

## NONDISCRIMINATION IN EMPLOYMENT

The Governing Board is determined to provide a safe, positive work environment where employees, interns, volunteers, and job applicants are free from harassment and 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. This policy shall apply to all district employees and, to the extent required by law, to interns, volunteers, and job applicants.

No district employee shall be discriminated against or harassed by their coworkers, supervisors or anyone else the employee comes into contact with during the course of their employment on the basis of the person's actual or perceived race, religious creed, color, national origin, immigration status, 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, or their association with a person or group with one or more of these actual or perceived characteristics.

(cf. 0410 - Nondiscrimination in District Programs and Activities)

Unlawful discrimination in employment may include the following, if the conduct or action is based on one or more of the protected classes, listed above:

1. Decisions in hiring, compensation, terms, conditions, and/or other privileges of employment.

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

2. The taking of any adverse employment action, including, but not limited to, termination or the denial of employment, promotion, job assignment, or training.
3. Unwelcome conduct to an individual, whether verbal, written, physical, or visual, that is so severe or pervasive, and adversely affects an individual's employment opportunities, or has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment. Such conduct may include:
  - a. Slurs, epithets, threats or verbal abuse;
  - b. Derogatory or degrading comments, descriptions, drawings, pictures or gestures; and
  - c. Unwelcome jokes, stories, teasing or taunting.

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

4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code 12940 and/or 2 CCR 11006 to 11086, including, but not limited to the following:

**NONDISCRIMINATION IN EMPLOYMENT (continued)**

- a. Religious creed discrimination based on an employee's or job applicant's religious belief or observance, including religious dress or grooming practices. In accordance with Government Code section 12940, prohibited discrimination on the basis of religious creed also includes the 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, an accommodation of a religious dress practice or religious grooming practice may not be reasonable if it requires segregation of the individual from other employees or the public.
- b. Sex discrimination includes discrimination based on an employee's or job applicant's pregnancy, childbirth, breastfeeding, or any related medical condition or an employee's gender, gender expression, or gender identity, including transgender status.

(cf. 4033 - Lactation Accommodation)

- c. Disability discrimination based on the district's 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.

(cf. 4032 – Reasonable Accommodation)

(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)

- d. Disability discrimination based on the district's failure to make a 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, to determine effective reasonable accommodations for the employee, when he/she has requested reasonable accommodation for a known physical or mental disability or medical condition.

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.

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.

**NONDISCRIMINATION IN EMPLOYMENT** (continued)

**Notice and Measures to Prevent Unlawful Discrimination, Harassment and Related Retaliation**

The Superintendent or designee shall use all appropriate means to prevent unlawful discrimination, harassment and related retaliation, including, but not limited to the following:

1. Disseminate the district's Nondiscrimination in Employment policy (cf. 4030) to all employees one or more of the following methods: (2 CCR 11023)
  - a. Printing and providing a copy of the policy to all employees, with an acknowledgement for each employee to sign and return;
  - b. Sending a copy of the policy via email with an acknowledgement return form;
  - c. Posting a copy of the policy on the district's intranet with a tracking system to ensure all employees have read and acknowledged receipt;
  - d. Discussing the policy with employees upon hire and/or during new hire orientation; or
  - e. Any other way that ensure employees receive and understand the policy.
2. Publicize, within the district and in the community, the district's Nondiscrimination in Employment Board policy and administrative regulation(cf 4030) by doing the following:
  - 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, student government meeting rooms, and other prominent locations
  - c. Posting them on the district's website and providing easy access to them on district-supported social media, when available.
3. Provide employees a handbook that contains information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to anyone who feels that he/she has been the victim of any discriminatory, harassing or retaliatory behavior.
4. Provide training to employees, volunteers, and interns regarding the district's Nondiscrimination in Employment Policy (cf 4030), including what constitutes unlawful discrimination, harassment and retaliation and how and to whom a report of an incident should be made. Training for supervisors and management employees shall include, as

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topic in the sexual harassment prevention training required pursuant to CCR 11024, the requirement to report any complaint of misconduct to a designated representative such as the Legal Compliance Specialist or the Superintendent. (2 CCR 11023)

5. 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 the law.
6. For any district facility where 10 percent or more of the employees speak a language other than English, translate the policy into every language spoken by at least ten percent of the workforce.
7. Display in a prominent and accessible location at every work site where the district has employees and post electronically on computers in a conspicuous location, the California Department of Fair Employment and Housing (DFEH) posters in regard to workplace discrimination and harassment and the rights of transgender employees. (Government Code 12950)

**Legal References:**

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

11006-11086 Discrimination in employment

11013 Recordkeeping

11019 Terms, conditions and privileges of employment

11023 Harassment and discrimination prevention and correction

11024 Sexual harassment training and education

**NONDISCRIMINATION IN EMPLOYMENT** (continued)

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

Shepard 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

**NONDISCRIMINATION IN EMPLOYMENT (continued)**

**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>

**Policy**

Adopted: May 16, 1994

Revised: April 6, 1998

Revised: July 1, 2002

Revised: October 16, 2012

Revised: March 17, 2015

November 15, 2016

September 3, 2019

**ELK GROVE UNIFIED SCHOOL DISTRICT**

**Elk Grove, California**