

NONDISCRIMINATION IN EMPLOYMENT

The Governing Board is determined to provide a safe, positive environment where all district employees are assured of full and equal employment access and opportunities, protection from harassment or intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. For purposes of this policy employees include job applicants, interns, volunteers, and persons who contracted with the district to provide services, as applicable.

No district employee shall be discriminated against or harassed by any coworker, supervisor, manager, or other person with whom the employee comes in contact in the course of employment, on the basis of the employee's actual or perceived race, color, ancestry, national origin, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran or military status, gender, sex, sexual orientation, gender identity, gender expression, or association with a person or group with one or more of these actual or perceived characteristics.

The district shall not inquire into any employee's immigration status nor discriminate against an employee on the basis of immigration status, unless there is clear and convincing evidence that the district is required to do so in order to comply with federal immigration law. (2 CCR 11028)

Discrimination in employment based on the characteristics listed above is prohibited in all areas of employment and in all employment-related practices, including the following:

1. Hiring, compensation, terms, conditions, and other privileges of employment
2. Taking of an adverse employment action, such as termination or the denial of employment, promotion, job assignment, or training
3. Unwelcome conduct, whether verbal, physical, or visual, that is so severe or pervasive as to adversely affect an employee's employment opportunities, or that has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment
4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code 12940 or 2 CCR 11006-11086, such as:
 - a. Sex discrimination based on an employee's pregnancy, childbirth, breastfeeding, or any related medical condition or on an employee's gender, gender expression, or gender identity, including transgender status
 - b. Religious creed discrimination based on an employee's religious belief or observance, including religious dress or grooming practices, or based on the district's failure or refusal to use reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement.
 - c. Requiring medical or psychological examination of a job applicant, or an inquiry into

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whether a job applicant has a mental or physical disability or a medical condition or as to the severity of any such disability or condition, without the showing of a job-related need or business necessity

- d. Failure to make reasonable accommodation for the known physical or mental disability of an employee or to engage in a timely, good faith, interactive process with an employee who has requested such accommodations in order to determine the effective reasonable accommodations, if any to be provided to the employee.

The Board also prohibits retaliation against any district employee who opposes any discriminatory employment practice by the district or its employees, agents, or representatives or who complains, reports an incident, testifies, assists, or in any way participates in the district's complaint process pursuant to this policy. No employee who requests an accommodation for any protected characteristic listed in this policy shall be subjected to any punishment or sanction, regardless of whether the request was granted. (Government Code 12940; CCR 11028)

No employee shall, in exchange for a raise or bonus or as a condition of employment or continued employment, be required to sign any document that releases the employee's right to file a claim against the district or to disclose information about harassment, discrimination, or other unlawful acts in the workplace, including any conduct that the employee has reasonable cause to believe is unlawful. (Government Code 12964.5)

Complaints concerning employment discrimination or harassment or retaliation shall immediately be investigated in accordance with procedures specified in the accompanying administrative regulation.

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

The Superintendent or designee shall use all appropriate means to reinforce the district's nondiscrimination policy, including providing training and information to employees about how to recognize harassment, discrimination, or other prohibited conduct, how to respond appropriately, and components of the district's policies and regulations regarding discrimination. The Superintendent or designee shall regularly review the district's employment practices and, as necessary, shall take action to ensure district compliance with the nondiscrimination laws.

Any district 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.

The district shall maintain and preserve all applications, personnel, membership, or employment referral records and files for at least four years after the records are initially created or received or, for an applicant or a terminated employee, for four years after the date the employment action was taken. However, when the district is notified that a complaint has been filed with the California Department of Fair Employment and Housing, records related to the employee involved shall be

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maintained and preserved until the later of the first date after the time for filing a civil action has expired or the first date after the complaint has been fully and finally disposed of and all administrative proceedings, civil actions, appeals, or related proceedings have been terminated. (Government Code 12946)

State

2 CCR 11006-11086: Discrimination in employment

2 CCR 11023: Harassment and discrimination prevention and correction

2 CCR 11024: Required training and education on harassment based on sex, gender identity and expression, and sexual orientation

2 CCR 11027-11028: National origin and ancestry discrimination

5 CCR 4900-4965: Nondiscrimination in elementary and secondary education programs

Civ. Code 51.7: Freedom from violence or intimidation

Ed. Code 200-262.4: Educational equity; prohibition of discrimination on the basis of sex

Gov. Code 11135: Unlawful discrimination

Gov. Code 11138: Rules and regulations

Gov. Code 12900-12996: Fair Employment and Housing Act

Gov. Code 12940-12952: Unlawful employment practices

Gov. Code 12960-12976: Unlawful employment practices; complaints

Pen. Code 422.56: Definitions, hate crimes

Federal

20 USC 1681-1688: Title IX of the Education Amendments of 1972

28 CFR 35.101-35.190: Americans with Disabilities Act

29 USC 621-634: Age Discrimination in Employment Act

29 USC 794: Rehabilitation Act of 1973, Section 504

34 CFR 100.6: Compliance information

34 CFR 104.7: Designation of responsible employee for Section 504

34 CFR 104.8: Notice

34 CFR 106.8: Designation of responsible employee and adoption of grievance procedures

34 CFR 106.9: Severability

34 CFR 110.1-110.39: Nondiscrimination on the basis of age

42 USC 12101-12213: Equal opportunity for individuals with disabilities

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

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

42 USC 2000ff-2000ff-11: Genetic Information Nondiscrimination Act of 2008

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

42 USC 6101-6107: Age discrimination in federally assisted programs

Management Resources

CA Dept of Fair Employment and Housing Publication: Transgender Rights in the Workplace

CA Dept of Fair Employment and Housing Publication: California Law Prohibits Workplace Discrimination and Harassment

CA Dept of Fair Employment and Housing Publication: Workplace Harassment Guide for California Employers

CA Dept of Fair Employment and Housing Publication: Your Rights and Obligations as a Pregnant Employee

All Personnel

BP 4030(d)

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Court Decision: Kennedy v. Bremerton (2022) 142 S.Ct. 2407

Court Decision: Shephard v. Loyola Marymount, (2002) 102 Cal.Appl 4th 837

Court Decision: Thomson v. North American Stainless LP, (2011) 131 S.Ct. 863

U.S. DOE Office for Civil Rights Publication: Notice of Non-Discrimination, August 2010

U.S. Equal Employment Opportunity Comm Publication: Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999

U.S. Equal Employment Opportunity Comm Publication: EEOC Compliance Manual

Website: California Department of Fair Employment and Housing

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

Website: U.S. Equal Employment Opportunity Commission

Policy Adopted: 12/14/22

ORCUTT UNION SCHOOL DISTRICT
Orcutt, California