

**PIEDMONT UNIFIED SCHOOL DISTRICT**  
**Board Policy**

**Students**

**BP 5145.3**

**NON-DISCRIMINATION / ~~HATE-MOTIVATED INCIDENTS AND~~  
~~HATE CRIMES/ HAZING / HARASSMENT (INCLUDING~~  
~~SEXUAL HARASSMENT), INTIMIDATION,~~  
~~BULLYING AND CYBERBULLYING)~~**  
*(Student Version)*

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

The Board of Education 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. ~~believes that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. Discrimination, hate-motivated incidents and hate crimes, hazing, harassment, (including sexual harassment), intimidation, bullying, and cyberbullying, like other disruptive or violent behaviors, disrupt both a student's ability to learn and a school's ability to educate its students in a safe environment. The Board prohibits, at any district school or school activity, unlawful discrimination, hate-motivated incidents and hate crimes, hazing, harassment, (including sexual harassment), intimidation, bullying, or cyberbullying against any student by any student, employee, or any other person in the District authorized to transact business or perform services on behalf of the District. anyone, 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 group with one or more of these actual or perceived characteristics.~~

While sexual harassment and sexual violence are forms of discrimination and discriminatory harassment on the basis of sex, this policy shall *not* be used to address sexual harassment or sexual violence complaints. All sexual harassment and sexual violence reports or complaints involving students shall be addressed through BP 5145.7 and BP/AR 1312.3.

This policy shall apply to 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.

Though an incident of alleged harassment, intimidation, and/or bullying as defined within this policy may occur off campus, if the effects of the off-campus incident result in

harassment, intimidation, or bullying at school or a school activity that is sufficiently serious to interfere with or limit the targeted student's ability to participate in or benefit from the education program, the school shall respond promptly and effectively to investigate the complaint, determine what happened, eliminate any harassment that occurs at school or a school activity, prevent its recurrence, and address its effects. Such response may include discipline of the alleged harasser in accordance with applicable law and as provided in Board Policy (BP) and Administrative Regulation (AR) 5144. Other possible responses include, but are not limited to, those listed in AR 1312.3.

(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 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 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.

~~Likewise, teachers, administrators, and all other staff members have the right to perform their duties in the same safe and civil environment. The Board, therefore, also 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.~~

~~District programs and activities shall be free from discrimination, hate-motivated incidents and hate crimes, hazing, harassment, including sexual harassment, intimidation, bullying or cyberbullying, with respect to any ethnic group, religion, gender, gender identity or expression, sexual orientation, ancestry, national origin, color, race, or mental, physical or sensory handicaps, or 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.~~

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. 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 district's 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 ineligibility for certain activities, suspension or expulsion when the behavior is severe or pervasive as defined in Education Code 48900.4. Appropriate educational and/or disciplinary action shall depend on the circumstances involved.; 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 - Dismissal/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)

~~Board policy requires all students in the District to adhere to the rules and regulations established by the District. Any student who engages in discrimination, hate-motivated incidents and hate crimes, hazing, harassment, (including sexual harassment), intimidation, bullying, or cyberbullying against another student, a teacher or other staff member, or any other person in the District authorized to transact business or perform services on behalf of the District at school or a school-related activity, shall be subject to educational and/or disciplinary action as appropriate. Appropriate educational and/or disciplinary action shall depend on the circumstances involved. Disciplinary action may include ineligibility for certain activities, suspension and/or expulsion.~~

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 ensure District compliance with law:

### **District Coordinator and Compliance Officer**

Director of Curriculum and Instruction  
760 Magnolia Avenue, Piedmont, CA 94611  
(510) 594-2686  
[cwozniak@piedmont.k12.ca.us](mailto:cwozniak@piedmont.k12.ca.us)

### **Annual Notification**

~~The Superintendent or appropriate designee shall provide the rules of the District regarding student conduct to students and their parents/guardians at the beginning of each school year. The policy against discrimination, hazing, hate-motivated incidents and hate crimes, harassment (including sexual harassment), intimidation, bullying, and cyberbullying shall appear in all publications of the school district's comprehensive rules, procedures and standards of conduct for schools within the school district, including the student handbooks. The policy shall also be displayed in a prominent location near each school principal's office (Education Code Section 231.5, 48980).~~

## **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.

(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

Management Resources:

CSBA PUBLICATIONS

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

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

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>

ADOPTED: July 5, 2000

REVISED: December 10, 2003

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**PIEDMONT UNIFIED SCHOOL  
DISTRICT  
Administrative Regulation**

