's employment opportunities or that has the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive work environment

CSBA NOTE: Item #4 below lists some, but not all, specific practices prohibited under Government Code 12940 or 2 CCR 11006-11086 in relation to certain protected categories. As the specific prohibitions are too numerous to list in policy, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel when questions arise as to any specific claim.

4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code 12940 or 2 CCR 11006-11086, such as:
 - a. Sex discrimination as specified in Board Policy and Administrative Regulation 4119.11 - Sex Discrimination and Sex-Based Harassment
 - b. Religious creed discrimination based on an employee's religious belief or observance, including religious dress or grooming practices, or based on the district's failure or refusal to use reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement
 - c. Requiring medical or psychological examination of a job applicant or making an inquiry into whether a job applicant has a mental or physical disability or a medical condition or as to the severity of any such disability or condition, without the showing of a job-related need or business necessity
 - d. Failure to make reasonable accommodation for the known physical or mental disability of an employee or to engage in a timely, good faith, interactive process with an employee who has requested such accommodations in order to determine the effective reasonable accommodations, if any, to be provided to the employee
 - e. Requiring an applicant or employee to disclose information relating to the employee's reproductive health decision-making

CSBA NOTE: Retaliation against complainants or other participants in the grievance procedures is prohibited by Government Code 12940 and 34 CFR 110.34. In addition to the general prohibition against retaliation, Government Code 12940 provides that an employee who requests accommodation for a physical or mental disability or religious belief is protected from retaliation as specified below. CSBA recommends that this protection be extended to all protected characteristics, as provided below.

The Board also prohibits retaliation against any district employee who opposes any discriminatory employment practice by the district or its employees, agents, or representatives or who complains, reports an incident, testifies, assists, or in any way participates in the district's complaint process pursuant to this policy. No employee who requests an accommodation for any protected characteristic listed in this policy shall be subjected to any punishment or sanction, regardless of whether the request was granted. (Government Code 12940; 2 CCR 11028)

CSBA NOTE: Pursuant to Government Code 12964.5, the district is prohibited from requiring an employee, in exchange for a raise or bonus or as a condition of employment or continued employment, to sign a nondisparagement agreement or similar document that would deny the employee the right to disclose information about unlawful acts in the workplace or requiring an employee to release the right to file a claim or civil action against the district.

Pursuant to Government Code 12964.5, the above prohibition applies not only to claims or complaints of sex-based

harassment or sexual assault, but to those involving harassment or discrimination based on any protected characteristic and to other unlawful employment practices under FEHA.

No employee shall, in exchange for a raise or bonus or as a condition of employment or continued employment, be required to sign a release of the employee's claim or right to file a claim against the district or a nondisparagement agreement or other document that has the purpose or effect of preventing the employee from disclosing information about harassment, discrimination, or other unlawful acts in the workplace, including any conduct that the employee has reasonable cause to believe is unlawful. (Government Code 12964.5)

CSBA NOTE: Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in the accompanying administrative regulation, it is unclear whether districts would additionally be required to follow the procedures specified in the accompanying administrative regulation. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing such a complaint process for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Complaints concerning employment discrimination, harassment, or retaliation shall immediately be investigated in accordance with procedures specified in the accompanying administrative regulation. However, complaints alleging sex discrimination under Title IX shall be investigated and resolved in accordance with the procedures specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

CSBA NOTE: Pursuant to 2 CCR 11019, in certain instances, an employee's (especially a supervisor's) knowledge or notice of prohibited conduct of another employee or individual may subject the district to liability. Therefore, it is recommended that the district require its employees with knowledge of harassment or discrimination to report the incident to the appropriate district authorities. In addition, Government Code 12940 provides that a district may be responsible for harassment of employees by nonemployees when the district knows or should have known of the conduct and failed to take immediate and corrective action, taking into consideration the extent of the district's control and other legal responsibility that the district may have with respect to the conduct of those nonemployees. See also BP/AR 4119.11 - Sex Discrimination and Sex-Based Harassment.

See the accompanying administrative regulation for requirements related to the identification of the employee who will be responsible for compliance with nondiscrimination laws.

The following paragraph should be revised to reflect the district's timeline.

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment, including harassment of an employee by a nonemployee, shall report the incident to the Superintendent or designated district coordinator within one workday. All other employees shall report such incidents to their supervisor or designated district coordinator within one workday.

CSBA NOTE: Government Code 12940 and 2 CCR 11023 require districts to take all reasonable steps to prevent prohibited discrimination and harassment, including, but not limited to, dissemination of the district's policy on the prevention of harassment, discrimination, and retaliation. Government Code 12950 and 2 CCR 11049 require districts to post, in prominent and accessible locations on district premises, posters developed by the California Civil Rights Department (CRD), formerly the Department of Fair Employment and Housing (DFEH), which are available on CRD's website. In addition, Executive Order 11246 requires contractors and subcontractors who hold a single federal contract or subcontract in excess of \$10,000, or who hold contracts or subcontracts with the federal government in any 12-month period that have a total value of more than \$10,000, to display EEOC's "Know Your Rights: Workplace Discrimination is Illegal" poster in conspicuous places available to employees and applicants for employment and representatives of each labor union with which the covered contractor or subcontractor has a collective bargaining agreement.

EEOC's April 2024, "Enforcement Guidance on Harassment in the Workplace," provides for components of effective training, including that it (1) explains the district's anti-harassment policy, complaint process, and confidentiality and anti-retaliation protections, (2) describes and provides examples of prohibited conduct under the policy, (3) provides information about employees' rights if they experience, observe, become aware of, or report prohibited conduct, (4) provides supervisors with information about how to prevent, identify, stop, report, and correct harassment, with clear instructions for addressing and reporting harassment, (5) is tailored to the workplace

and workforce, (6) is provided on a regular basis to all employees, and (7) is provided in a clear and easily understood format.

