

**PIEDMONT UNIFIED SCHOOL DISTRICT
Board Policy**

Personnel

BP 4030

**DISCRIMINATION / HATE-MOTIVATED INCIDENTS AND HATE CRIMES /
HAZING / HARASSMENT (Including Sexual Harassment),
Intimidation, Bullying and Cyberbullying**
(Employee Version)

District Statement Prohibiting Discrimination, Hate-Motivated Incidents and Hate Crimes, Hazing, Harassment, (including Sexual Harassment), Intimidation, Bullying and Cyberbullying

The Board of Education believes that teachers, administrators, and all other staff members have the right to perform their duties in a safe and civil environment. The Board prohibits discrimination, hate-motivated incidents and hate crimes, hazing, harassment (including sexual harassment), intimidation, bullying or cyberbullying against any teacher, administrator or staff member by a student, another employee, or any other person in the District authorized to transact business or perform services on behalf of the District.

Discrimination, hate-motivated incidents and hate crimes, hazing, harassment, and harassment (including sexual harassment), intimidation, bullying, or cyberbullying, like other disruptive or violent behaviors, disrupt the ability to teach and learn, and a school's ability to educate its students in a safe environment.

In addition, the District shall not tolerate the unlawful discrimination against or tolerate any hate crime, hazing, harassment (including sexual harassment), intimidation bullying, or cyberbullying against students, employees or job applicants on the basis of ethnic group, religion, gender, gender identity or expression, sexual orientation, ancestry, national origin, color, race, or mental, physical or sensory handicap, age, marital status, pregnancy, medical condition, veteran status, or by any other distinguishing characteristic. This prohibition also includes such misconduct against anyone on the basis of their association or affinity with anyone who is directly protected, or against anyone in retaliation for reporting or attempting to stop such misconduct.

Equal employment opportunity shall be provided to all employees and applicants. Physically or mentally disabled employees or applicants may request reasonable accommodation.

The Board of Education designates the following employee to receive and investigate complaints of discrimination, hate-motivated incidents and hate crimes, hazing, harassment (including sexual harassment), intimidation, bullying, or cyberbullying, and to ensure District compliance with law:

Superintendent
760 Magnolia Ave., Piedmont, CA 94611
(510) 594-2614

Annual Notification

The Superintendent or designee shall annually publicize this policy and the availability of complaint procedures throughout the District and the community.

(see also BP/AR 5145.3, "Discrimination / Hate-Motivated Incidents and Hate Crimes / Hazing/ Harassment (Including Sexual Harassment, Intimidation, Bullying and Cyberbullying) – *Student Version*", and BP/AR 6163.4, "Acceptable Use of Technology – Students & Employees")

Adopted:	February 9, 2000
Revised:	December 10, 2003
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Revised:	September 26, 2007
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Revised:	January 26, 2010

**PIEDMONT UNIFIED SCHOOL DISTRICT
Administrative Regulation**

Personnel

AR 4030

**DISCRIMINATION / HATE-MOTIVATED INCIDENTS AND HATE
CRIMES / HAZING / HARASSMENT (Including Sexual
Harassment), Intimidation, Bullying and Cyberbullying**
(Employee Version)

**Definition of Discrimination, Hazing, Harassment, Intimidation, or Bullying
(see following separate definitions of Hate-Motivated Incidents and Hate
Crimes, Hazing, Sexual Harassment, Cyberbullying, and Misconduct)**

Discrimination, harassment, intimidation, or bullying means any gesture or written, verbal or physical act that causes or threatens to cause bodily harm or emotional suffering that takes place on school property, at any school-sponsored function or on a school bus, that is one or more of the following:

- a. Acts motivated by any actual or perceived characteristic, such as ethnic group, religion, gender, gender identity and expression, sexual orientation, ancestry, national origin, color, race, or mental, physical or sensory handicap, or by any other distinguishing characteristic;
- b. Acts that a reasonable person should know, under the circumstances, will have the effect of harming a person or damaging the person's property, or placing a person in reasonable fear of harm to his /her person or damage to his/her property, to include extortion, and/or
- c. Acts that have the effect of insulting, demeaning, or ridiculing any person(s) or group of persons in such a way as to cause substantial disruption in, or substantial interference with the orderly operation of the school.
- d. Acts that have the effect of insulting, demeaning, or ridiculing any teacher, administrator, staff member, or any other person in the District authorized to transact business or perform services on behalf of the District or group thereof in such a way as to cause substantial disruption in, or substantial interference with the orderly operation of the school.
- e. Acts include those directed against someone because of their association or affinity with anyone who exhibits or is believed by the offender to exhibit any distinguishing characteristic protected by this policy, or in retaliation for their objection to or reporting of such misconduct.

