

BP 4119.1 (a)
BP 4219.1 (a)
BP 4319.1 (a)

Personnel

CIVIL AND LEGAL RIGHTS

The Governing Board believes that the personal life of an employee is not an appropriate concern of the district, except as it may directly relate to the performance of the employee's duties.

The district acknowledges that employees have certain privacy rights under applicable law. The district shall make no inquiry concerning the personal values, attitudes, and beliefs of district employees or their sexual orientation or political or religious affiliations, beliefs, or opinions except when authorized by law. In addition, no district employee shall be required to provide critical appraisals of other individuals with whom the employee has a familial relationship. However, the district reserves the right to access any publicly available information about any employee.

No employee shall be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a student engaged in conduct authorized under Education Code 48907 or 48950.

When necessary to protect the health, welfare, or safety of students and staff, school officials may search district property under an employee's control.

Whistleblower Protection

An employee shall have the right to disclose to a Board member, a school administrator, a member of the County Board of Education, County Superintendent of Schools, or the Superintendent of Public Instruction any improper governmental activity by the district or a district employee that violates state or federal law, is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. When the employee has reasonable cause to believe that the information discloses a violation of state or federal statute or a violation or noncompliance with a state or federal rule or regulation, ~~he/she~~ the employee has the right to disclose such information to a government or law enforcement agency or to refuse to participate in any such activity. (Education Code 44112, 44113; Labor Code 1102.5)

The Superintendent or designee shall prominently display in lettering larger than size 14 point type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline maintained by the office of the California Attorney General. (Labor Code 1102.7, 1102.8)

No employee shall use or attempt to use official authority status or influence to intimidate, threaten, coerce, or command, another employee for the purpose of interfering with that employee's right to disclose improper governmental activity. (Education Code 44113)

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An employee who has disclosed improper governmental activity and believes that acts or attempted acts of reprisal have subsequently occurred file a written complaint in accordance with the district's complaint procedures. After filing a complaint with the district, he/she may also file a copy of the complaint with local law enforcement in accordance with Education Code 44114.

Protection Against Liability

No employee shall be liable for harm caused by the employee's act or omission when acting within the scope of employment or district responsibilities, the employee's act or omission is in conformity with federal, state, and local laws, district policy, or administrative regulation, and the employee's act or omission is in furtherance of an effort to control, discipline, expel, or suspend a student, or to maintain order or control in the classroom or school. (20 USC 6736)

The protection against liability shall not apply when: (20 USC 6736)

1. The employee acted with willful or criminal misconduct, gross negligence, recklessness, or a conscious, flagrant indifference to the rights or safety of the individual harmed.
2. The employee caused harm by operating a motor vehicle or other vehicle requiring license or insurance.
3. The employee was not properly licensed, if required, by state law for such activities.
4. The employee was found by a court to have violated a federal or state civil rights law.
5. The employee was under the influence of alcohol or any drug at the time of the misconduct.
6. The misconduct constituted a crime of violence pursuant to 18 USC 16 or an act of terrorism for which the employee has been convicted in a court.
7. The misconduct involved a sexual offense for which the employee has been convicted in a court.
8. The misconduct occurred during background investigations, or other actions, involved in the employee's hiring.

State

CA Constitution Article 1, Section 1: Inalienable rights

Ed. Code 200-262.4: Prohibition of discrimination

Ed. Code 44040: Discrimination based on employee's appearance before certain boards committees

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Ed. Code 44110-44114: Reporting by school employees of improper governmental activity

Ed. Code 48907: Exercise of free expression; time, place and manner rules and regulations

Ed. Code 48950: Speech and other communication

Ed. Code 49091.24: Teacher rights to refuse evaluation/survey of personal life

Ed. Code 7050-7058: Political activities of school officers and employees

Gov. Code 12650-12656: False claims actions

Gov. Code 12940-12953: Discrimination prohibited; unlawful practices

Gov. Code 3540.1: Public employment; definitions

Gov. Code 3543.5: Interference with employee's rights prohibited

Gov. Code 815.3: Intentional torts

Gov. Code 820-823: Tort claims act

Gov. Code 825.6: Indemnification of public entity

Lab. Code 1102.5-1106: Whistleblower protections

Federal

18 USC 16: Crime of violence; definition

20 USC 1681-1688: Title IX of the Education Amendments of 1972; discrimination based on sex

20 USC 7941-7948: Teacher liability protection

42 USC 12101-12213: Americans with Disabilities Act

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

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

U.S. Constitution: Amendment 1, Free exercise, free speech, and establishment clauses

Management Resources

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

Court Decision: New Jersey v. T.L.O. (1985) 469 U.S. 325

Court Decision: Garcetti v. Ceballos (2006) 547 U.S. 410

Court Decision: Hartnett v. Crosier (2012) 205 Cal.App.4th 685

Court Decision: Johnson v. Poway Unified School District (2011) 658 F.3d 954

Court Decision: O'Conner v. Ortega (1987) 480 U.S. 709

Court Decision: Ohton v. CSU San Diego (2007) 56 Cal.Rptr.3d 111

Website: CSBA District and County Office of Education Legal Services

Website: California Office of the Attorney General

Policy Adopted: 12/14/22

ORCUTT UNION SCHOOL DISTRICT
Orcutt, California