**Students**

**AR 5145.3**

**~~DISCRIMINATION / HATE-MOTIVATED INCIDENTS AND HATE CRIMES /  
HAZING / HARASSMENT (INCLUDING SEXUAL HARASSMENT),  
INTIMIDATION, BULLYING AND CYBERBULLYING~~**  
*(Student Version)*

The district designates the individual(s) identified below as the employee(s) responsible for coordinating the district's efforts to comply with state and federal civil rights laws, including Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Age Discrimination Act of 1975, and to answer inquiries regarding the district's nondiscrimination policies. The individual(s) shall also serve as the compliance officer(s) specified in AR 1312.3 - Uniform Complaint Procedures as the responsible employee to handle complaints regarding unlawful discrimination, including discriminatory harassment, intimidation, or bullying, based on actual or perceived race, color, ancestry, national origin, nationality, ethnicity, ethnic group identification, age, religion, marital or parental status, pregnancy, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or any other legally protected status or association with a person or group with one or more of these actual or perceived characteristics; ~~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~~. The coordinator/compliance officer(s) may be contacted at:

(Education Code 234.1; 5 CCR 4621)

**District Coordinator and Compliance Officer**

Director of Curriculum and Instruction  
760 Magnolia Avenue, Piedmont, CA 94611  
(510) 594-2686  
[cwozniak@piedmont.k12.ca.us](mailto:cwozniak@piedmont.k12.ca.us)

**Definition of Discrimination, Harassment, Intimidation, or Bullying**

~~(see following separate sections on 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 which takes place on school property, at any school-sponsored function, or on the way to or from school, 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 or expression, sexual orientation, ancestry, national origin, color, race, or mental, physical or sensory handicap, or by any other distinguishing characteristic;
- b. Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, regardless of whether they are sexual in nature, where the act has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment are prohibited under state and federal law.
- c. Acts that a reasonable person should know, under the circumstances, will have the effect of harming a student or damaging the student's property, or placing a student in reasonable fear of harm to his /her person or damage to his/her property, to include extortion;;
- d. Acts that a reasonable person should know, under the circumstances, will have the effect of harming the property of a teacher, administrator, staff member, or any other person in the District authorized to transact business or perform services on behalf of the District, or placing that person in reasonable fear of harm to his /her person or damage to his/her property;
- e. Acts that have the effect of insulting, demeaning, or ridiculing any student or group of students in such a way as to cause substantial disruption in, or substantial interference with the orderly operation of the school.
- f. 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; or
- g. 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 pre-initiation 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 personally degradation or disgrace resulting in physical or mental harms, to any pupil or other person attending any school in the state. The term hazing does not include customary athletic events or other similar contests or competitions (Education Code Section 32051).

### **Definition of Sexual Harassment**

~~Sexual harassment of a teacher, administrator, other staff member, or any other person in the District authorized to transact business or perform services on behalf of the District includes, but is not limited to, sexual violence, unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature. Sexual harassment of this nature may include persistent or pervasive harassment.~~

~~Sexual harassment of a student includes, but is not limited to, sexual violence, unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, visual, or physical conduct of a sexual nature, including but not limited to persistent and pervasive harassment, made by someone in the educational setting, under any of the following conditions~~  
(Education Code Section 212.5):

- ~~a. Submission to the conduct is explicitly or implicitly made a term or a condition of a student's academic status or progress.~~
- ~~b. Submission to, or rejection of, the conduct by the individual is used as the basis of academic decisions affecting the student~~

- c. ~~The conduct has the purpose or effect of having a negative impact upon the student's work or academic performance, or of creating an intimidating, hostile, or offensive educational environment.~~
- d. ~~Submission to, or rejection of the conduct by the individual is used as the basis for any decision affecting the student regarding services, honors, programs, or activities available at or through the educational institution.~~

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~~
- e. ~~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 Transgender and Gender-Non Conforming Students**

Gender identity means a student's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that

traditionally associated with the student's physiology or assigned sex at birth.

Gender transition refers to the process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that Gender expression means a student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth. (Education Code 210.7) corresponds to the student's gender identity.

Gender-nonconforming student means a student whose gender expression differs from stereotypical expectations.