Definition of Hate-Motivated Incidents and Hate Crimes

A "hate-motivated incident" means an act or attempted act which constitutes an expression of hostility against a person, property, or institution because of the target's real or perceived race, color, national origin, religion, disability, sex, sexual orientation, or gender-identity. This may include using bigoted insults, taunts, or slurs in words or

writing, distributing or posting hate group literature or posters, defacing, removing, or destroying posted materials or announcements, posting or circulating demeaning jokes or leaflets, or sending insulting or threatening messages by phone, e-mail, web sites, or any other electronic or written communication.

Some hate-motivated behavior may also be a crime as defined in State or Federal law. These crimes include, but are not limited to: bomb threats, cross burnings, destruction or defacement of property, and certain types of vandalism and assaults. (Education Code Section 233(e); Penal Code Sections 422.6, 422.7, 422.75). They may also include an act that willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person. (18 USC Section 249)

Definition of Hazing

Hazing includes any method of initiation or preinitiation into a student organization or student body or any pastime or amusement engaged in with respect to these organizations which causes, or is likely to cause, bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm, to any pupil or other person attending any school in this state. The term "hazing" does not include customary athletic events or other similar contests or competitions. (Ed Code Section 32050)

Definition of Sexual Harassment

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, visual, physical conduct of a sexual nature, or sexual violence made by someone in the educational setting, under any of the following conditions:

- a. Submission to or rejection of the conduct is explicitly or implicitly used as the basis or condition of employment or continued employment;
- b. The conduct has the purpose or effect of having a negative impact upon the employee's performance, or of creating an intimidating, hostile, or offensive work environment;
- c. Submission to, or rejection of the conduct by the individual is used as the basis for any decision affecting the person regarding employment, services, honors, programs, or activities available at or through the work setting.

Other types of conduct which are prohibited in the District and which may constitute sexual harassment include:

Verbal or written conduct: making derogatory comments, including epithets, slurs, jokes, etc.; sexual propositions or flirtations, graphic commentary about an individual's body; sexually degrading words used to describe an individual; suggestive or obscene letters, notes or invitations; spreading sexual rumors.

Visual conduct: leering; making sexual gestures; displaying sexually suggestive objects, pictures, books, magazines, etc.

Physical conduct: inappropriate touching or impeding one's movement.

Definition of Sexual Violence

Sexual violence is defined as a sexual act committed against someone without that person's freely given consent. Sexual violence is divided into the following types:

- a. Completed or attempted forced penetration of a victim
- b. Completed or attempted alcohol/drug-facilitated penetration of a victim
- c. Completed or attempted forced acts in which a victim is made to penetrate a perpetrator or someone else
- d. Completed or attempted alcohol/drug-facilitated acts in which a victim is made to penetrate a perpetrator or someone else
- e. Non-physically forced penetration which occurs after a person is pressured verbally or through intimidation or misuse of authority to consent or acquiesce
- f. Unwanted sexual contact
- g. Non-contact unwanted sexual experiences

Definition of Cyberbullying

Cyberbullying includes the posting of harassing messages, direct threats, social cruelty, or other harmful text or images on the internet, social networking sites, or other digital technologies, as well as breaking into another person's account and assuming that person's identity in order to damage that person's reputation or friendships.

Districts have the ability to monitor use of the District's internet system and to conduct a search of person or possessions such as, but not limited to, computer, locker, backpacks, if there is reasonable suspicion that a user has violated District policy or the law (see also BP/AR 6163.4, "Acceptable Use of Technology"). Cyberbullying conducted using District-owned equipment or on school premises, as well as off-campus cyberbullying that impacts school activity or school attendance may be subject to discipline in accordance with District policies and regulations.

Definition of Misconduct

For economy of writing and ease of reading, the term "misconduct" is introduced below. For purposes of this policy, "misconduct" means Discrimination, Hate-Motivated Incidents and Hate Crimes, Hazing, Harassment (including Sexual Harassment), Intimidation, Bullying, or Cyberbullying.

Type of Behavior Expected from Each Employee

All employees are expected to carry out their responsibilities in a manner that is free from discriminatory statements or conduct. Employees who permit or engage in discrimination, hazing, harassment, sexual harassment, intimidation or bullying may be subject to disciplinary action up to and including dismissal.

