

## 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 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 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. (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, includes physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also shall include the creation of a hostile environment when the 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 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.

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)

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)

#### 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

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

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: 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>

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

~~Prohibited discrimination, harassment, intimidation, or bullying includes physical, verbal, nonverbal, or written conduct based on one of the categories listed above that is so severe 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.~~

~~The Board also prohibits any form of retaliation against any student who files a complaint or report regarding an incident of discrimination, harassment, intimidation, or bullying.~~

~~The Superintendent or designee shall provide age-appropriate training and information to students, parents/guardians, and employees regarding discrimination, harassment, intimidation, and bullying, including, but not limited to, the district's nondiscrimination policy, what constitutes prohibited behavior, how to report incidents, and to whom such reports should be made.~~

~~In providing instruction, guidance, supervision, or other services to district students, employees and volunteers shall carefully guard against segregating or stereotyping students.~~

~~The principal or designee shall develop a plan to provide students with appropriate accommodations when necessary for their protection from threatened or potentially harassing or discriminatory behavior.~~

~~The Board of Education shall ensure equal opportunities for all students in admission and access to the educational program, guidance and counseling programs, athletic programs, testing procedures, and other activities. School staff and volunteers shall carefully guard against segregation, bias and stereotyping in instruction, guidance and supervision. The district may provide male and female students with separate shower rooms and sexual health and HIV/AIDS prevention classes in order to protect student modesty.~~

~~The Board prohibits discrimination, intimidation, harassment, bullying, and threats of any student by any employee, student or other person in the district. Staff shall be alert and immediately responsive to student conduct which may interfere with another student's ability to participate in or benefit from school services, activities or privileges.~~

BP 5145.3(b)

~~Students who engage in discrimination, harassment, intimidation, bullying or retaliation in violation of law, Board policy or administrative regulation shall be provided counseling and shall be subject to appropriate discipline, up to and including suspension and/or expulsion. Any employee who permits or engages in prohibited discrimination, harassment intimidation, bullying or retaliation shall be subject to disciplinary action, up to and including dismissal.~~

### **Grievance Procedures**

~~The Board hereby designates the following positions as Coordinators for Nondiscrimination to handle complaints regarding discrimination, intimidation, or bullying and to answer to inquiries regarding the district's nondiscrimination policies:~~

~~Executive Director of Human Resources  
310 Nova Albion Way  
San Rafael, CA. 94903  
(415) 492-3531~~

~~Executive Director of Student Services  
San Rafael City Schools  
310 Nova Albion Way  
San Rafael, CA 94903  
(415) 492-3220~~

~~Any student who feels that he/she has been subjected to discrimination, harassment, or bullying should immediately contact the Coordinator for Nondiscrimination, the principal or any other staff member. Any student who observes an incident of harassment should report the harassment to a school employee, whether or not the victim files a complaint. If the nondiscrimination coordinator, principal or designee does not promptly remedy the situation involving harassment, bullying or threats, a complaint may be filed with the Superintendent or designee who shall determine which complaint procedure is appropriate.~~

~~Any school employee who observes an incident of discrimination, harassment, intimidation, or bullying or to whom such an incident is reported shall report the incident to the Coordinator or principal, whether or not the victim files a complaint.~~

~~In addition, the employee shall immediately intervene when safe to do so. (Education Code 234.1)~~

BP 5145.3(c)

### **NONDISCRIMINATION/HARASSMENT (continued)**

~~Upon receiving a complaint of discrimination or harassment, the Coordinator shall~~

~~immediately investigate the complaint in accordance with the district's complaint procedures specified in AR 1312.3—Uniform Complaint Procedures. Where the Coordinator finds that harassment has occurred, he/she shall take prompt, appropriate action to end the harassment and address its effects on the victim.~~

~~The Coordinator shall also advise the victim of any other remedies that may be available. The Coordinator shall file a report with the Superintendent or designee and refer the matter to law enforcement where required.~~

~~The Superintendent or designee shall ensure that the student handbook clearly describes the district's nondiscrimination policy, procedures for filing a complaint regarding discrimination, harassment, intimidation, or bullying, and the resources that are available to students who feel that they have been the victim of any such behavior. The district's policy shall also be posted on the district web site or any other location that is easily accessible to students.~~

~~When required pursuant to Education Code 48985, complaint forms shall be translated into the student's primary language.~~

*Legal Reference:*

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~~48900.3 Suspension or expulsion for act of hate violence~~

~~48900.4 Suspension or expulsion for threats or harassment~~

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UNITED STATES CODE, TITLE 42

~~2000d-2000e-17 Title VI & VII Civil Rights Act of 1964 as amended~~

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

CODE OF FEDERAL REGULATIONS, TITLE 34

~~100.3 Prohibition of discrimination on basis of race, color or national origin~~

BP 5145.3(d)

**NONDISCRIMINATION/HARASSMENT (continued)**

*Legal Reference (continued):*

*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*

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*Flores v. Morgan Hill Unified School District, (2003) 324 F.3d 1130*

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*Notices of Non-Discrimination, January 1999*

**WEB SITES**

*CSBA: <http://www.esba.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 of Civil Rights: <http://www.ed.gov/offices/list/ocr>*

Policy

adopted: December 8, 2008

revised: July 22, 2013

**SAN RAFAEL CITY SCHOOL DISTRICT**

San Rafael, California