

MODESTO CITY SCHOOLS Administrative Regulation

AR 4030

ALL PERSONNEL

Nondiscrimination in Employment

→ All allegations of discrimination in employment, including those involving an employee, **job applicant**, intern, volunteer, or ~~other job applicant~~, or person contracted to provide services to the District shall be investigated and resolved in accordance with procedures specified in this administrative regulation.

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

(cf. 1240 – Volunteer Assistance) (N/A)

(cf. 3312 – Contracts)

(cf. 3600 – Consultants)

(cf. 4032 – Reasonable Accommodation)

Coordinator for Complaints of Discrimination in Employment

- The Board of Education designates the **position identified below** following person as
 → **its coordinator** ~~Coordinator for nondiscrimination c~~Complaints of ~~d~~Discrimination in
 → **employment (e**~~ordinator)~~ **Employment and** to coordinate receipt and processing of
 → complaints under this policy and procedure, including alleged violations of Title IX
 → and Section 504: **as well as 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.**

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Discriminatory Harassment

Prohibited discriminatory harassment includes, but is not limited to, unwelcome acts of physical, verbal or visual harassment based on an employee's or applicant's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age over 40, sexual orientation, or sex, by someone in or from the District.

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Examples of Discriminatory Harassment

Examples of prohibited harassment include, but are not limited to the following:

1. **Verbal Harassment**: Unwelcome jokes, stories, epithets, threats, verbal abuse, degrading comments or descriptions, derogatory comments or slurs when based upon a person’s race, religious creed, color, national origin, ancestry, physical disability, mental disability, marital status, age over 40, sexual orientation or sex.
2. **Physical Harassment**: Unwelcome gestures, assault, impeding or blocking movement when directed at an individual based upon a person’s race, religious creed, color, natural origin, ancestry, physical disability, mental disability, marital status, age over 40, sexual orientation or sex.
3. **Visual Forms of Harassment**: Unwelcome or derogatory posters, cartoons, or drawings based on an individual’s race, religious creed, color, national origin, ancestry, physical disability, mental disability, marital status, age over 40, sexual orientation or sex.

Definitions

Complainant: An employee or applicant for employment who files a complaint under this policy.

Respondent: An individual charged with engaging in discrimination in employment as defined in District policy and/or administrative regulations.

Days: As used in this policy and procedure, “days” means days in which the employee is required to work. Timelines may be extended by mutual agreement.

Any employee who believes he or she has been, or is being subjected to discriminatory harassment, or who is aware of the occurrence of such harassment, or who desires counseling about such harassment, should immediately contact his or her immediate supervisor, site administrator, another District administrator, or the Associate Superintendent, Human Resources (any such complaint made against the Associate Superintendent, Human Resources shall be directed to the Superintendent; any such complaint against the Superintendent shall be directed to the President of the Board of Education).

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Each site administrator and supervisor has the responsibility of maintaining an environment free of harassment. This responsibility includes discussing the District's policies with his or her students and employees and assuring them that they are not required to endure prohibited harassment.

For Modesto Teachers Association and California School Employees Association members, a grievance may be filed as an alternative to this procedure. The timelines for the regular grievance procedures are tolled if a Modesto Teacher Association or California School Employees Association member chooses to pursue a complaint through the following District procedure.

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 on computers ~~in a conspicuous location~~ **on computers for employee use, up-to-date**, the California Department of Fair Employment and Housing (DFEH) posters **on the prohibition of** ~~in regard to~~ workplace discrimination and harassment, **and** the rights of transgender employees, **and the rights and obligations of employees who are pregnant, have a related medical condition, or are recovering from childbirth** (Government Code 12950; **2 CCR 11013, 11023, 11049**)

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

→ (cf. ~~4119.1214/4219.1214/4319.1214~~ – **Title IX** *Sexual Harassment Complaint Procedures* ~~in Employment~~)

2. Publicize the District's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, by: (5 CCR 4960; 34 CFR 100.6, 106.9)
 - a. Including them in each announcement, bulletin, or application form that is used in employee recruitment

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- 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. 1113 – District and School Web Sites) (N/A)

(cf. 1113 – District, School, Staff, and Student Web Sites)

