

PERSONNEL

SUBJECT: Nondiscrimination in Employment

All allegations of discrimination in employment, including those involving an intern, volunteer, or job applicant, shall be investigated and resolved in accordance with procedures specified in this administrative regulation.

The County Office of Education designates the position identified below as its coordinator for nondiscrimination in employment (coordinator) to coordinate the County Office of Education's efforts to comply with state and federal nondiscrimination laws and to answer inquiries regarding the County Office of Education's nondiscrimination policies. The coordinator may be contacted at:

Executive Director, Personnel Services
3939 Thirteenth Street
Riverside, CA
951-826-6653
dlclark@rcoe.us

Measures to Prevent Discrimination

To prevent unlawful discrimination, harassment, and retaliation in County Office of Education employment, the Superintendent or designee shall implement the following measures:

1. Publicize the County Office of Education's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, by: (5 CCR 4960; 34 CFR 100.6, 106.9)
 - a. Including them in each announcement, bulletin, or application form that is used in employee recruitment
 - b. Posting them in all County Office of Education schools and offices, including staff lounges and other prominent locations
 - c. Posting them on the County Office of Education's web site and providing easy access to them through County Office of Education-supported social media, when available

(cf. 1113 - County Office of Education and School Web Sites)
(cf. 1114 - County Office of Education-Sponsored Social Media)
2. Disseminate the County Office of Education's nondiscrimination policy to all employees by one or more of the following methods: (2 CCR 11023)

- a. Printing and providing a copy of the policy to all employees, with an acknowledgment form for each employee to sign and return
- b. Sending the policy via email with an acknowledgment return form
- c. Posting the policy on the County Office of Education intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies
- d. Discussing the policy with employees upon hire and/or during a new hire orientation session
- e. Any other way that ensures employees receive and understand the policy

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

3. Provide to employees a handbook that contains information that clearly describes the County Office of Education's nondiscrimination policy, procedures for filing a complaint, and resources available to anyone who feels that he/she has been the victim of any discriminatory or harassing behavior
4. Provide training to employees, volunteers, and interns regarding the County Office of Education's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made

Training for supervisors shall include the requirement to report any complaint of misconduct to a designated representative, such as the coordinator, human resources manager, or Superintendent or designee as a topic in the sexual harassment prevention training required pursuant to 2 CCR 11024 (2 CCR 11023)

(cf. 1240 - Volunteer Assistance)
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)
(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)

5. Periodically review the County Office of Education's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure County Office of Education compliance with law
6. For any County Office of Education facility where 10 percent of employees have a language other than English as their spoken language, translate the policy into every language spoken by at least 10 percent of the workforce

The County Superintendent of Schools desires to provide a positive work environment where employees and job applicants are assured of equal access and opportunities and are free from harassment in accordance with law. The County Superintendent of Schools prohibits Riverside County Superintendent of Schools (RCSS) employees or third parties from discriminating against or harassing any other RCSS employee or job applicant on the basis of the person's actual or perceived race, religious creed, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran status, gender, gender identity, gender expression, sex, or sexual orientation.

Additionally, the County Superintendent of Schools prohibits discrimination against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation on any WIA Title I- financially assisted program. The recipient of Federal Financial Assistance must not discriminate in any of the following areas:

1. Deciding who will be admitted, or have access, to any WIA Title I-financially assisted program or activity;
2. providing opportunities in, or treating any persons with regard to, such a program or activity; or,
3. making employment decisions in the administration of, or in connection with, such a program or activity.

For additional WIA information refer to AR 4030 Exhibit A

(cf. 0410.3 - Nondiscrimination in Programs and Activities)
(cf. 4032 - Reasonable Accommodation)
(cf. 4033 - Lactation Accommodation)
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)
(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)
(cf. 4154/4254/4354 - Health and Welfare Benefits)
(cf. 5145.7 - Sexual Harassment)

Prohibited discrimination consists of the taking of any adverse employment action against a person, including termination or denial of promotion, job assignment, or training, or in discriminating against the person in compensation, terms, conditions, or other privileges of employment based on any of the prohibited categories of discrimination listed above.

The prohibition against discrimination based on the religious creed of an employee or job applicant includes any discrimination based on the person's religious dress or grooming practices or any conflict between the person's religious belief, observance, or practice and an employment requirement. The prohibition against discrimination based on the sex of

an employee or job applicant shall include any discrimination based on the person's pregnancy, childbirth, breastfeeding, or any related medical conditions. (Government Code 12926, 12940)

Harassment consists of any unwelcome verbal, physical, or visual conduct that is based on any of the prohibited categories of discrimination listed above and that is so severe or pervasive that it adversely affects an individual's employment opportunities, has the purpose or effect of unreasonably interfering with the individual's work performance, or creates an intimidating, hostile, or offensive work environment.

