

CVUSD Board Policy

BP 4030

Personnel

Nondiscrimination In Employment

***Note: The following policy reflects the provisions of Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-7), Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17), Title IX of the Education Act Amendments of 1972 (42 USC 2000h-2000h-6), the Americans with Disabilities Act (42 USC 12101-12213), Section 504 of the Vocational Rehabilitation Act of 1973 (29 USC 794) and the California Fair Employment and Housing Act (FEHA) (Government Code 12900-12996). ***

Note: Education Code 260 and the implementing regulations at 5 CCR 4900-4965 specify that the Board has primary responsibility for ensuring that district programs and activities are free from discrimination on the basis of both sex and gender, among other categories. 5 CCR 4910 defines "sex" as the biological condition or quality of being a female or male human being. "Gender," pursuant to 5 CCR 4910, is defined as a person's actual sex or perceived sex and includes a person's perceived identity, appearance or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with a person's sex at birth. In accordance with those definitions, the following paragraph lists both "sex" and "gender" as prohibited categories of discrimination.

Note: For purposes of FEHA, Government Code 12926 defines "sex" in the same terms as in Penal Code 422.56. This extends the FEHA prohibition against discrimination to that based on an individual's gender, regardless of whether the perceived gender characteristics are different from those traditionally associated with the individual's sex at birth.

The Governing Board prohibits unlawful discrimination against and/or harassment of district employees and job applicants on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, or sexual orientation at any district site and/or activity. The Board also prohibits retaliation against any district employee or job applicant who complains, testifies or in any way participates in the district's complaint procedures instituted pursuant to this policy.

(cf. 4031 - Complaints Concerning Discrimination in Employment)
(cf. 4032 - Reasonable Accommodation)
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)
(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)

Any district employee who engages or participates in unlawful discrimination, or who aids, abets, incites, compels or coerces another to discriminate, is in violation of this policy and is subject to disciplinary action, up to and including dismissal.

(cf. 4117.4 - Dismissal)
(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

***Note: 2 CCR 7287.6 and case law provide that, in certain instances, an employee's (especially a supervisor's) knowledge or notice of harassment may subject the district to liability. Therefore, it is recommended that the district require its employees with knowledge or notice of harassment or discrimination to report the incident to the appropriate district authorities. In addition, AB 76 (Ch. 671, Statutes of 2003) amended Government Code 12940 to provide that an employer may also be responsible for the sexual harassment of employees by nonemployees where the employer knows or should have known of the conduct and failed to take immediate and corrective action. See BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment. ***

Any district employee who observes or has knowledge of an incident of unlawful discrimination or harassment shall report the incident to the principal, district administrator or Superintendent as soon as practical after the incident. Failure of a district employee to report discrimination or harassment may result in disciplinary action.

***Note: Pursuant to 34 CFR 100.6(d) and 106.9, and 28 CFR 35.106, the district is required to continually notify employment applicants that it does not discriminate on the basis of race, color, national origin, sex, disability or age. ***

The Superintendent or designee shall regularly publicize, within the district and in the community, the district's nondiscrimination policy and the availability of complaint procedures. Such publication shall be included in each announcement, bulletin or application form that is used in employee recruitment. (34 CFR 100.6, 106.9)

The district's policy and administrative regulation shall be posted in all schools and offices including staff lounges and student government meeting rooms. (5 CCR 4960)

***Note: Pursuant to 34 CFR 104.7 and 106.8, the district is required to designate the person(s) responsible for the overall implementation of the requirements of Title IX and Section 504, which prohibit discrimination on the basis of sex and disability. In its January 1999 Notice of Non-Discrimination, the Office of Civil Rights (OCR) states that it is acceptable for the district to identify such designated person(s) by position title(s) rather than by name. ***

The Board designates the following position(s) as Coordinator(s) for Nondiscrimination in Employment:

Assistant Superintendent, Personnel Services
1400 E. Janss Road, Thousand Oaks, CA 91362-2198
(805) 497-9511, Extension 213

Other Remedies

***Note: The Equal Employment Opportunity Commission (EEOC), in its June 1999 Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, states that it is important for employers' anti-harassment policies to contain information about time frames for filing charges of unlawful discrimination/harassment with the EEOC and the California Department of Fair Employment and Housing. An employee may file a complaint with EEOC either directly or after proceedings initiated by DFEH to address the employee's complaint have been terminated. The following paragraphs state the time limits within which employees must file their complaints. ***

An employee may, in addition to filing a discrimination complaint with the district, 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:

Note: Pursuant to Government Code 12960, an employee has one year to file a complaint with DFEH, although that period may be extended under certain circumstances, such as when a person obtains knowledge of the unlawful practice after the expiration of the one-year period.

1. To file a valid complaint with DFEH, the employee must file his/her complaint within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960. (Government Code 12960)
2. To file a valid complaint directly with EEOC, the employee must file his/her complaint within 180 days of the alleged discriminatory act(s). To file a valid complaint with EEOC after filing a complaint with DFEH, the employee must file the complaint 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)

Employees wishing to file complaints with the DFEH and EEOC should contact the nondiscrimination coordinator for more information.

Note: Pursuant to Government Code 12940, employees who unlawfully discriminate may be personally liable in a court of law for their unlawful conduct.

Legal Reference:

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 receiving state financial assistance
UNITED STATES CODE, TITLE 20
1681-1688 Discrimination based on sex or blindness, Title IX
UNITED STATES CODE, TITLE 29
794 Section 504 of the Rehabilitation Act of 1973
UNITED STATES CODE, TITLE 42
2000d-2000d-7 Title VI, Civil Rights Act of 1964
2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended
2000h-2-2000h-6 Title IX, 1972 Education Act Amendments
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
104.8 Notice
106.8 Designation of responsible employee and adoption of grievance procedures
106.9 Dissemination of policy
COURT DECISIONS
Carter v. California Department of Veterans Affairs (2003) 2003 Cal.LEXIS 5694
Shephard v. Loyola Marymount (2002) 102 CalApp.4th 837

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999
Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, March, 1999
U.S. DEPARTMENT OF EDUCATION, OFFICE OF CIVIL RIGHTS
Notice of Non-Discrimination, January, 1999
WEB SITES
EEOC: <http://www.eeoc.gov>
OCR: <http://www.ed.gov/offices/OCR>
DFEH: <http://www.dfeh.ca.gov>

CSBA: (11/99 11/01) 11/03

CVUSD Global Adoption: August 19, 2008