

Book BCSD Board Policies
Section 0500 Personnel
Title NONDISCRIMINATION IN EMPLOYMENT
Code 0500.49
Status Active
Adopted September 9, 2003
Last Revised June 15, 2021

The Governing Board desires to provide a safe, positive work environment where all District employees are assured of full and equal 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.

(cf. BP 500.01 – Personnel Recruitment, Selection and Employment)
(cf. BP 604.11 – Volunteer Assistance)
(cf. BP 700.11 – Contracts)

The Board prohibits unlawful discrimination against and/or harassment of District employees 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 characteristics of age, ethnicity or race, which is inclusive of traits historically associated with race, including but not limited to, hair texture and protective hairstyles, such as braids, locks, and twists, color, ancestry, nationality, national origin, immigration status, ethnic group identifications, religion, pregnancy, marital status, parental status, physical disability, mental disability, sex (including sexual harassment), sexual orientation, gender, gender identity, gender expression, medical information, genetic information, homelessness, foster status, military veteran status, political affiliation, or any other characteristic identified in Education Code 200 or 220, Penal Code 422.55, Government Code 11135, and Title IX, or based on association with a person or group with one or more of these actual or perceived characteristics. Equal employment opportunity shall be provided to all employees and applicants. Employees and applicants with disabilities should notify their supervisor and/or Human Resources Department if they have a disability that requires reasonable accommodation.

(cf. BP 300.63 – Nondiscrimination in District Programs and Activities)
(cf. BP 500.13 – Lactation Accommodation)
(cf. BP 500.38 – Sexual Harassment)

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 it is necessary to comply with federal immigration law (Title 2, California Code of Regulations Section 11028).

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. Discrimination in hiring, compensation, terms, conditions, and other privileges of employment

(cf. BP 500.09 – Salary Schedules)
(cf. BP 500.20 – Health Benefits)

2. Taking of an adverse employment action, such as termination or the denial of employment, promotion, job assignment, or training
3. Unwelcome conduct, whether verbal, physical, or visual, that is 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 individual's work performance or creating an intimidating, hostile, or offensive work environment
4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code Section 12940 or Title 2, California Code of Regulations Sections 11006-11086, such as:

- a. Sex discrimination based on an employee's pregnancy, childbirth, breastfeeding, or any related medical condition or on an employee's gender, gender expression, or gender identity, including transgender status

(cf. BP 500.13 – Lactation Accommodation)

(cf. BP 500.38 – Sexual 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. Requirement for a medical or psychological examination of a job applicant, or 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

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, testifies, assists, or in any way participates in the District's complaint procedures instituted 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 Section 12940; Title 2, California Code of Regulations Section 11028).

No employee shall, in exchange for a raise or bonus or as a condition of employment or continued employment, be required to sign any document that releases the employee's right to file a claim against the District or to disclose information about harassment or other unlawful employment practices (Government Code Section 12964.5).

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

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 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 reports such incidents from retaliation.

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 related 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 or participates in unlawful discrimination, harassment, or retaliation, or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in such behavior, is in violation of this policy and is subject to disciplinary action, up to and including dismissal.

Legal Reference:

CIVIL CODE

51.7 Freedom from violence or intimidation

EDUCATION CODE

200-262.4 Prohibition of discrimination

GOVERNMENT CODE

11135 Unlawful discrimination
11138 Rules and regulations
12900-12996 Fair Employment and Housing Act
12940-12952 Unlawful employment practices
12960-12976 Unlawful employment practices; complaints

PENAL CODE

422.56 Definitions, hate crimes

CODE OF REGULATIONS, TITLE 2

11006-11086 Discrimination in employment, especially:
11013 Recordkeeping
11019 Terms, conditions and privileges of employment
11023 Harassment and discrimination prevention and correction
11024 Sexual harassment training and education
11027-11028 National origin and ancestry discrimination

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
2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended
2000h-2-2000h-6 Title IX, 1972 Education Act Amendments
12101-12213 Americans With Disabilities Act
6101-6107 Age discrimination in federally assisted programs

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 American with Disabilities Act
36.101-36.608 Nondiscrimination on the basis of disability by public facilities

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

Management Resources

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999
Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002
Questions and Answers: Religious Discrimination in the Workplace, 2008