For further information on prevention strategies, including posting requirements, see the accompanying administrative regulation.

The Superintendent or designee shall use all appropriate means to reinforce the district's nondiscrimination policy, including providing training and information to employees about how to recognize harassment, discrimination, or other prohibited conduct, how to respond appropriately, and components of the district's policies and regulations regarding discrimination. The Superintendent or designee shall regularly review the district's employment practices and, as necessary, shall take action to ensure district compliance with the nondiscrimination laws.

Any district employee who engages in prohibited discrimination, harassment, or retaliation or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in such behavior in violation of this policy shall be subject to disciplinary action, up to and including dismissal.

CSBA NOTE: Government Code 12946 makes it an unlawful employment practice for a district to fail to maintain certain records and files for employees, applicants, and terminated employees, as provided in the following paragraph.

The district shall maintain and preserve all applications, personnel, membership, or employment referral records and files for at least four years after the records are initially created or received or, for an applicant or a terminated employee, for four years after the date the employment action was taken. However, when the district is notified that a complaint has been filed with the California Civil Rights Department, records related to the employee involved shall be maintained and preserved until the later of the first date after the time for filing a civil action has expired or the first date after the complaint has been fully and finally disposed of and all administrative proceedings, civil actions, appeals, or related proceedings have been terminated. (Government Code 12946)

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 References

2 CCR 11006-11086

2 CCR 11023

2 CCR 11024

2 CCR 11027-11028

5 CCR 4900-4965

CA Constitution Article 1, Section 1

Civ. Code 51.7

Ed. Code 200-262.4

Gov. Code 11135

Gov. Code 12900-12996

Gov. Code 12940-12954

Gov. Code 12960-12976

Lab. Code 1030-1034

Lab. Code 1197.5

Lab. Code 79-107

Pen. Code 422.56

Description

Discrimination in employment

Harassment and discrimination prevention and correction

Required training and education on harassment based on sex, gender identity and expression, and sexual orientation

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Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance

[Inalienable rights](#)

[Freedom from violence or intimidation](#)

[Prohibition of discrimination](#)

[Prohibition of discrimination](#)

[Fair Employment and Housing Act](#)

Unlawful employment practices

[Unlawful employment practices; complaints](#)

Lactation accommodation

Wages, hours and working conditions

Division of Labor Standards Enforcement

[Definitions; hate crimes](#)

Federal References

20 USC 1681-1688

28 CFR 35.101-35.190

Description

Title IX of the Education Amendments of 1972; discrimination based on sex

Americans with Disabilities Act

Federal References

29 CFR 1636
29 USC 218d
29 USC 621-634
29 USC 794
34 CFR 100.6
34 CFR 104.7
34 CFR 104.8
34 CFR 106.1-106.82
34 CFR 110.1-110.39
42 USC 12101-12213
42 USC 2000d-2000d-7
42 USC 2000e-2000e-17
42 USC 2000ff-2000ff-11
42 USC 2000gg-2000gg-6
42 USC 2000h-2-2000h-6
42 USC 6101-6107
Executive Order 11246
U.S. Constitution, First Amendment

Management Resources References

CA Civil Rights Department Publication
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CA Civil Rights Department Publication
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Federal Register
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U.S. Equal Employment Opportunity Comm Publication

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Implementation of the Pregnant Workers Fairness Act
Fair Labor Standards Act; Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act
Age Discrimination in Employment Act
Rehabilitation Act of 1973; Section 504
Title VI; Compliance information
Section 504; Designation of responsible employee and adoption of grievances procedures
Notice of Nondiscrimination on the Basis of Handicap
Discrimination on the basis of sex; effectuating Title IX
Nondiscrimination on the basis of age
Americans with Disabilities Act
Title VI, Civil Rights Act of 1964
Title VII, Civil Rights Act of 1964, as amended
Genetic Information Nondiscrimination Act of 2008
Pregnant Workers Fairness Act
Title IX of the Civil Rights Act of 1964
Age discrimination in federally assisted programs
[Equal Employment Opportunity](#)
[Free exercise, free speech, and establishment clauses](#)

Description

[Sexual Harassment, January 2023](#)
[Family Care and Medical Leave and Pregnancy Disability Leave, January 2023](#)
[California Law Prohibits Workplace Discrimination and Harassment, January 2024](#)
[The Rights of Employees Who Are Transgender or Gender Nonconforming: Fact Sheet, November 2022](#)
[Harassment Prevention Guide for California Employers, 2017](#)
[Your Rights and Obligations as a Pregnant Employee, January 2023](#)
Burlington Industries, Inc v. Ellerth (1998) 524 U.S. 742
Faragher-Ellerth v. City of Boca Raton (1998) 524 U.S. 775
Groff v. DeJoy (2023) 600 U.S. 447
Kennedy v. Bremerton (2022) 142 S.Ct. 2407
Shephard v. Loyola Marymount (2002) 102 Cal.App. 4th 837
Thomson v. North American Stainless LP (2011) 62 U.S. 170
[Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896](#)
[Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools, May 2023](#)
[Know Your Rights: Workplace Discrimination is Illegal, June 2023](#)

Management Resources References

U.S. Equal Employment Opportunity Comm
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[Enforcement Guidance on Harassment in the Workplace, April 2024](#)

[EEOC Compliance Manual](#)

[U.S. Department of Labor, Office of Federal Contract Compliance Program](#)

[CSBA District and County Office of Education Legal Services](#)

[California Department of Industrial Relations](#)

[California Civil Rights Department](#)

[U.S. Department of Education, Office for Civil Rights](#)

[Equal Employment Opportunity Commission](#)

Cross References

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