

Riverside County Office of Education
Board Policy 5145.3 Nondiscrimination/Harassment

STUDENTS

SUBJECT: 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 County Office of Education (County Office) school or program, 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, and to all acts of the County Board of Education (County Board) and the County Superintendent of Schools or designee (County Superintendent) in enacting policies and procedures that govern the County Office of Education (County Office).

The County Board is committed to providing a safe school environment that allows all students equal access and opportunities in the County Office's academic, extracurricular, and other educational support programs, services, and activities. Unlawful discrimination against a student in any County Office school, program, or activity, including discriminatory harassment, intimidation, and bullying, is prohibited. Any form of retaliation against an individual who files or otherwise participates in the filing or investigation of a complaint or report regarding an incident of discrimination is also prohibited.

Unlawful discrimination may result from physical, verbal, nonverbal, or written conduct against a student based on the student's actual or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or the student's association with a person or group with one or more of these actual or perceived characteristics. Unlawful discrimination also occurs when the prohibited conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.

Unlawful discrimination also includes disparate treatment of students based on any one of the characteristics specified above with respect to the provision of opportunities for a student's participation in any County Office school, program, or activity, or a student's receipt of educational benefits or services, such as prohibiting a student from enrolling in a class or course on the basis of the student's sex.

Because unlawful discrimination may occur when disciplining students, including suspension and expulsion, discipline shall be enforced in a fair, consistent, and non-discriminatory manner.

In accordance with law, all County Office students shall be afforded the same rights, benefits, and protections. When, as permitted by law, the County Office maintains sex-segregated facilities, such as restrooms and locker rooms, or offers sex-segregated programs and activities, such as physical education classes, students may choose to access facilities and participate in such programs and activities consistent with their gender identity. In addition, students may

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choose to participate in accordance with their gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. (Education Code 221.5)

- (cf. 0410. - Nondiscrimination in Programs and Activities)
- (cf. 1312.3 - Uniform Complaint Procedures)
- (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)

Complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying or retaliation, may be filed in accordance with the County Office's uniform complaint procedures (UCP) pursuant to BP 1312.3 - Uniform Complaint Procedures. For complaints of sexual harassment, it is the responsibility of the County Office's Title IX Coordinator to determine whether the complaint should be addressed through UCP, or if the alleged conduct meets the federal definition of sexual harassment pursuant to 34 CFR 106.30, the complaint procedures established in 34 CFR 106.44-106.45. 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 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 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- Professional Standards)
- (cf. 5144 - Discipline)
- (cf. 5144.1 - Suspension and Expulsion/Due Process)
- (cf. 5145.2 - Freedom of Speech/Expression)

Antidiscrimination Measures

The County Board hereby incorporates by reference the policies, procedures, and measures implemented by the County Superintendent to prevent or address unlawful discrimination in County Office schools, programs, and activities. County Office nondiscrimination policies and practices shall be reviewed regularly, and action shall be taken to remove any identified barriers to student access to or participation in the educational program.

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Legal Reference:

CIVIL CODE

1714.1 Liability of parents/guardians for willful misconduct of minor EDUCATION CODE
 200-262.4 Prohibition of discrimination on the basis of sex
 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

GOVERNMENT CODE

11135 Nondiscrimination in programs or activities funded by state

CODE OF REGULATIONS, TITLE 5

432 Student record
 4600-4670 Uniform complaint procedures
 4900-4965 Nondiscrimination in elementary and secondary education programs

PENAL CODE

422.6 Crimes, harassment
 422.55 Definition of hate crime

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 29

794 Section 504 of Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000h-2 2000h-6 Title VI, Civil Rights Act of 1964
 2000d - 2000e-17 Title VII, Civil Rights Act of 1964 as amended
 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

CODE OF FEDERAL REGULATIONS, TITLE 34

99.31 Disclosure of personally identifiable information
 100.3a 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

COURT DECISIONS

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Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567
Flores v. Morgan Hill Unified School County Office of Education, (2003) 324 F.3d 1130

Management Resources:

CSBA PUBLICATIONS

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

CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS

Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018

FIRST AMENDMENT CENTER PUBLICATIONS

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

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

Resolution Agreement Between the Arcadia Unified School District, U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, (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

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PUBLICATIONS

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, August 2003

WEB SITES

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

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

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

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

First Amendment Center: <http://www.firstamendmentcenter.org>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/a>