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

Notice of Non-Discrimination, August 2010

WEBSITES

EEOC <http://www.eeoc.gov>

OCR <http://www.ed.gov/offices/OCR>
DFEH <http://www.dfeh.ca.gov>

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Administrative Regulation

The district designates the position identified below as its coordinator for nondiscrimination in employment (coordinator) to organize and manage the district's efforts to comply with state and federal nondiscrimination laws and to answer inquiries regarding the district's nondiscrimination policies. The coordinator may be contacted at:

Erin Johnston
Director I, Human Resources
1300 Baker Street
Bakersfield, Ca 93305
661-631-4663
johnstone@bcسد.com

Unlawful discrimination or harassment based on a person's race, sex, or other attribute listed in the District's nondiscrimination policy includes, but is not limited to, the following:

1. Slurs, epithets, threats or verbal abuse.
2. Derogatory or degrading comments, descriptions, drawings, pictures, or gestures.
3. Unwelcome jokes, stories, teasing, or taunting.
4. Any other verbal, written, visual, or physical conduct against the individual which:
 - a. Adversely affects employment opportunities, or
 - b. Has the purpose or effect of unreasonably interfering with work performance, or
 - c. Creates an intimidating, hostile, or offensive work environment.

Harassment may arise not only as a result of the offender's intention, but also as a result of the offended person's perception of the offensive conduct and the way in which it affects them.

Any employee or job applicant who feels that they have been or are being unlawfully discriminated against or harassed in violation of District policy should immediately contact their supervisor, the nondiscrimination coordinator, or the Superintendent who shall advise the employee or applicant about the District's procedures for filing, investigating, and resolving any such complaint. Such complaints shall be filed in accordance with AR 300.13 - Complaints Against District Employees. An employee may bypass their supervisor when the supervisor is the alleged offender.

Any supervisor who receives a discrimination/harassment complaint shall immediately notify the nondiscrimination coordinator or the Superintendent, who shall ensure that the complaint is appropriately investigated in accordance with District policy and regulations.

(cf. BP 300.13 – Complaints Against District Employees)
(cf. BP 500.38 – Sexual Harassment)
(cf. BP 500.49 – Uniform Complaint Procedures)

Any District employee who observes or has knowledge of an incident of unlawful discrimination or harassment shall report the incident to their supervisor, the nondiscrimination coordinator, or the Superintendent as soon as practical after the incident under the applicable complaint procedure. Failure of a District employee to report discrimination or harassment may result in disciplinary action.

Measures to Prevent Discrimination

To prevent unlawful discrimination, harassment, and retaliation in District employment, the Superintendent or designee shall implement the following measures:

1. Display in a prominent and accessible location at every work site where the District has employees, and post electronically in a conspicuous location on computers for employee use, up-to-date California Department of Fair Employment and Housing (DFEH) posters on the prohibition of workplace discrimination and harassment, and the rights and obligations of employees who are pregnant, have a related medical condition, or are recovering from childbirth (Government Code Section 12950; Title 2, California Code of Regulations Sections 11013, 11023 & 11049).

(cf. BP 500.05 – Leaves of Absence – Certificated and Classified Service Employees)

(cf. BP 500.12 – Lactation Accommodation)

(cf. BP 500.38 – Sexual Harassment)

2. Publicize the district's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, by: (Title 5, California Code of Regulations Section 4960; Title 34, Code of Federal Regulations Sections 100.6 & 106.9)
 - a. Including them in each announcement, bulletin, or application form that is used in employee recruitment.
 - b. Posting them in all District schools and offices, including staff lounges and other prominent locations.
 - c. Posting them on the District's web site and providing easy access to them through district-supported social media, when available.

