

CSBA Sample

Board Policy

Nondiscrimination In Employment

USE CSBA SAMPLE WITH REVISIONS

BP 4030

Personnel

***Note: The following Board policy and accompanying administrative regulation are mandated pursuant to Government Code 11138. The California Fair Employment and Housing Act (FEHA) (Government Code 12900-12996) prohibits employers from discriminating against employees and job applicants on the basis of actual or perceived race, color, ancestry, national origin, age, sex, sexual orientation, gender, gender identity, gender expression, religious creed, physical or mental disability, medical condition, marital status, or genetic information. The same or similar protections are available to employees and job applicants 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), 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). ***

***Note: For policy addressing sexual harassment of and by employees, see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment. ***

The Governing Board is determined to provide district employees and job applicants a safe, positive environment where they are assured of full and equal employment access and opportunities, protection from harassment or intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. The Board prohibits district employees from discriminating against or harassing any other district employee or job applicant on the basis of the person's actual or perceived race, religious creed, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, military and veteran status, gender, gender identity, gender expression, sex, or sexual orientation.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)

***Note: The following paragraph illustrates unlawful discriminatory practices as specified in Government Code 12940. ***

The Board also prohibits discrimination against any employee or job applicant in compensation, terms, conditions, and other privileges of employment and the taking of any adverse employment action, including, but not limited to, termination or the denial of employment, promotion, job assignment, or training, against an employee or job applicant based on any of the categories listed above.

(cf. 4032 - Reasonable Accommodation)
(cf. 4154/4254/4354 - Health and Welfare Benefits)

***Note: Government Code 12940 provides that a district may not discriminate against an employee or job applicant based on the person's religious beliefs, observances, or dress or grooming practices unless it can demonstrate that it has explored available reasonable alternative means of accommodating the person but is unable to reasonably accommodate him/her. In addition, Government Code 12926 clarifies the definitions of "religious creed" and "sex," as stated below. ***

Prohibited discrimination on the basis of religious creed includes discrimination based on an employee's or job applicant's religious belief or observance, including his/her religious dress or grooming practices. In accordance with Government Code 12940, prohibited discrimination on the basis of religious creed also includes the district's failure or refusal to use reasonable means to accommodate an employee's or job applicant's religious belief, observance, or practice which conflicts with an employment requirement. However, the district shall not accommodate an employee's religious dress practice or religious grooming practice if it requires segregation of the individual from other employees or the public or if it would result in a violation of this policy or any law prohibiting discrimination.

Prohibited sex discrimination includes discrimination based on an employee's or job applicant's pregnancy, childbirth, breastfeeding, or any related medical condition.

(cf. 4033 - Lactation Accommodation)

Harassment consists of unwelcome verbal, physical, or visual conduct that is based on any of the prohibited categories of discrimination listed above and that is so severe or pervasive that it adversely affects an individual's employment opportunities, has the purpose or effect of unreasonably interfering with the individual's work performance, or creates an intimidating, hostile, or offensive work environment.

(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

***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, as amended by AB 987 (Ch. 122, Statutes of 2015), provides that an employee or job applicant who requests accommodation for his/her 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 and has modified the policy accordingly. ***

***Note: In *Thompson v. North American Stainless LP*, the U.S. Supreme Court held that a third party may file an anti-retaliation suit. ***

The Board also prohibits retaliation against any district employee or job applicant who opposes

any discriminatory employment practice by the district or its employee, agent, or representative or who complains, testifies, assists, or in any way participates in the district's complaint procedures pursuant to this policy. No employee or job applicant 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)

Comment [DF1]: Revised language for "retaliation" included because of AB 987

The following position is designated as Coordinator for Nondiscrimination in Employment:

Associate Superintendent
375 Reina del Mar Avenue
Pacifica, CA 94044
(650) 738-6600

Any employee or job applicant who believes that he/she has been or is being discriminated against or harassed in violation of district policy should, as appropriate, immediately contact his/her supervisor, the Coordinator, or the Superintendent who shall advise the employee or applicant about the district's procedures for filing, investigating, and resolving any such complaint.

Complaints concerning employment discrimination, harassment, or retaliation shall immediately be investigated in accordance with procedures specified in the accompanying administrative regulation.

***Note: Pursuant to 2 CCR 11019, in certain instances, an employee's (especially a supervisor's) knowledge or notice of harassment 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 an employer may be responsible for the sexual harassment of employees by nonemployees where the employer knows or should have known of the conduct and failed to take immediate and corrective action. See BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment. ***

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

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment shall report the incident to the Superintendent or designated district coordinator as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately. The district shall protect any employee who does report such incidents from retaliation.

***Note: Government Code 12940 requires districts to take all reasonable steps, including training, to prevent prohibited discrimination and harassment. The U.S. Equal Employment Opportunity Commission, in its April 2006 New Compliance Manual Section 15: Race and Color Discrimination, suggests proactive preventive measures for employers, including the adoption of transparent recruitment, hiring, and promotion processes; provision of training to employees; and

periodic review of employment practices. For details of such measures, see the accompanying administrative regulation. ***

The Superintendent or designee shall use all appropriate means to reinforce the district's nondiscrimination policy. He/she shall provide training and information to employees about how to recognize harassment and discrimination, 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.

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

CIVIL CODE

51.7 Freedom from violence or intimidation

GOVERNMENT CODE

11135 Unlawful discrimination

11138 Rules and regulations

12900-12996 Fair Employment and Housing Act

PENAL CODE

422.56 Definitions, hate crimes

CODE OF REGULATIONS, TITLE 2

11019 Terms, conditions and privileges of employment

CODE OF REGULATIONS, TITLE 5

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

621-634 Age Discrimination in Employment Act

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act of 1964, as amended

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

2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008

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

6101-6107 Age discrimination in federally assisted programs

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
100.6 Compliance information
104.7 Designation of responsible employee for Section 504
104.8 Notice
106.8 Designation of responsible employee and adoption of grievance procedures
106.9 Dissemination of policy
110.1-110.39 Nondiscrimination on the basis of age

COURT DECISIONS

Thompson v. North American Stainless LP, (2011) 131 S.Ct. 863
Shephard v. Loyola Marymount, (2002) 102 Cal.App.4th 837

Management Resources:

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PUBLICATIONS

California Law Prohibits Workplace Discrimination and Harassment, December 2014

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Notice of Non-Discrimination, August 2010

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Questions and Answers: Religious Discrimination in the Workplace, 2008

New Compliance Manual Section 15: Race and Color Discrimination, April 2006

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors,
June 1999

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

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

U.S. Equal Employment Opportunity Commission: <http://www.eeoc.gov>

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