

**FRESNO COUNTY SUPERINTENDENT OF SCHOOLS
FRESNO COUNTY BOARD OF EDUCATION****Students
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 County Superintendent-operated school or program, 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 County Superintendent and County Board in enacting policies and procedures that govern County Superintendent and County Board schools and programs.

The County Superintendent and County Board desire to provide a welcoming, safe, and supportive school environment that allows all students equal access to and opportunities in the County Superintendent's academic, extracurricular, and other educational support programs, services, and activities. Unlawful discrimination against any student by anyone in any County Superintendent-operated school, program, or activity is prohibited, including discriminatory harassment, intimidation, and bullying based on the student's actual or perceived race; color; ancestry; nationality; national origin; immigration status; ethnic group identification; ethnicity; age; religion; pregnancy, childbirth, termination of pregnancy or lactation, including related medical conditions or recovery; parental, marital, and family status; physical or mental disability; medical condition; sex; sex stereotypes; sex characteristics; 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 could 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 law and applicable policy and regulation.

The County Superintendent and County Board also prohibit 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, participates, or refuses to participate 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.

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The County Superintendent or designee shall facilitate students' access to the educational program by publicizing the nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. In addition, the County Superintendent or designee shall post the policies prohibiting discrimination, harassment, intimidation, and bullying and other required information on applicable websites 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; 34 CFR 106.8)

The County Superintendent or designee may 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 County Superintendent or designee may regularly review the implementation of the nondiscrimination policies and practices and, as necessary, take action to remove any identified barrier to student access to or participation in the educational program. The County Superintendent or designee may 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, County Superintendent and County 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.

When a student has been suspended, or other means of correction have been implemented against the student for an incident of racist bullying, harassment, or intimidation, the principal or designee may engage both the victim and perpetrator in a restorative justice practice suitable to the needs of the students. The principal or designee may also require the perpetrator to engage in a culturally sensitive program that promotes racial justice and equity and combats racism and ignorance and shall regularly check on the victim to ensure that the victim is not in danger of suffering from any long-lasting mental health issues. (Education Code 48900.5)

When appropriate based on the severity or pervasiveness of the bullying, the County Superintendent or designee may notify the parents/guardians of victims and perpetrators and may contact law enforcement.

Allegations of unlawful discrimination in County Superintendent and County Board programs and activities shall be brought, investigated, and resolved in accordance with County Superintendent/County Board Policy 1312.3 and County Superintendent Administrative Regulation 1312.3 - Uniform Complaint Procedures, when required by law. However, complaints

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alleging sex discrimination, including sex-based harassment, 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 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Record-Keeping

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

Adopted: 03/21/2013

Amended: 10/15/2020, 04/20/2023, 12/12/2023, 08/15/2024

Legal ReferencesEducation Code

200-262.4 Prohibition of discrimination
17585 School modernization project; all-gender restroom
33353 California Interscholastic Federation; standardized incident form
35292.5 School restrooms; all-gender restrooms
48900.3 Suspension or expulsion for act of hate violence
48900.4 Suspension or expulsion for threats or harassment
48900.5 Suspension; other means of correction
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
51204.5 Social sciences instruction; contributions of specified groups
51500 Prohibited instruction or activity
51501 Prohibited means of instruction
60010 Instructional materials; definition
60040-60052 Requirements for 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

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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 Section 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 opportunity for individuals with disabilities

Code of Federal Regulations, Title 28

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

106.1-106.82 Discrimination on the basis of sex; effectuating Title IX

106.30 Discrimination on the basis of sex; definitions

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

California Department of Education Publications

California Longitudinal Pupil Achievement Data System (CALPADS) Update FLASH #158:
Guidance for Changing a Student's Gender in CALPADS, July 2019

CSBA Publications

Reference: State Roles, Responsibilities, and Process for Instructional Materials Adoption,
February 2024

Fact Sheet: Instructional Materials Adoption: Local governing board responsibilities, February
2024

Instructional Materials Adoptions: State and local governing board processes, roles, and
responsibilities, February 2024

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Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools, October 2022

California Office of the Attorney General Publications

Guidance to School Officials re: Legal Requirements for Providing Inclusive Curricula and Books, January 2024

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

Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics, May 2024

Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools, May 2023

Dear Colleague Letter: Discrimination, Including Harassment, Based on Shared Ancestry or Ethnic Characteristics, November 2023

Dear Colleague Letter: Resource on Confronting Racial Discrimination in Student Discipline, May 2023

Dear Colleague Letter: Addressing Discrimination Against Jewish Students, May 2023

U.S. Department of Education Toolkit: Creating Inclusive and Nondiscriminatory School Environments for LGBTQI+ Students, June 2023

Dear Colleague Letter: Race and School Programming, August 2023

Questions and Answers on the Title IX Regulations on Sexual Harassment, June 2022

Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973

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

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 2013

Websites

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

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California Department of Education: <http://www.cde.ca.gov>
California Office of the Attorney General: <http://oag.ca.gov>
California Safe Schools Coalition: <http://www.casafeschools.org>
First Amendment Center: <http://www.firstamendmentcenter.org>
U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

5145.3, 7/2024; Doc# 123016-4