The District prohibits active or passive support for the misconduct prohibited by this policy, and requires all such acts to be reported to the designated authority immediately by an employee who witnesses an incident. Failure of an employee to report an act shall be subject to disciplinary action, up to and including dismissal. In addition, criminal or civil charges may be brought against the alleged perpetrator of the misconduct; sexual harassment also may be considered a violation of laws relating to child abuse.

Procedures for Reporting Misconduct

All school employees are required to report incidents that they experience or observe that they believe violate this policy as soon as is reasonably possible (within 24 hours) to the principal or the principal's designee, even if the victim has not complained. All other members of the school community, including students, parents, volunteers and visitors, are encouraged to report any act that may be a violation of this policy. Any employee or applicant for employment who feels that he/she has been the victim of misconduct prohibited by this policy should immediately contact his/her supervisor or the Superintendent or designee. An employee may bypass his/her supervisor when the supervisor is the alleged offender.

At each school, the principal or designee is responsible for receiving complaints alleging violations of this policy. The reporting party is encouraged to use the District's Uniform & General Complaint Form, which is available from the principal of each site or at the school district office, or on the District's Internet site at www.piedmont.k12.ca.us. However, oral reports will also be considered official reports. Reports may be made anonymously, but formal disciplinary action may not be based solely on an anonymous report. Information related to a complaint shall be confidential to the extent possible, and individuals involved in the investigation of such a complaint shall not discuss related information outside the investigation process.

The principal and/or designee is responsible for determining whether an alleged act constitutes a violation of this policy. In so doing, the principal and/or designee shall conduct a prompt, thorough and complete investigation of the alleged incident.

Complaints against a student can be directed to the site administrator who will follow the same process.

Complaints against administrators can be directed to the Superintendent or designee who will follow the same process.

Complaints against the Superintendent can be directed to the Board of Education, who will follow the same process.

Staff Training

Principals or their designee will be responsible for training and preparing staff members in the prevention of these types of incidents toward students, and when necessary, providing positive behavioral intervention. Staff shall be alert and immediately responsive to any student conduct which may interfere with another student's ability to participate in or benefit from school services, activities or privileges.

Staff shall also be alert and immediately responsive to any teacher/staff conduct toward a student, another staff member, or other person in the District authorized to transact

business or perform services on behalf of the District, which may interfere with their safety and/or well being.

Information related to a complaint shall be confidential to the extent possible, and individuals involved in the investigation of such a complaint shall not discuss related information outside the investigation process.

Retaliation for Reporting Acts of Misconduct

The District prohibits reprisal or retaliation against any employee or any participant in the complaint process who reports an act of misconduct

False Accusation of Misconduct

Consequences and appropriate remedial action for a school employee found to have falsely accused another staff member or student of misconduct, as a means of misconduct shall be disciplined in accordance with District policies, procedures and/or collective bargaining agreements.

Remedial Action

The District will consider the following factors in determining the appropriate response to employees who commit or participate in one or more acts of misconduct:

1. levels of harm
2. surrounding circumstances
3. nature of the behaviors
4. past incidences or past or continuing patterns of behavior
5. relationships between the parties involved
6. context in which the alleged incidents occurred

Consequences and appropriate remedial action for employees who commit misconduct may range from positive behavioral interventions and/or disciplinary action up to and including suspension or termination.

Investigation of Complaints at School (Site-Level Grievance Procedure)

1. Procedures for investigation of complaints shall be consistent with all provisions covered under the respective collective bargaining agreement or memorandum of understanding.
2. The principal or designee shall promptly investigate all complaints of misconduct. In so doing, he/she shall talk individually with:
 - a. The employee who has filed a complaint
 - b. The target of the misconduct, if different from the employee who filed the complaint
 - c. The person accused of misconduct
 - d. Anyone who witnessed the alleged misconduct
 - e. Anyone mentioned as having related information

- f. All misconduct involving damage to property, i.e., graffiti, shall be photographed immediately and archived. The Superintendent or designee may report the activity to the appropriate legal authorities
3. The principal or designee shall tell the employee who complained that he/she has the right to file a formal complaint at any time in accordance with the District's uniform complaint procedures.
4. The employee who is complaining shall have an opportunity to describe the incident, present witnesses and other evidence of misconduct, and put his/her complaint in writing.
5. The principal or designee shall discuss the complaint only with the people described above. When necessary to carry out his/her investigation or for other good reasons that apply to the particular situation, the principal or designee also may discuss the complaint with the following persons:
 - a. The Superintendent or designee
 - b. A teacher or staff member whose knowledge of the people involved may help in determining who is telling the truth
 - c. Child protective agencies responsible for investigating child abuse reports (if applicable)
 - d. Legal counsel for the District
 - e. Law enforcement agency responsible for investigating criminal activity, if necessary
6. When the employee who complained and the person accused of misconduct so agree, the principal or designee may arrange for them to resolve the complaint informally with the help of an administrator or trained mediator.
7. In reaching a decision about the complaint, the principal or designee may take into account:
 - a. Statements made by the persons identified above
 - b. The details and consistency of each person's account
 - c. Evidence of how the complaining employee reacted to the incident
 - d. Evidence of past instances of misconduct by the accused person
 - e. Adversely affected complainant's employment opportunities
 - f. Evidence of past complaints of misconduct that were found to have been unfounded

