

MODESTO CITY SCHOOLS

Board Policy

BP 5145.3

STUDENTS

Nondiscrimination/Harassment

This policy shall apply to all acts constituting unlawful discrimination or harassment 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.

The Governing Board desires to provide a safe school environment that allows all students equal access **to** 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,** ~~District education~~
- ~~programs and activities shall be free from~~ unlawful discrimination, including discriminatory harassment, intimidation, and bullying, targeted at any student by anyone, based on the student's actual or perceived race, color, ancestry, nationality, national origin, ~~language~~, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, ~~economic status~~, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or association with a person or group with one or more of these actual or perceived characteristics.

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

(cf. 5131 – Conduct)

(cf. 5131 – Student Conduct Code, K-6)

(cf. 5132 – Student Conduct Code, 7-12)

(cf. 5131.2 – Bullying) (N/A)

(cf. 5137 – Positive School Climate) (N/A)

(cf. 5145.7 – Sexual Harassment)

(cf. 5145.9 – Hate-Motivated Behavior) (N/A)

(cf. 5146 – Married/Pregnant/Parenting Students)

(cf. 6164.6 – Identification and Education Under Section 504) (N/A)

(cf. 6146.6 – Identification, Evaluation and Education of Students Who Are Qualified Disabled Persons as Defined in Section 504 of the Rehabilitation Act of 1973) (N/A)

This policy shall apply to all acts related to school activity or school attendance occurring within a District school under the jurisdiction of the Superintendent of Modesto City Schools, 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.

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- Unlawful discrimination, including discriminatory harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also ~~includes the creation of a hostile environment through~~ **occurs when** prohibited conduct that 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 Governing Board seeks to ensure equal opportunities for all students in admission and access to programs and courses, counseling services, athletic programs, testing procedures, career technical education, and other activities. All school staff and volunteers should be careful to guard against discrimination and stereotyping in instruction, programming, and supervision. Any District employee with knowledge or belief of conduct that may constitute harassment, intimidation, bullying, and/or discrimination toward any person shall immediately intervene when safe to do so. In addition, the employee shall report the alleged acts immediately to an appropriate District official designated by this policy.

Students have a right to exercise complaint procedures which provide a prompt and equitable means for processing discrimination and harassment complaints (see BP 1312.3, Uniform Complaint Procedures and AR 5145.3). 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.

- ~~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. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.~~

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In addition, the Superintendent or designee shall post the District's policies prohibiting discrimination, harassment, intimidation, and bullying and other required information on the District's web site in a manner that is easily accessible to parents/guardians and students, in accordance with law and the accompanying administrative regulation.

- (cf. 1312.3 – Uniform Complaint Procedures)*
- (cf. 1330 – Use of Facilities) (N/A)*
- (cf. 1330 – Use of School Facilities)*
- (cf. 4131/4231/4331 – Staff Development)*
- (cf. 6145 – Extracurricular and Cocurricular Activities)*
- (cf. 6145.2 – Athletic Competition)*
- (cf. 5133 – Athletic Code of Conduct, 7-12)*
- (cf. 6164.2 – Guidance/Counseling Services)*

→ ~~Federal and state law and District policy~~ **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. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

The Superintendent or designee shall provide training and/or 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 District's educational program. The Superintendent or designee shall report the findings and recommendations to the Board after each review.

Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, the District will act to investigate all complaints

- **alleging unlawful discrimination, including discriminatory**, ~~either formal or~~
- ~~informal, verbal or written~~, of harassment, intimidation, or bullying, **and they shall**
- **be investigated** and **prompt**/~~or discrimination and take appropriate action taken.~~, to stop the discrimination, prevent recurrence, and address any continuing effect on students, against any pupil, teacher, administrator or other school

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- ~~personnel who is found to have violated this policy.~~ The District will also act to take appropriate action against parents, community members, and visitors at
- school sites or school-sponsored events **who are found to have violated this policy.**

*(cf. 1312.1 – Complaints Concerning School Personnel
 (cf. 1312.3 – Uniform Complaint Procedures
 (cf. 4119.11/4219.11/4319.11 – Sexual Harassment)
 (cf. 4119.14/4219.14/4319.14 – Complaint Procedure for Sexual Harassment in Employment)
 (cf. 5131 – Student Conduct Code, K-6)
 (cf. 5132 – Student Conduct Code, 7-12)
 (cf. 5145.4 – Principles of Rights, Responsibilities, and Respect to Ensure a Safe School Environment)
 (cf. 5145.7 – Sexual Harassment)*

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 when the behavior is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or

- **engages in prohibited discrimination, including** ~~engages in prohibited~~
- ~~discrimination, including~~ discriminatory harassment, intimidation, retaliation, or bullying, shall be subject to disciplinary action, up to and including dismissal.

*(cf. 4118 – Dismissal/Suspension/Disciplinary Action) (N/A)
 (cf. 4118 – Dismissal/Suspension/Disciplinary Action (Certificated))
 (cf. 4119.21/4219.21/4319.21 – Professional Standards Code of Ethics)
 (cf. 4218 – Dismissal/Suspension/Disciplinary Action) (N/A)
 (cf. 4218 – Dismissal/Suspension/Disciplinary Action (Classified))
 (cf. 5144 – Discipline) (N/A)
 (cf. 5144.1 – Suspension and Expulsion Due Process)
 (cf. 5144.2 – Suspension and Expulsion/Due Process (Students with Disabilities))
 (cf. 5132.1 – Suspension and Expulsion/Due Process (Pupils with Previously Identified Exceptional Needs))
 (cf. 5144 – Subpoena Power, Expulsion Proceedings)
 (cf. 5145.2 – Freedom of Speech/Expression) (N/A)
 (cf. 5145.2 – Student Free Speech)*

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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.

Legal References:

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
49060-49079 Student records
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~~

GOVERNMENT CODE

11135 Nondiscrimination in programs or activities funded by state

PENAL CODE

422.55 Definition of hate crime
422.6 Crimes, harassment

CODE OF REGULATIONS, TITLE 5

432 Student record
4600-4670 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

12101-12213 Title II equal opportunity for individuals with disabilities

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

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Legal References (cont.):

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

104.8 Notice

106.8 Designation of responsible employee for Title IX

106.9 Notification of nondiscrimination on basis of sex

110.25 Prohibition of discrimination based on age

Management Resources:

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

CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATION

Promoting Safe & Secure Learning Environment for All: Guidance & Model Policies to Assist CA K-12 Schools in Responding to Immigration Issues, 4/2018

CSBA PUBLICATION

Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Sex Discrimination, March 2017

FIRST AMENDMENT CENTER PUBLICATION

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

U.S. DEPT OF ED OFFICE FOR CIVIL RIGHTS PUBLICATION

Resolution Agreement Between the Arcadia USD, US Dept of Ed, OCR, & the US DOJ, CRD, (2013) OCR 09-12-1020, DOJ 169-12C-70

Dear Colleague Letter: Harassment and Bullying, October 2010

Notice of Non-Discrimination, Fact Sheet, August 2010

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

Dear Colleague Letter: Title IX Coordinators, April 2015

U.S. DEPT OF HEALTH & HUMAN SERVICES PUBLICATION

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affect Limited English Proficient Persons, Aug. 2013

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

Dear Colleague Letter: Title IX Coordinators, April 2015

WEBSITES

First Amendment Center: <https://www.freedomforuminstitute.org/first-amendment-center/>

California Office of the Attorney General: <https://oag.ca.gov/>

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

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

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

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

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ADOPTED: April 25, 1994
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