Transgender student means a student whose gender identity or gender expression is different from that traditionally associated with the assigned sex at birth. Examples of types of conduct which are prohibited in the district and which may constitute gender-based harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with his/her gender identity
2. Disciplining or disparaging a transgender student because his/her mannerisms, hairstyle, or style of dress correspond to his/her gender identity, or a non-transgender student because his/her mannerisms, hairstyle, or style of dress do not conform to stereotypes for his/her gender or are perceived as indicative of the other sex
3. Blocking a student's entry to the bathroom that corresponds to his/her gender identity because the student is transgender or gender-nonconforming
4. Taunting a student because he/she participates in an athletic activity more typically favored by a student of the other sex
5. Revealing a student's transgender status to individuals who do not have a legitimate need for the information
6. Use of gender-specific slurs
7. Physical assault of a student motivated by hostility toward him/her because of his/her gender, gender identity, or gender expression

### **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.~~

### **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 Student**

The Board of Education expects students to conduct themselves in keeping with their levels of development, maturity and demonstrated capabilities. Conduct must show a proper regard for the rights and welfare of other students and school staff, for the educational purpose underlying all school activities, and for the care of school facilities and equipment. The Superintendent or designee shall ensure that students receive age-appropriate information related to these issues.

The District prohibits active or passive support for discrimination, hate-motivated incidents and hate crimes, hazing, harassment, sexual harassment, intimidation, bullying or cyberbullying. The District encourages support for students who do not participate in these acts, and expects students to report to the designated authority when they witness such an incident. Failure of a student to report an act may result in disciplinary action.

### **Procedures for Reporting Acts of Discrimination, ~~Hate-Motivated Incidents and Hate Crimes~~, Hazing, Harassment (~~including Sexual Harassment~~), Intimidation, Bullying, or Cyberbullying**

All students should 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.

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](http://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. Within 24 hours of receiving a report, the principal or designee shall forward the complaint itself or a transcription of the oral report to the District’s Compliance Officer. 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. Within 24 hours of receiving a report, the site administrator shall forward the complaint itself or a transcription of the oral report to the District's Compliance Officer.

Complaints against administrators or staff can be directed to the Superintendent or designee, who will follow the same process. Within 24 hours of receiving a report, the Superintendent or designee shall forward the complaint itself or a transcription of the oral report to the District's Compliance Officer.

Complaints against the Superintendent can be directed to the Board of Education, who will follow the same process. Within 24 hours of receiving a report, the Board of Education or designee shall forward the complaint itself or a transcription of the oral report to the District's Compliance Officer.

### **Procedures for Reporting Acts of Discrimination Against Transgender and Gender-Non Conforming Students**

The district's uniform complaint procedures (AR 1312.3) shall be used to report and resolve complaints alleging discrimination against transgender and gender-nonconforming students. Examples of bases for complaints include, but are not limited to, the above list as well as improper rejection by the district of a student's asserted gender identity, denial of access to facilities that correspond with a student's gender identity, improper disclosure of a student's transgender status, discriminatory enforcement of a dress code, and other instances of gender-based harassment.

To ensure that transgender and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Board policy, the district shall address each situation on a case-by-case basis, in accordance with the following guidelines:

1. Right to privacy: A student's transgender or gender-nonconforming status is his/her private information and the district will only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the district has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In the latter instance, the district shall limit disclosure to individuals reasonably believed to be able to protect the student's wellbeing. Any district employee to whom a student discloses his/her transgender or gender-nonconforming status shall seek the student's permission to notify the compliance officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless he/she is required to disclose or report the student's information pursuant to this procedure, and shall inform the student that honoring the student's request may limit the district's ability to meet the student's needs related to his/her status as a transgender or gender-nonconforming student. If the student permits the employee to notify the compliance officer, the employee shall do so within three school days.

As appropriate given the physical, emotional, and other significant risks to the student,

the compliance officer may consider discussing with the student any need to disclose the student's transgender or gender-nonconformity status to his/her parents/guardians and/or others, including other students, teacher(s), or other adults on campus. The district shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and desire assistance in doing so.

