

KERN COUNTY SUPERINTENDENT OF SCHOOLS**PERSONNEL****NONDISCRIMINATION IN EMPLOYMENT**

The Office of the Kern County Superintendent of Schools (“Office”) desires to provide a safe, positive work environment where employees and job applicants are assured of full and equal employment access and opportunities and freedom from harassment and any fear of reprisal or retribution for asserting their employment rights in accordance with law. The Office strictly prohibits employees from discriminating against or harassing any other Office employee or job applicant on the basis of actual or perceived race or ethnicity, religious creed or religion, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or on the basis of a person’s association with a person or group with one or more of these actual or perceived characteristics, at any Office work environment or work-related activity.

The Office also prohibits retaliation by or against any Office employee, job applicant, or other person who opposes any discriminatory employment practice by the Office or its employees, agents, or representatives, or who complains, testifies, assists, or in any way participates in the complaint procedures instituted pursuant to this policy. No employee or job applicant 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. (Gov’t Code § 12940)

This policy applies to all work environments and work-related activities of the Office. The term "work environment" means any location where Office employees perform their job duties including, but not limited to, worksites of the Office, and jails, hospitals, juvenile halls, private schools, homes where employees deliver home instruction, charter schools, and the sites of other school districts. As used in this policy, the term "employee" includes an independent contractor, volunteer, and unpaid intern as provided in Government Code section 12940(j)(1),(5).

DEFINITIONS AND EXAMPLES

Discrimination and harassment 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. Discrimination in 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 section 12940 or 2 C.C.R. sections 11006-11086, including, but not limited to:
 - 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 his or her religious dress or grooming practices, or based on the Office'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. Disability discrimination based on an Office requirement for a medical or psychological examination of a job applicant, or an inquiry into 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. Disability discrimination based on the Office's 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, to determine effective reasonable accommodations for the employee, when he or she has requested reasonable accommodation for a known physical or mental disability or medical condition.

Sexual harassment is a form of unlawful discrimination and is addressed in SP 4119.11. The procedure to follow if the action(s) meets the Title IX definition of sexual harassment is found in SP 4119.12.

Complaints concerning employment discrimination or harassment shall immediately be investigated in accordance with the complaint procedures specified below.

Any Office employee who engages or participates in prohibited discrimination, harassment, or retaliation, or who aids, abets, incites, compels, or coerces another to unlawfully discriminate, harass, or retaliate against another Office employee, job applicant, or other person in the work environment, is in violation of this policy and may be subject to disciplinary action, up to and including dismissal.

Any non-employee who engages in or participates in prohibited discrimination, harassment, or retaliation, or who aids, abets, incites, compels, or coerces another to commit prohibited

discrimination, harassment, or retaliation against an Office employee, job applicant, or other person in the work environment is in violation of this policy and subject to exclusion from any and all property under the authority of the Superintendent and such other corrective action as may be appropriate.

COMPLAINTS

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

The following position is designated as the Employment Nondiscrimination Compliance Officer. The Employment Nondiscrimination Compliance Officer will coordinate the Office's efforts to comply with state and federal nondiscrimination laws and to answer inquiries regarding the Office's nondiscrimination policies. The Employment Nondiscrimination Compliance Officer may be contacted at:

Assistant Superintendent-Human Resources & Special Services
Kern County Superintendent of Schools Office
1300 17th Street - CITY CENTRE
Bakersfield, CA 93301
(661) 636-4673
E-mail: tosmith@kern.org

Any Office employee or applicant who feels that he or she has been discriminated, harassed, or retaliated against in violation of this policy, or who has knowledge of an incident of discrimination, harassment, or retaliation by or against another employee in violation of this policy, shall immediately report the incident to his or her supervisor, another supervisor, or the Employment Nondiscrimination Compliance Officer. An employee may bypass his or her supervisor when the supervisor is the alleged offender. The Office shall protect any employee who reports such incidents from retaliation. Failure of an Office employee to report discrimination, harassment, or retaliation may result in disciplinary action.

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination, harassment, or retaliation shall report the incident to the Superintendent or the Employment Nondiscrimination Compliance Officer as soon as practical after the incident. A supervisor or administrator who receives a discrimination, harassment, or retaliation complaint shall promptly notify the Employment Nondiscrimination Compliance Officer.

A non-employee who feels that he or she has been or is being discriminated, harassed, or retaliated against in violation of this policy may file a complaint pursuant to SP 4109 - Complaints Against Employees.

If the action in the complaint meets the Title IX definition of sexual harassment, the procedure in SP 4119.12 must be followed. Any other 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 or her direct supervisor, another supervisor, the Employment Nondiscrimination Compliance Officer, or the Superintendent when he or she feels that he or she has been discriminated, harassed, or retaliated against in violation of this policy.

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

A supervisor or manager who has received information about an incident of discrimination, harassment, or retaliation, or has observed such an incident, shall report it to the Employment Nondiscrimination Compliance Officer, 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(s), a description of the incident(s), the date and location where the incident(s) occurred, the name(s) of witness(es) who may have relevant information, other evidence of the discrimination, harassment, or retaliation, and any other pertinent information which may assist in investigating and resolving the complaint.

