

Superintendent Policy 5145.3: Nondiscrimination/Harassment

Status: ADOPTED

Original Adopted Date: 03/05/2020 | **Last Revised Date:** 11/29/2023 | **Last Reviewed Date:** 11/29/2023

This policy shall apply to all acts constituting unlawful discrimination or harassment related to school activity or to school attendance occurring within a county office of education (COE) school or program, to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school, and to all acts of the County Board of Education and the County Superintendent of Schools in enacting policies and procedures that govern the COE.

The County Superintendent of Schools is committed to providing a welcoming, safe, and supportive school environment that allows all students equal access to opportunities in academic and other educational support programs, services, and activities. Unlawful discrimination against a student in any COE school, program, or activity, including discriminatory harassment, intimidation, and bullying, is prohibited. Any form of retaliation against an individual who files or otherwise participates in the filing or investigation of a complaint or report regarding an incident of discrimination is also prohibited.

Unlawful discrimination may result from physical, verbal, nonverbal, or written conduct against a student based on the student's actual or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or the student's association with a person or group with one or more of these actual or perceived characteristics. Unlawful discrimination also occurs when the prohibited conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.

Unlawful discrimination also includes disparate treatment of students based on any one of the characteristics specified above with respect to the provision of opportunities for a student's participation in any COE school, program, or activity, or a student's receipt of educational benefits or services.

Because unlawful discrimination may occur when disciplining students, including suspension and expulsion, discipline shall be enforced in a fair, consistent, and non-discriminatory manner.

In accordance with law, all COE students shall be afforded the same rights, benefits, and protections. When, as permitted by law, the COE maintains sex-segregated facilities, such as restrooms and locker rooms, or offers sex-segregated programs and activities, such as physical education classes, students may choose to access facilities and participate in such programs and activities consistent with their gender identity. In addition, students may choose to participate in accordance with their gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. (Education Code 221.5)

Complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying or retaliation may be filed in accordance with the COE's uniform complaint procedures (UCP) pursuant to Board Policy 1312.3 - Uniform Complaint Procedures. For complaints of sexual harassment, it is the responsibility of the COE's Title IX Coordinator to determine whether the complaint should be addressed through UCP or, if the alleged conduct meets the federal definition of sexual harassment pursuant to 34 CFR 106.30, the complaint procedures established in 34 CFR 106.44-106.45. Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, all complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and prompt action shall be taken to stop the discrimination, prevent recurrence, and address any continuing effect on students.

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, or bullying, or retaliation in violation of law or COE policy or procedures shall be subject to appropriate consequence or discipline, which may include suspension or expulsion when the behavior is severe or pervasive as defined in Education Code 48900.4.

Antidiscrimination Measures

The County Superintendent of Schools hereby incorporates by reference the policies, procedures, and measures implemented by the COE to prevent or address unlawful discrimination in COE schools, programs, and activities. COE nondiscrimination policies and practices shall be reviewed regularly, and action shall be taken to remove any

identified barriers to student access to or participation in the educational program.

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

Federal References

| | Description |
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| 20 USC 1681-1688 | Title IX of the Education Amendments of 1972; discrimination based on sex |
| 28 CFR 35.107 | Designation of responsible employee and adoption of grievance procedures |
| 29 USC 794 | Rehabilitation Act of 1973, Section 504 |
| 34 CFR 100.3 | Prohibition of discrimination on basis of race, color or national origin |
| 34 CFR 104.7 | Designation of responsible employee for Section 504 |
| 34 CFR 104.8 | Notice |
| 34 CFR 106.30 | Discrimination on the basis of sex; definitions |
| 34 CFR 106.44-106.45 | Grievance process for formal complaints of sexual harassment |
| 34 CFR 106.8 | Designation of responsible employee and adoption of grievance procedures |
| 34 CFR 110.25 | Prohibition of discrimination based on age |
| 34 CFR 99.31 | Disclosure of personally identifiable information |
| 42 USC 12101-12213 | Americans with Disabilities Act |
| 42 USC 2000d-2000d-7 | Title VI and Title VII Civil Rights Act of 1964, as amended |
| 42 USC 2000h-2-2000h-6 | Title IX of the Civil Rights Act of 1964 |
| 42 USC 6101-6107 | Age Discrimination Act of 1975 |