(cf. 1114 – District-Sponsored Social Media)

(cf. 4111/4211/4311 – Recruitment and Selection) (N/A)

- 3. Disseminate the District's nondiscrimination policy and administrative regulation to all employees by one or more of the following methods: (2 CCR 11023)

- a. Printing and providing a copy of the policy to all employees, with an acknowledgment form for each employee to sign and return

—————> b. Sending **a copy of** the policy via email with an acknowledgment return form

—————> c. Posting **a copy of** the policy 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

(cf. 4112.9/4212.9/4312.9 – Employee Notifications) (N/A)

- 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

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5. Provide training to employees, volunteers, and interns 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 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 **(2 CCR 11023)**

Complaint Procedure

Complaints of sexual harassment shall be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures if the alleged conduct meets the definition of sexual harassment pursuant to 34 CFR 106.30.

Any **other** complaint alleging unlawful discrimination or harassment shall be addressed in accordance with the following procedures:

1. Notice and Receipt of Complaint: A complainant may inform a direct
→ supervisor, another supervisor, the coordinator, or the Superintendent ~~or, if~~
→ ~~available, a complaint hotline or an ombudsman~~. The complainant's
→ employee's direct supervisor may be bypassed in filing a complaint **when**
→ ~~where~~ the supervisor is the subject of the complaint.

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The complainant may file a written complaint in accordance with this procedure or may first attempt to resolve the situation informally with the

→ **complainant's** employee's supervisor **before filing a written complaint.**

An informal complaint must be initiated within thirty (30) working days from the time an employee knew or reasonably should have known of the alleged discrimination in employment event or condition prompting the complaint. The Associate Superintendent, Human Resources should be contacted when the informal complaint concerns an applicant for employment, individuals at more than one work site, or when the immediate supervisor is the subject of or involved in the complainant's allegation of discrimination in employment.

The supervisor, site administrator, or other District administrator will investigate the allegations in the informal complaint in a manner designed to protect the privacy of all parties to the greatest extent practicable. The supervisor, site administrator, or other District administrator will attempt to resolve the matter within thirty (30) days from receipt of the informal complaint.

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.

If the complainant is not satisfied with the resolution of the informal complaint, the complainant may file a formal written complaint with the immediate supervisor of the supervisor or administrator who investigated and attempted to resolve the informal complaint. Any such complaint against the Associate Superintendent, Human Resources should be directed to the Superintendent; any such complaint against the Superintendent should be directed to the President of the Board of Education. The formal complaint must be filed within sixty (60) days of the time the informal attempt was made to settle the complaint. The written complaint should contain:

- a. the complainant's name, address, work and home telephone numbers;
- b. the name of the individual(s) who allegedly committed the act(s);

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- c. a description of the incident(s);
 - d. the date, time, and location where the incident(s) occurred;
 - e. a specific description of the nature, participants in, and witnesses to the alleged discrimination in employment acts;
 - f. any witnesses who may have relevant information
 - g. other evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint; and
 - h. the complainant's suggested remedy for resolution of the complaint.
2. **Investigation Process**: The coordinator shall initiate an impartial investigation of an allegation of discrimination or harassment within five (5) business days of receiving notice of the alleged discriminatory or harassing 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 investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. The coordinator shall also inform the parties that the investigation will be kept confidential to the extent possible, but that some information may be

→ **disclosed** revealed as necessary to conduct an effective investigation.

(cf. 3580 – District Records)

(cf. 4112.6/4212.6/4312.6 – Personnel Files)

(cf. 4119.23/4219.23/4319.23 – Unauthorized Release of Confidential/Privileged Information) (N/A)

If the coordinator determines that a detailed fact-finding investigation is necessary, the investigation shall begin 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.

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The coordinator shall track and document the progress of the investigation to ensure reasonable progress and shall inform the parties as necessary.

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

The coordinator shall also determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the
→ investigation is completed **in order to prevent** ~~ensure that~~ further incidents
→ are prevented. The coordinator shall ensure that such interim measures do not constitute retaliation.

If a complaint is withdrawn or found to be invalid, the complaint and findings shall not be referred to in the employee's personnel file. There shall be no retaliation against any individual for filing a complaint or providing information regarding a discrimination in employment complaint.

