

**NONDISCRIMINATION/HARASSMENT**

The Governing Board desires to provide a safe school environment that allows all students equal access and opportunities in the district's academic, extracurricular, and other educational support programs, services, and activities. The Board prohibits, at any district school or school activity, unlawful discrimination, including discriminatory harassment, intimidation, and bullying, targeted at any student by anyone, ~~of any student~~ based on the student's actual or perceived race, color, ancestry, national origin, nationality, ethnicity, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, or gender expression or association with a person or group with one or more of these actual or perceived characteristics.

This policy shall apply to all acts related to school activity or to school attendance occurring within a district school, and 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. ~~(Education Code 234.1)~~

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

*(cf. 5131 - Conduct)*

*(cf. 5131.2 - Bullying)*

*(cf. 5137 - Positive School Climate)*

*(cf. 5145.9 - Hate-Motivated Behavior)*

*(cf. 5146 - Married/Pregnant/Parenting Students)*

*(cf. 6164.6 - Identification and Education Under Section 504)*

Unlawful discrimination, including discriminatory harassment, intimidation, or bullying, may result from ~~includes~~ physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also includes ~~shall include~~ the creation of a hostile environment ~~when the~~ through 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.

The Board also prohibits 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 or participates in the investigation of a complaint or report alleging unlawful discrimination, ~~files or otherwise participates in the filing or investigation of a complaint or report regarding an incident of discrimination~~. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

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The Superintendent or designee shall facilitate students' access to the educational program by publicizing the district's nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. He/she shall provide training and 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 Superintendent or designee shall regularly review the implementation of the district's nondiscrimination policies and practices and, as necessary, shall take action to remove any identified barrier to student access to or participation in the educational program. He/she shall report his/her findings and recommendations to the Board after each review.

*(cf. 1312.3 - Uniform Complaint Procedures)*

*(cf. 1330 - Use of Facilities)*

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

*(cf. 6145 - Extracurricular and Cocurricular Activities)*

*(cf. 6145.2 - Athletic Competition)*

*(cf. 6164.2 - Guidance/Counseling Services)*

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, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline, which may include suspension or expulsion for behavior that 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.

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

*(cf. 4119.21/4219.21/4319.21 - Professional Standards)*

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

*(cf. 5144 - Discipline)*

*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*

*(cf. 5145.2 - Freedom of Speech/Expression)*

### **Record-Keeping**

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

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*(cf. 3580 - District Records)*

### *Legal Reference:*

#### EDUCATION CODE

200-262.4 Prohibition of discrimination  
48900.3 Suspension or expulsion for act of hate violence  
48900.4 Suspension or expulsion for threats or harassment  
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  
51500 Prohibited instruction or activity  
51501 Prohibited means of instruction  
60044 Prohibited instructional materials

#### CIVIL CODE

1714.1 Liability of parents/guardians for willful misconduct of minor

#### PENAL CODE

422.55 Definition of hate crime  
422.6 Crimes, harassment

#### CODE OF REGULATIONS, TITLE 5

432 Student record  
4600-4687 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  
12101-12213 Title II equal opportunity for individuals with disabilities

#### 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

#### 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  
106.8 Designation of responsible employee for Title IX  
106.9 Notification of nondiscrimination on basis of sex

#### 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

*(Legal References continued on next page)*

## NONDISCRIMINATION/HARASSMENT

### *Management Resources:*

#### CSBA PUBLICATIONS

*Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students*, Policy Brief, February 2014

*Final Guidance Regarding Transgender Students, Privacy, and Facilities*, March 2014

*Safe Schools: Strategies for Governing Boards to Ensure Student Success*, 2011

#### FIRST AMENDMENT CENTER PUBLICATIONS

*Public Schools and Sexual Orientation: A First Amendment Framework for Finding Common Ground*, 2006

#### NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

*Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity*, 2004

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

*Dear Colleague Letter: Transgender Students*, May 2016

*Examples of Policies and Emerging Practices for Supporting Transgender Students*, May 2016

*Dear Colleague Letter: Title IX Coordinators*, April 2015

*Dear Colleague Letter: Harassment and Bullying*, October 2010

*Notice of Non-Discrimination*, January 1999

#### WEB SITES

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

California Department of Education: <http://www.cde.ca.gov>

California Safe Schools Coalition: <http://www.casafeschools.org>

First Amendment Center: <http://www.firstamendmentcenter.org>

National School Boards Association: <http://www.nsba.org>

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

### Policy

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revised:

**SAN RAFAEL CITY SCHOOL DISTRICT**

San Rafael, California