The County Superintendent of Schools also prohibits retaliation against any RCSS employee or job applicant who complains, testifies, assists, or in any way participates in the RCSS' complaint procedures instituted pursuant to this policy.

Any RCSS' employee who engages in prohibited discrimination, harassment, or retaliation or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in such behavior in violation of this policy shall be subject to disciplinary action, up to and including dismissal.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment shall report the incident to the Coordinator or County Superintendent of Schools as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately.

Complaint Procedure

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

1. Notice and Receipt of Complaint: A complainant may inform his/her direct supervisor, another supervisor, the coordinator, the Superintendent or, if available, a complaint hotline or an ombudsman.

The complainant may file a written complaint in accordance with this procedure, or if he/she is an employee, may first attempt to resolve the situation informally with his/her supervisor.

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the coordinator, whether or not the complainant files a written complaint.

The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, other evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

(cf. 0410 - Nondiscrimination in County Office of Education Programs and Activities)
(cf. 4032 - Reasonable Accommodation)

2. Investigation Process: The coordinator shall initiate an impartial investigation of an allegation of discrimination or harassment within five business days of receiving notice of the alleged discriminatory or harassing behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The coordinator shall meet with the complainant to describe the County Office of Education's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The coordinator shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. He/she shall also inform the parties that the investigation will be kept confidential to the extent possible, but that some information may be revealed as necessary to conduct an effective investigation.

(cf. 3580 - County Office of Education Records)
(cf. 4112.6/4212.6/4312.6 - Personnel Files)
(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

If the coordinator determines that a detailed fact-finding investigation is necessary, he/she shall begin the investigation immediately. As part of this investigation, the coordinator should interview the complainant, the person accused, and other persons who could be expected to have relevant information.

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

When necessary to carry out his/her investigation or to protect employee safety, the coordinator may discuss the complaint with the Superintendent or designee, County Office of Education legal counsel, or the County Office of Education's risk manager.

The coordinator also shall determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation

is completed to ensure that further incidents are prevented. The coordinator shall ensure that such interim measures do not constitute retaliation.

3. **Written Report on Findings and Remedial/Corrective Action:** No more than 20 business days after receiving the complaint, the coordinator shall conclude the investigation and prepare a written report of his/her findings. This timeline may be extended for good cause. If an extension is needed, the coordinator shall notify the parties and explain the reasons for the extension.

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the report also shall include any corrective action(s) that have been or will be taken to address the behavior, provide appropriate options for remedial actions and resolutions for the complainant, and ensure that retaliation or further discrimination or harassment is prevented.

The report shall be presented to the complainant, the person accused, and the Superintendent or designee.

4. **Appeal to the Superintendent:** The complainant or the person accused may appeal any findings to the Superintendent within 10 business days of receiving the written report of the coordinator's findings. The Complaint Officer shall provide the Superintendent with all information presented during the investigation. Upon receiving an appeal, the Superintendent or designee shall schedule a hearing as soon as practicable. Any complaint against a County Office of Education employee shall be addressed in closed session in accordance with law. The Superintendent shall render his/her decision within 10 business days.

(cf. 1312.1 - Complaints Concerning County Office of Education Employees)

Other Remedies

In addition to filing a discrimination or harassment complaint with the County Office of Education, a person may file a complaint with either the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

1. To file a valid complaint with DFEH, within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960
2. To file a valid complaint directly with EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)

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

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

CIVIL CODE

51.7 Freedom from violence or intimidation

GOVERNMENT CODE

11135 Unlawful discrimination

12900-12996 Fair Employment and Housing Act

PENAL CODE

422.56 Definitions, hate crimes

CODE OF REGULATIONS, TITLE 2

7287.6 Terms, conditions and privileges of employment

CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 29

621-634 Age Discrimination in Employment Act

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act of 1964, as amended

2000e-2000e-17 Title VII, Civil Rights Act of 1964, as amended

2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008

2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964

6101-6107 Age discrimination in federally assisted programs

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 Compliance information

104.7 Designation of responsible employee for Section 504

104.8 Notice

106.8 Designation of responsible employee and adoption of grievance procedures

106.9 Dissemination of policy

110.1-110.39 Nondiscrimination on the basis of age

COURT DECISIONS

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

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

Management Resources:

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

Notice of Non-Discrimination, August 2010

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Questions and Answers: Religious Discrimination in the Workplace, 2008

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the
Americans with Disabilities Act, October 2002

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

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

U.S. Department of Education, Office for Civil Rights:

<http://www.ed.gov/about/offices/list/ocr>

U.S. Equal Employment Opportunity Commission: <http://www.eeoc.gov>