2. **Determining a Student's Gender Identity:** The compliance officer shall accept the student's assertion unless district personnel present a credible basis for believing that the student's assertion is for an improper purpose. In such a case, the compliance officer shall document the improper purpose and, within seven school days of receiving notification of the student's assertion, shall provide a written response to the student and, if appropriate, to his/her parents/guardians.
3. **Addressing a Student's Transition Needs:** The compliance officer shall arrange a meeting with the student and, if appropriate, his/her parents/guardians to identify potential issues, including transition-related issues, and to develop strategies for addressing them. The meeting shall discuss the transgender or gender-nonconforming student's rights and how those rights may affect and be affected by the rights of other students and shall address specific subjects related to the student's access to facilities and to academic or educational support programs, services, or activities, including, but not limited to, sports and other competitive endeavors. In addition, the compliance officer shall identify specific school site employee(s) to whom the student may report any problem related to his/her status as a transgender or gender-nonconforming individual, so that prompt action could be taken to address it. Alternatively, if appropriate and desired by the student, the school may form a support team for the student that will meet periodically to assess whether the student's arrangements are meeting his/her educational needs and providing equal access to programs and activities, educate appropriate staff about the student's transition, and serve as a resource to the student to better protect the student from gender-based discrimination.
4. **Accessibility to Sex-Segregated Facilities, Programs, and Activities:** The district may maintain sex-segregated facilities, such as restrooms and locker rooms, and sex-segregated programs and activities, such as physical education classes, ~~intermural~~ intramural sports, and interscholastic athletic programs. A student shall be entitled to access facilities and participate in programs and activities consistent with his/her gender identity. If available and requested by any student, regardless of the underlying reason, the district shall offer options to address privacy concerns in sex-segregated facilities, such as a gender-neutral or single-use restroom or changing area, a bathroom stall with a door, an area in the locker room separated by a curtain or screen, access to a staff member's office, or use of the locker room before or after the other students. However, the district shall not require a student to utilize these options because he/she is transgender or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with his/her gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. A student's right to participate in a sex-segregated activity in accordance with his/her gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

5. Student Records: A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed pursuant to a court order. However, at the written request of a student or, if appropriate, his/her parents/guardians, the district shall use the student's preferred name and pronouns consistent with his/her gender identity on all other district-related documents.
6. Names and Pronouns: If a student so chooses, district personnel shall be required to address the student by a name and the pronouns consistent with his/her gender identity, without the necessity of a court order or a change to his/her official district record. However, inadvertent slips or honest mistakes by district personnel in the use of the student's name and/or consistent pronouns shall not constitute a violation of this administrative regulation or the accompanying district policy.
7. Uniforms/Dress Code: A student has the right to dress in a manner consistent with his/her gender identity, subject to any dress code adopted on a school site.

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

1. The principal or designee shall promptly investigate all complaints of misconduct. In so doing, he/she shall talk individually with:
  - a. The student who is complaining within two (2) ~~five (5)~~ school days of receiving the complaint
  - b. The target of the misconduct, if different from the person who is complaining within five (5) school days of receiving the complaint
  - c. The person accused of misconduct
  - d. Anyone who saw the misconduct take place
  - e. Law enforcement agency, as necessary
  - f. One or more teachers or staff members whose knowledge of the students involved may help to evaluate the situation.
  - g. Anyone mentioned as having related information
2. The student who is complaining shall have an opportunity to describe the incident, identify and request the presence of others who witnessed the incident, and to present any other information or evidence of the misconduct, and put his/her complaint in writing.
3. The person who is the subject of the complaint shall have an opportunity to describe

the incident, to request the presence of others who witnessed the incident, and to present any other information or evidence.

4. 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, including compliance officer;
  - b. The parent/guardian of the student who complained;
  - c. The parent/guardian of the person accused of misconduct;
  - d. A teacher or staff member whose knowledge of the people involved may help in determining who is telling the truth;
  - e. Anyone mentioned as having related information;
  - f. Child protective agencies responsible for investigating child abuse reports, if necessary;
  - g. Law enforcement agency responsible for investigating criminal activity, if necessary;
  - h. Legal counsel for the District;
5. When the victim and/or the student who complained agree along with the person accused of misconduct, the principal or designee may arrange for them to resolve the complaint informally with the help of a counselor, teacher, administrator or trained mediator. The victim and student who complained shall never be asked to work out the problem directly with the accused person unless such help is provided.
6. The principal or designee shall tell the student 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. If the student wishes to file a formal complaint, the principal or designee shall assist the student in doing this.
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 student reacted to the incident

- d. Evidence of past instances of misconduct prohibited by this policy by the accused person
  - e. 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 one or more students' safety, well-being or education; or how the misconduct affected the safety and well-being of a teacher, administrator, any other staff member, or any other person in the District authorized to transact business or perform services on behalf of the District
  - b. The type, frequency, pattern, violence and duration of the misconduct
  - c. The number of persons involved
  - d. The age, maturity and sex of the person accused
  - e. The subject(s) prompting the misconduct
  - f. The place and situation where the incident occurred
  - g. Other incidents at the school, including incidents of misconduct
  - h. According to the misconduct, a report may be obtained from the appropriate law enforcement agency
8. 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 student 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 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 victim or the person who complained has been further discriminated against, by misconduct prohibited by this policy, or by retaliation for the initial complaint. The principal or designee shall keep a record of this information and shall continue this follow-up at his/her discretion.