Management Resources References

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| CA Office of the Attorney General Publication | Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018 - https://simbli.eboardsolutions.com/SU/ooeCURkNWJynAeTollv07A== |
| California Department of Education Publication | California Longitudinal Pupil Achievement Data System (CALPADS) Update FLASH #158: Guidance for Changing a Student's Gender in CALPADS, July 2019 - https://simbli.eboardsolutions.com/SU/6plusepgmCSgxqy19WbRAH2Qw== |
| Court Decision | Flores v. Morgan Hill Unified School District (2003) 324 F.3d 1130 |
| Court Decision | Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567 |
| CSBA Publication | Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools, October 2022 - https://simbli.eboardsolutions.com/SU/TJrCO83d42yQSTw6naAD0w== |
| U.S DOE, Office for Civil Rights Publication | Resolution Agreement Between the Arcadia USD, US Dept of Ed, OCR, & the US DOJ, CRD, (2013) OCR 09-12-1020, DOJ 169-12C-70 - https://simbli.eboardsolutions.com/SU/NaeV6aYv62hond0k7HLI0A== |
| U.S. Dept of Health & Human Services Publication | Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, August 2013 - https://simbli.eboardsolutions.com/SU/P2mNU6eB2VziOaQ4D8TM7A== |
| U.S. DOE OCR, U.S. DOJ Civil Rights Div. Pub | Dear Colleague Letter: Resource on Confronting Racial Discrimination in Student Discipline, May 2023 - https://simbli.eboardsolutions.com/SU/LIGBefta2t7tACr08i6nPQ== |
| U.S. DOE Publication | Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools, May 2023 |

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| U.S. DOE, Office for Civil Rights Publication | Dear Colleague Letter: Addressing Discrimination Against Jewish Students, May 2023 - https://simbli.eboardsolutions.com/SU/xVlb6kX0bql7lYg7N7lxDA== |
| U.S. DOE, Office for Civil Rights Publication | Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973, July 2022 - https://simbli.eboardsolutions.com/SU/XqCZNRpgr9KaYtLHZjrtSw== |
| U.S. DOE, Office for Civil Rights Publication | U.S. Department of Education Toolkit: Creating Inclusive and Nondiscriminatory School Environments for LGBTQI+ Students, June 2023 - https://simbli.eboardsolutions.com/SU/181OMF0JQSSH58t4UvJ1jg== |
| U.S. DOE, Office for Civil Rights Publication | Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County, June 2021 - https://simbli.eboardsolutions.com/SU/1dwptNmRoj4jSIZbrh5VYw== |
| U.S. DOE, Office for Civil Rights Publication | Questions and Answers on the Title IX Regulations on Sexual Harassment, June 2022 - https://simbli.eboardsolutions.com/SU/TXPOa8rms9nR7xqDSKJ9gg== |
| U.S. DOE, Office for Civil Rights Publication | Dear Colleague Letter: Race and School Programming, August 2023 - https://simbli.eboardsolutions.com/SU/cplusK5pMWRslshwixY9DsNmPYA== |
| U.S. DOE, Office for Civil Rights Publication | Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016 |
| U.S. DOE, Office for Civil Rights Publication | Dear Colleague Letter: Harassment and Bullying, October 2010 - https://simbli.eboardsolutions.com/SU/XX9aqjyOHBUO5MT1EmGslshslshA== |
| Website | U.S. Department of Justice, Civil Rights Division - https://simbli.eboardsolutions.com/SU/6MmdalPL7xqKlfePslsh4WyJQ== |
| Website | U.S. Department of Education, Office for Civil Rights - https://simbli.eboardsolutions.com/SU/HrN4mDOsAx53TBZ2HPwBvQ== |
| Website | First Amendment Center - https://simbli.eboardsolutions.com/SU/jzlfta62CjSCuo68JOXF1w== |
| Website | CSBA - https://simbli.eboardsolutions.com/SU/W3QxkK2FPsDsQBnMIENxGg== |
| Website | California Safe Schools Coalition - https://simbli.eboardsolutions.com/SU/WemZSl34fz0YvWHUM4trDg== |
| Website | California Office of the Attorney General - https://simbli.eboardsolutions.com/SU/5qNslsh5DoKuytasYcv9khGiA== |
| Website | California Department of Education - https://simbli.eboardsolutions.com/SU/os2jq5DcA2RawmY2VZ5FZQ== |