3. **Written Report on Findings and Remedial/Corrective Action:** No more than twenty (20) business days after receiving the complaint, the coordinator shall conclude the investigation and prepare a written report of the findings. This timeline may be extended for good cause. If an extension is needed, the coordinator shall notify the parties 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 is prevented. The report shall be presented to the Superintendent or designee.

A summary of the findings shall be presented to the complainant and the person accused.

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If the complaint is not resolved to the complainant's satisfaction, the complainant may appeal that resolution to the Associate Superintendent, Human Resources. The complainant must submit his/her written complaint to the Associate Superintendent, Human Resources within ten (10) working days of the complainant's receipt of the decision to the written complaint. The Associate Superintendent, Human Resources, the complainant, and the person who investigated the written complaint and prepared the written response to the complainant, will meet to discuss the appeal. The Associate Superintendent, Human Resources shall provide a written decision within thirty (30) working days of this meeting. Copies of the decision shall be provided to all parties present at the meeting.

4. Appeal to the Governing Board: 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~~ may schedule a hearing **as soon as practicable**. Any complaint appeal heard by the Board against a District employee shall be addressed in closed session in accordance with law. Consistent with the Board's agenda deadlines and open meeting law requirements, the Board of Education may meet in closed session to consider the complainant's appeal. The Board shall render its decision within ten (10) business days.

(cf. 1312.1 – Complaints Concerning District Employees)

(cf. 9321 – Closed Session Purposes and Agendas) (N/A)

(cf. 9321 – Closed Session)

Other Remedies

In addition to filing a discrimination or harassment complaint with the District, a person may file a complaint with either 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 **alleging a violation of**
 → **Government Code 12940-12952**, within **three (3) years** ~~one year~~ of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960

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2. **For filing a complaint** directly with EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)
3. To file a valid complaint with EEOC after first filing a complaint with DFEH, within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by DFEH, whichever is earlier (42 USC 2000e-5)

Legal References:

EDUCATION CODE

200-262.4 Educational equity; prohibition of discrimination on the basis of sex

44100 Legislative intent, affirmative action employment

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

12940-12952 Unlawful employment practices

12960-12976 Unlawful employment practices; complaints

PENAL CODE

422.56 Definitions, hate crimes

LABOR CODE

1102.1 Employment discrimination: sexual orientation

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

1683 et seq. Civil Rights Restoration Act

UNITED STATES CODE, TITLE 29

621 et seq. Age Discrimination in Employment Act 791 et seq. Vietnam Era Veterans' Act

621-634 Age Discrimination in Employment Act

794 Rehabilitation Act of 1973, Section 504

UNITED STATES CODE, TITLE 42

12101 et seq. Americans With Disabilities Act

2000d & 2000e et seq. Title VI & Title VII, Civil Rights Act of 1964 as amended

2000h-2 et seq. Title IX, 1972 Education Act Amendments

12101-12213 Americans with Disabilities Act

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

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Designation of responsible employee and adoption of grievance procedures

35.101-35.190 Americans with Disabilities Act

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Legal References (cont.):

CODE OF FEDERAL REGULATIONS, TITLE 29

1630.2(r) Direct threat

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 Notifications

106.9 Dissemination of policy

110.1-110.39 Nondiscrimination on the basis of age

CODE OF REGULATIONS, TITLE 2

11006-11086 Discrimination in employment

11023 Harassment and discrimination prevention and correction

11024 Required training and education on harassment based on sex, gender identity and expression, and sexual orientation

11027-11028 National origin and ancestry discrimination

CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs

Management Resources:

COURT DECISIONS

Thomson v. North American Stainless LP, (2011) 131 S.Ct. 863

Shephard v. Loyola Marymount, (2002) 102 Cal.Appl 4th 837

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

Notice of Non-Discrimination, August 2010

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PUBLICATIONS

California Law Prohibits Workplace Discrimination and Harassment

Transgender Rights in the Workplace

Workplace Harassment Guide for California Employers

Your Rights and Obligations as a Pregnant Employee

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

EEOC Compliance Manual

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999

WEBSITES

California Department of Fair Employment and Housing: <https://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: <https://www.eeoc.gov/>

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