8. To judge the severity of the misconduct, the principal or designee may take into consideration:
 - a. How the misconduct affected the safety, well-being or work performance of the victim or complainant, or created an intimidating, hostile or offensive work environment
 - b. The type, frequency, pattern, violence and duration of the misconduct
 - c. The number of persons involved
 - d. The age and sex of the person accused of misconduct
 - e. The subject(s) of misconduct
 - f. The place and situation where the incident occurred
 - g. Other incidents at the school, including incidents of misconduct that were not related to sexual harassment
 - h. According to the misconduct, a report may be obtained from the appropriate law enforcement agency.
 - i. The principal or designee shall write a report of his/her findings, decision, and reasons for the decision and shall present this report to the employee who complained and the person accused.
9. The principal or designee shall give the Superintendent or designee a written report of the complaint and investigation. If he/she verifies that misconduct occurred, this report shall describe the actions he/she took to end the misconduct, address the effects of the misconduct on the victim, and prevent retaliation or further misconduct
10. Within two weeks after receiving the complaint, the principal or designee shall determine whether or not the employee who complained has been further harassed. The principal or designee shall keep a record of this information and shall continue this follow-up at his/her discretion.

Enforcement

The Superintendent or designee shall take appropriate actions to reinforce the District's policy against misconduct. As needed, these actions may include any of the following:

1. Warning
2. Counseling
3. Reassignment
4. Transfer
5. Disciplinary action up to and including suspension or termination
6. In addition, the principal or designee may take disciplinary measures against any employee who is found to have made a complaint which he/she knew was unfounded.

Civil Law Remedies

A victim (and in some circumstances a complainant) may pursue available civil law remedies outside of the District's complaint procedures. Complainants may seek assistance from mediation centers or public/private interest attorneys. Civil law remedies that may be imposed by a court include, but are not limited to, injunctions and restraining orders. For discrimination complaints, however, a complainant must wait until 60 days have elapsed from the filing of an appeal with the California Department of Education before pursuing civil law remedies. The moratorium does not apply to injunctive relief and is applicable only if the District has appropriately, and in a timely manner, apprised the complainant of his/her right to file a complaint in accordance with 5 CCR Section 4622.

Annual Notification

The Superintendent or appropriate designee shall provide to staff, annually, at the beginning of the school year, the rules of the District regarding staff conduct. The rules shall be posted in a prominent location near each school principal's office.

See also BP/AR 5145.3, "Discrimination / Hate Crimes / Harassment, Including Sexual Harassment, Intimidation, Bullying and Cyberbullying – Student Version", and BP/AR 6163.4, "Acceptable Use of Technology – Students and Employees"

Legal References:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex, especially:

212.5 Sexual harassment, defined

230 Particular practices prohibited

231.5 Sexual harassment policy

233(e) Defines "hate violence"

32261 Right to attend safe schools, free from the misconduct addressed in this policy

44100 Legislative intent, affirmative action employment

GOVERNMENT CODE

11135 Unlawful discrimination

12900-12996 Fair Employment and Housing Act

LABOR CODE

1101 Political activities of employees

1102.1 Employment discrimination: sexual orientation

UNITED STATES CODE, TITLE 18

249, Hate crime acts

UNITED STATES CODE, TITLE 20

1683 et seq. Civil Rights Restoration Act

UNITED STATES CODE, TITLE 29

621 et seq. Age Discrimination in Employment Act

791 et seq. Vocational Rehabilitation Act of 1973, Sections 503 and 504

UNITED STATES CODE, TITLE 38

2011 et seq. Vietnam Era Veterans' Act

UNITED STATES CODE, TITLE 42

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 et seq. Americans With Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Designation of responsible employee and adoption of grievance procedures

CODE OF FEDERAL REGULATIONS, TITLE 29

1630.2(r) Direct threat

CODE OF FEDERAL REGULATIONS, TITLE 34

104.7 Designation of Overall Responsible Employee for Section 504

106.8 Designation of Overall Responsible Employee for Title IX

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