#### **~~Additional Procedures Related to Sexual Harassment or Sexual Violence~~**

~~The District shall evaluate whether the factual finding of behavior constituting sexual harassment or sexual violence, including off campus incidents, creates a hostile environment on campus or in an off-campus education program or activity. If the principal and/or designee is able to determine that the factual finding rises to a level of harassment in violation of this policy, the District shall promptly take reasonable steps eliminate the harassment in the educational setting, prevent its recurrence in the educational setting, and address the effects in the educational setting.~~

~~For the purposes of this section, a “factual finding” includes a finding of fact made by another public or private school, a law enforcement agency, a child protection agency, a court, the Commission on Teaching Credentials or any other finding of fact provided by the District which indicates that an employee or student engaged in behavior which may constitute a violation of this policy and poses a risk to the safety of the District’s students.~~

~~For the purposes of this section, a “hostile environment” exists where alleged conduct is sufficiently serious that it denies or limits a student’s ability to participate in or benefit from the District’s program. To determine whether a hostile environment exists, the principal or designee examines the context, nature, scope, frequency, duration and location of incidents, as well as the identity, number, and relationships of the persons involved. The principal or designee also determines whether the person at whom the conduct was directed found it harassing and whether a “reasonable person” would find the conduct harassing. Factors such as these assist in determining whether the conduct at issue is harassing and whether it is sufficiently severe, persistent or pervasive to have created a hostile environment. Such incidents may include injury to persons or property or conduct threatening injury to persons or property. In other instances, the behavior at issue is harassing, but not sufficiently severe, persistent or pervasive as to constitute a hostile educational environment. A determination of the existence of a hostile environment shall be considered in deciding an appropriate resolution to a complaint.~~

~~Where the misconduct involves an incident with a third party who is not a student, teacher, administrator, other staff member, or any other person in the District authorized to transact business or perform services on behalf of the District, the third party subject to the complaint shall have an opportunity to describe the incident, to request the presence of others who witnessed the incident, and to present any other information or evidence.~~

### **Additional Procedures Related to Cyberbullying**

~~Districts have the ability to monitor students' 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 — Students and Employees”). When conducted off campus using students' personal equipment, cyberbullying may be subject to District discipline to the extent that the activity is related to school activity or school attendance as noted above. The District is justified in responding when material: (1) is posted, sent, or displayed to other students through the District's Internet system; (2) originated on campus, such as a photo taken with a cell phone; (3) is related to on-campus bullying; (4) causes emotional harm to another student and interferes with his/her right to feel secure and successful at school; or (5) causes or threatens to cause school disruptions.~~

~~When a student is suspected of or reported to be using electronic or digital communications to engage in cyberbullying against other students or staff or to threaten District property, the investigation shall include documentation of the activity, identification of the source, and a determination of the impact or potential impact on school activity or school attendance. Students shall be encouraged to save and print any messages sent to them that~~

~~they feel constitutes cyberbullying, and to notify a teacher, principal, or other employee so that the matter may be investigated. If the principal or designee finds investigation to be warranted he/she shall follow the procedures set forth in this policy.~~

~~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. If the student is using a social networking site or service that has terms of use that prohibit posting harmful material, the~~

~~Superintendent or designee also may file a complaint with the Internet site or service to have the material removed.~~

### **Remedial Action**

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

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

Consequences and appropriate remedial action for students who commit misconduct that violates this policy may range from positive behavioral interventions up to and including suspension or expulsion.

### **Retaliation for Reporting Misconduct**

The District prohibits reprisal or retaliation against any student, or any participant in the complaint process who reports misconduct prohibited by this policy.

### **False Accusation of Misconduct**

Consequences and appropriate remedial action for a student found to have falsely accused another of misconduct prohibited by this policy range from positive behavioral interventions up to and including suspension or expulsion.

### **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. All misconduct involving damage to property, such as graffiti, shall be

photographed immediately and archived, prior to be removed. The Superintendent or designee may report the activity to the appropriate legal authorities.