(cf. BP 300.68 – Social Media)

(cf. BP 500.50 – District and School Web Sites)

3. Disseminate the District's nondiscrimination policy and administrative regulation to all employees by one or more of the following methods: (Title 2, California Code of Regulations Section 11023)
 - a. Printing and providing a copy to all employees, with an acknowledgment form for each employee to sign and return;
 - b. Sending a copy via email with an acknowledgment return form;
 - c. Posting a copy on the District intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies;
 - d. Discussing the policy and regulation with employees upon hire and/or during a new hire orientation session;
 - e. Any other way that ensures employees receive and understand the policy.
4. Provide to employees a handbook which contains information that clearly describes the District's nondiscrimination policy, procedures for filing a complaint, and resources available to employees who believe they have been the victim of any discriminatory or harassing behavior.
5. Provide training regarding the District's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made

The District may also provide bystander intervention training to employees which includes information and practical guidance on how to recognize potentially problematic behaviors and which may motivate them to take action when they observe such behaviors. The training and education may include exercises to provide employees with the skills and confidence to intervene as appropriate and to provide them with resources they can call upon that support their intervention (Government Code Section 12950.2).

6. Periodically review the District's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure district compliance with law
7. For any District facility where ten (10) percent of employees have a language other than English as their spoken language, translate the policy into every language spoken by at least ten (10) percent of the workforce (Title 2, California Code of Regulations Section 11023).

Complaint Procedure

Complaints of sexual harassment shall be investigated and resolved in accordance with AR 500.57 - Title IX Sexual Harassment Complaint Procedures if the alleged conduct meets the definition of sexual harassment pursuant to Title 34, Code of Federal Regulations Section 106.30. Any other complaint alleging discrimination or harassment shall be addressed in accordance with the following procedures:

1. Notice and Receipt of Complaint: A complainant who is an employee shall inform their immediate supervisor, Superintendent's designee, or any other administrator. However, if the supervisor is the person against whom the employee is complaining, the employee shall inform the coordinator or the Superintendent. A job applicant shall inform the coordinator or the Superintendent's designee.

The complainant may first attempt to resolve the situation informally with their supervisor. While complainants are encouraged to put their complaints in writing in accordance with this procedure, all claims shall be investigated, regardless of whether they are in writing.

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the coordinator, whether or not the complainant files a written complaint.

The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, other evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

(cf. BP 0300.63 - Nondiscrimination in District Programs and Activities)

2. Investigation Process: The coordinator shall initiate an impartial investigation of an allegation of discrimination or harassment within five business days of receiving notice of the behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The coordinator shall meet with the complainant to describe the District's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The coordinator shall inform the complainant that the allegations will be kept confidential to the extent possible, but that some information may be revealed as necessary to conduct an effective investigation.

(cf. BP 0300.12 - Access to District Records)

(cf. BP 0500.30 - Personnel Files)

(cf. BP 0300.49 - Unauthorized Release of Confidential/Privileged Information)

If the coordinator determines that a detailed fact-finding investigation is necessary, the coordinator shall begin the investigation immediately. As part of this investigation, the coordinator should interview the complainant, the person accused, and other persons who could be expected to have relevant information.

When necessary to carry out an investigation or to protect employee safety, the coordinator may discuss the complaint with the Superintendent or designee, district legal counsel, or the district's risk manager.

The coordinator also shall determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed to ensure that further incidents do not occur. The coordinator shall ensure that such interim measures do not constitute retaliation.

3. **Written Report on Findings and Corrective Action:** The coordinator shall attempt to conclude the investigation and prepare a written report of their findings within sixty (60) days after receiving the complaint. This timeline may be extended for good cause. If an extension is needed, the coordinator shall notify the complainant and explain the reasons for the extension.

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the report shall also include any corrective action(s) that have been or will be taken to address the behavior, provide appropriate options for remedial actions and resolutions for the complainant, and ensure that retaliation or further discrimination or harassment does not occur.

The report shall be presented to the complainant, the person accused, and the Superintendent or designee.

4. **Appeal to the Board of Education:** The complainant or the person accused may appeal any findings to the Board within ten (10) business days of receiving the written report of the coordinator's findings. The Superintendent or designee shall provide the Board with all information presented during the investigation. Upon receiving an appeal, the Board shall schedule a hearing as soon as practicable. Any complaint against a District employee shall be addressed in closed session in accordance with law. The Board shall render its decision within ten (10) business days.