2. *Investigation Process:* The Employment Nondiscrimination Compliance Officer shall initiate an impartial investigation of an allegation of discrimination or harassment within 10 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 investigation will be kept confidential to the extent possible, but some information may be revealed as necessary to conduct an effective investigation.

If the Employment Nondiscrimination Compliance Officer determines that a detailed fact-finding investigation is necessary, he or she shall begin the investigation as soon as practical. As part of this investigation, the Employment Nondiscrimination Compliance Officer or designee should interview the complainant, the person accused, and other persons who could be expected to have relevant information. The Employment Nondiscrimination Compliance Officer 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 or her investigation or to protect employee safety, the Employment Nondiscrimination Compliance Officer may discuss the complaint with the Superintendent or designee, district's legal counsel, or district's risk manager.

The Employment Nondiscrimination Compliance Officer shall also 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

Employment Nondiscrimination Compliance Officer shall ensure that such interim measures do not constitute retaliation.

3. *Written Report on Findings and Remedial/Corrective Action:* No more than 30 business days after receiving the complaint, the Employment Nondiscrimination Compliance Officer shall conclude the investigation and prepare a written report of his or her findings. This timeline may be extended for good cause. If an extension is needed, the Employment Nondiscrimination Compliance Officer shall notify the parties and explain the reasons for the extension.

The report shall include the decision and 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. If corrective action(s) include recommended or imposed discipline of an employee, the report shall state effective action was taken, or will be recommended, and that the employee was informed of the Office's expectations. The report shall not give any further information as to the nature of the disciplinary action. The report shall be presented to the complainant, the person accused, and the Superintendent or designee.

4. *Appeal to the Superintendent/Designee:* The complainant or the person accused may appeal any findings to the Superintendent/Designee within 10 business days of receiving the written report of the Employment Nondiscrimination Compliance Officer's findings. The Employment Nondiscrimination Compliance Officer shall provide the Superintendent/Designee with all information presented during the investigation. Upon receiving an appeal, the Superintendent/Designee shall schedule an informal hearing as soon as practicable. The Superintendent/Designee shall render a decision within 10 business days after the hearing.

MEASURES TO PREVENT DISCRIMINATION

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

1. Publicize the Office's nondiscrimination policy, including the complaint procedures and the Employment Nondiscrimination Compliance Officer's contact information by:
 - a. Including the policy in each announcement, bulletin, or application form that is used in employee recruitment;
 - b. Posting the policy in all Office schools and offices, including staff lounges and other, prominent locations; and

- c. Posting the policy on the Office's website. (5 C.C.R. § 4960; 34 C.F.R. §§ 100.6, 106.9)
2. Disseminate the Office's nondiscrimination policy to all employees by one or more of the following methods:
 - 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 district intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policy;
 - d. Discussing the policy with employees upon hire and/or during a new hire orientation session; and
 - e. Any other way that ensures employees receive and understand the policy. (2 C.C.R. § 11023)
 3. Include in any employee handbook information that clearly describes the Office's nondiscrimination policy, procedures for filing a complaint, and resources available to anyone who feels that he or she has been the victim of any discriminatory or harassing behavior.
 4. Provide training to employees, volunteers, and interns regarding the Office'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 Employment Nondiscrimination Compliance Officer, human resources manager, or Superintendent or designee as a topic in the sexual harassment prevention training required pursuant to Title 2, California Code of Regulations, section § 11024. (2 C.C.R. § 11023)
 5. Periodically review the Office's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure Office compliance with law.
 6. For any Office 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.

7. In addition, the Superintendent or designee shall post, in a conspicuous place on Office premises, the California Department of Fair Employment and Housing publication on workplace discrimination and harassment issued pursuant to Title 2, California Code of Regulations, section 11013.

OTHER REMEDIES

An employee or job applicant may, in addition to filing a discrimination or harassment complaint with the Office, 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, the employee must file his or her complaint within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code section 12960. (Gov’t Code § 12960)
2. To file a valid complaint directly with EEOC, the employee must file his or her charge within 180 days of the alleged discriminatory act(s).
3. To file a valid charge with EEOC after first filing a complaint with DFEH, the employee must file the charge within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by DFEH, whichever is earlier. (42 U.S.C. § 2000e-5)

Legal References:

EDUCATION CODE

200-262.4 Prohibition of discrimination

CIVIL CODE

51.7 Freedom from violence or intimidation

GOVERNMENT CODE

11135 Unlawful discrimination

11138 Rules and regulations

12900-12996 Fair Employment and Housing Act

PENAL CODE

422.56 Definitions, hate crimes

CODE OF REGULATIONS, TITLE 2

11006-11086 Discrimination in employment

11013 Recordkeeping

11019 Terms, conditions and privileges of employment

11023 Harassment and discrimination prevention and correction

11024 Sexual harassment training and education

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

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