2. Providing student counseling and appropriate sensitivity training and diversity education for students exhibiting hate-motivated behavior. The District shall also provide counseling, guidance and support, as necessary, to the students who are the victims of hate-motivated behavior or who make complaints about such behavior.
3. Notifying parents/guardians
4. Notifying child protective services for investigating child abuse reports
5. Notifying law enforcement agency for investigating hate crimes or sexual harassment/sexual violence that constitutes a crime.
6. Taking appropriate disciplinary action up to and including suspension or expulsion.
7. In addition, the principal or designee may take disciplinary measures against any person who is found to have made a complaint which he/she knew was not true.

### **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 annually, at the beginning of the school year to students and their parents/guardians, the rules of the District regarding student conduct which shall:

1. Describe student responsibilities, including the requirements for students to conform to reasonable standards of socially acceptable behavior; respect the person, property and rights of others; obey constituted authority; and respond to those who hold that authority;
2. Address appropriate recognition for positive reinforcement for good conduct, self-discipline, good citizenship and academic success;
3. Explain student rights;

4. Be displayed in a prominent location near each school principal's office (Education Code Section 231.5);
5. Be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester or summer session (Education Code Section 231.5);
6. Identify disciplinary sanctions and due process.

~~(See also BP/AR 4030-“Discrimination/ Hate-Motivated Incidents and Hate Crimes/~~

~~Hazing/Harassment (Including Sexual Harassment), Intimidation, Bullying and Cyberbullying~~

~~-Employee Version”, BP/AR 6163.4, “Acceptable Use of Technology – Students and Employees,” and BP 5131, “Discipline Code School Rules and Procedures Conduct”)~~

LEGAL REFERENCES:

#### EDUCATION CODE

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

~~212.5 Sexual harassment~~

220-221.1 Gender, gender identity and gender expression

221.7 School-sponsored athletic programs; prohibited sex discrimination

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

35181 Governing board policy on responsibilities of students

35291-35291.5 Rules

44807 Duty concerning conduct of students

48908 Duties of students

48900-48925 Grounds for suspension or expulsion; sexual harassment

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

48980 Notice at beginning of

term 49020-49023 Athletic

programs

#### CIVIL CODE

~~51.9 Liability for sexual harassment, business, service and professional relationships~~

1714.1 Liability of parents/guardians for willful misconduct of minor

## PENAL CODE

422.6, 422.7, 422.75 Liability for crimes based on discriminatory intent, including hate crimes

## UNITED STATES CODE

18 USC 245 Federally Protected Activities

~~18 USC 249 Hate Crime Acts~~

20 USC 1681-1688 Title IX, 1972 Education Act Amendments

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

## CODE OF FEDERAL REGULATIONS

34 CFR 104.7 Person Responsible for Overall Implementation of Title

IX 34 CFR 106.8 Person Responsible for Overall Implementation of

Title IX CODE OF REGULATIONS, TITLE 5

300-307 Duties of pupils

## COURT DECISIONS

Emmett v. Kent School District No. 415, (2000) 92 F.Supp. 1088

Bethel School District No. 403 v. Fraser, (1986) 478 U.S. 675

Tinker v. Des Moines Independent Community School District, (1969) 393 U.S. 503

Management Resources:

## CSBA PUBLICATIONS

Cyberbullying: Policy Considerations for Boards, Governance and Policy Services Policy Brief, July 2007

Protecting Our Schools: Governing Board Strategies to Combat School Violence, 1999

## CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Bullying at School, 2003

## NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Digital Discipline: Off-Campus Student Conduct, the First Amendment and Web Sites, School Law in Review, 2001

## NATIONAL SCHOOL SAFETY CENTER PUBLICATIONS

Set Straight on Bullies, 1989

## ~~U.S. DEPARTMENT OF EDUCATION PUBLICATIONS~~

~~Preventing Bullying: A Manual for Schools and Communities,~~

## ~~1998 WEB SITES~~

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

California Coalition for Children's Internet Safety: <http://www.cybersafety.ca.gov>

California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/ls/ss>

Center for Safe and Responsible Internet Use: <http://csriu.org> and <http://cyberbully.org>

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

National School Safety Center: <http://www.schoolsafety.us>

U.S. Department of Education: <http://www.ed.gov>

U.S. Office of Juvenile Justice and Delinquency Prevention: <http://www.ojjdp.ncjrs.org>  
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