(cf. BP 0300.13 - Complaints Concerning District Employees)
(cf. BP 0100.52 - Closed Session Purposes and Agendas)

Other Remedies

In addition to filing a discrimination or harassment complaint with the district, a person may file a complaint with either the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

1. To file a valid complaint with DFEH, within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code Section 12960.
2. To file a valid complaint directly with EEOC, within one hundred eighty (180) days of the alleged discriminatory act(s) (Title 42, United States Code Section 2000e-5).
3. To file a valid complaint with EEOC after first filing a complaint with DFEH, within three hundred (300) days of the alleged discriminatory act(s) or within thirty (30) days after the termination of proceedings by DFEH, whichever is earlier (Title 42, United States Code Section 2000e-5)

The Superintendent or designee shall ensure periodic training is provided to all employees regarding the issues of discrimination.

Reasonable Accommodations

Definitions

"Disability," with respect to an individual, is defined as any of the following: (Government Code Section 12926; Title 29, Code of Federal Regulations Section 1630.2)

1. A physical or mental impairment that limits one or more of the major life activities
2. A record of such impairment
3. Being regarded as having such an impairment

Limits shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (Government Code Section 12926)

“Essential functions” are the fundamental job duties of the position the individual with a disability holds or desires. The term does not include the marginal functions of the position. (Title 29, Code of Federal Regulations Section 1630.2)

Reasonable accommodations that an employer may need to provide in connection with modifications to the work environment or adjustments in how and when a job is performed that enable an individual with a disability to enjoy equal employment opportunities include, but are not limited to:

1. Making existing facilities accessible and usable
2. Restructuring the job duties
3. Offering part-time or modified work schedules
4. Acquisition or modification of equipment or devices
5. Changing tests, training materials or policies
6. Providing qualified readers or interpreters
7. Reassigning the employee to a vacant position

“Qualified individual with a disability” means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position and who, with or without reasonable accommodation, can perform the essential functions of such position. (Title 29, Code of Federal Regulations Section 1630.2)

“Undue hardship” is a determination based on an individualized assessment of current circumstances that shows that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors. (Title 29, Code of Federal Regulations, part 1630.2)

Requests for Reasonable Accommodation

The District designates the position of Coordinator for Nondiscrimination in Employment specified herein to coordinate its efforts to comply with the Americans with Disabilities Act (ADA) and to investigate complaints.

(cf. BP 300.63 – Nondiscrimination in District Programs and Activities)

When requesting reasonable accommodation, the employee or employee's representative shall inform the employee's supervisor that the employee needs a change at work for a reason related to a medical condition.

When requesting reasonable accommodation during the hiring process, a job applicant shall inform the District's coordinator for nondiscrimination in employment (the coordinator) that the job applicant will need a reasonable accommodation for the process.

Employees' requests for reasonable accommodation may first be considered informally by the site administrator. The site administrator shall consult with the coordinator before any decision as to accommodation is made.

When the disability and/or the need for accommodation is not obvious, the coordinator may ask the employee to supply reasonable documentation about the employee's disability. In requesting this documentation, the coordinator shall specify the types of information that are being sought about the employee's condition, the employee's functional limitations and the need for reasonable accommodation. The employee may be asked to sign a limited release allowing the District to submit a list of specific questions to the health care or vocational professional.

If the documentation submitted by the employee does not specify the existence of a qualifying disability and explain the need for reasonable accommodation, the District may require the employee to submit to an examination by a health care professional selected and paid for by the District.

Upon receiving a request to reasonably accommodate a qualified employee with a disability, the coordinator shall:

1. Determine the essential functions of the job.
2. Engage in an informal, interactive process with the employee to review the request for accommodation, identify the precise limitations resulting from the disability, identify potential means for providing accommodation, and assess their effectiveness; develop a plan for reasonable accommodation without imposing undue hardship on the District.

To qualify for a job, an individual shall not pose a significant risk of substantial harm to themselves or others in the workplace which cannot be eliminated or reduced by reasonable accommodation.

The determination of whether an individual poses a significant risk of substantial harm to themselves or others in the workplace which cannot be eliminated or reduced by reasonable accommodation.

The determination of whether an individual poses a significant risk of substantial harm to themselves or others shall be made on a case by case basis and shall be based on objective, factual evidence, taking into consideration the duration of the risks, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of potential harm (Title 29, Code of Federal Regulations Section 1630.2).

The coordinator may confer with the site administrator, the District medical advisor and/or other District staff before making a final decision as to the accommodation.

The coordinator shall notify the employee or applicant of the results of the determination.

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