State References

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| 5 CCR 432 | Student records |
| 5 CCR 4600-4670 | Uniform complaint procedures |
| 5 CCR 4900-4965 | Nondiscrimination in elementary and secondary education programs |
| Civ. Code 1714.1 | Liability of parent or guardian for act of willful misconduct by a minor - https://simbli.eboardsolutions.com/SU/NSknepEduiYWusJFnU3r9Q== |
| Ed. Code 200-262.4 | Educational equity; prohibition of discrimination on the basis of sex - https://simbli.eboardsolutions.com/SU/ytTLslshoozWGUAbNL6kKkgxQ== |
| Ed. Code 48900.3 | Suspension or expulsion for act of hate violence |
| Ed. Code 48900.4 | Suspension or expulsion for threats or harassment |
| Ed. Code 48904 | Liability of parent/guardian for willful student misconduct |
| Ed. Code 48907 | Students' exercise of free expression; rules and regulations |
| Ed. Code 48950 | Freedom of speech and other communication |
| Ed. Code 48985 | Notices to parents in language other than English |

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| Ed. Code 49020-49023 | Athletic programs |
| Ed. Code 49060-49079 | Student records |
| Ed. Code 51204.5 | Social sciences instruction; contributions of specified groups |
| Ed. Code 51500 | Prohibited instruction or activity |
| Ed. Code 51501 | Nondiscriminatory subject matter |
| Ed. Code 60010 | Instructional materials; definition |
| Ed. Code 60040-60052 | Requirements for instructional materials |
| Gov. Code 11135 | Unlawful discrimination - https://simbli.eboardsolutions.com/SU/PcUFWeMcCJnzBrKAL0EtfQ== |
| Pen. Code 422.55 | Definition of hate crime |
| Pen. Code 422.6 | Crimes, harassment |

Cross References

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| 0410 | Nondiscrimination In County Office Programs And Activities - https://simbli.eboardsolutions.com/SU/8u2xAZUEykS6zHUBlpicoA== |
| 1312.3 | Uniform Complaint Procedures - https://simbli.eboardsolutions.com/SU/4GXpyuYgD0JpcH35hKvYEQ== |
| 1312.3 | Uniform Complaint Procedures - https://simbli.eboardsolutions.com/SU/PrE2wf4LYA5285zUdzhO9g== |
| 1312.3 | Uniform Complaint Procedures - https://simbli.eboardsolutions.com/SU/5ebxYGslshFAccuv5FUkYNPOw== |
| 1312.4 | Williams Uniform Complaint Procedures - https://simbli.eboardsolutions.com/SU/OwmPJ6tvr79i4NEmGKDZplusQ== |
| 1312.4 | Williams Uniform Complaint Procedures - https://simbli.eboardsolutions.com/SU/E1QEC9MQhkF52ZKslsheW1psQ== |
| 1312.4-E(1) | Williams Uniform Complaint Procedures - https://simbli.eboardsolutions.com/SU/DwamZ7r7zrJUNdUgd1A4og== |
| 3553 | Free And Reduced Price Meals - https://simbli.eboardsolutions.com/SU/jpkiybXkV4JxPvhISR9wDw== |
| 3553 | Free And Reduced Price Meals - https://simbli.eboardsolutions.com/SU/othSgh595y3dGLdnKJVEag== |
| 5131.2 | Bullying - https://simbli.eboardsolutions.com/SU/3UbJDPRIchd82qEaCBDplusYA== |
| 5131.2 | Bullying - https://simbli.eboardsolutions.com/SU/jplusaGQf5HSmaqzexlYbLcmw== |
| 5145.7 | Sexual Harassment - https://simbli.eboardsolutions.com/SU/4IEKBCplusBX6dr4i2fzS9CcA== |
| 5145.7 | Sexual Harassment - https://simbli.eboardsolutions.com/SU/IXk7QzCUJMjQmiytaZMO2g== |
| 5145.71 | Title IX Sexual Harassment Complaint Procedures - https://simbli.eboardsolutions.com/SU/LCwl4t4eplus56OJzqtj9h3A== |
| 5145.71-E(1) | Title IX Sexual Harassment Complaint Procedures - https://simbli.eboardsolutions.com/SU/slshnlXlzu0f4PYe7u9INFBng== |
| 6173.1 | Education For Foster Youth - https://simbli.eboardsolutions.com/SU/JCvp4gzoplus6BIPVNpBNYcdA== |
| 6173.1 | Education For Foster Youth - https://simbli.eboardsolutions.com/SU/HMopqTr3GMSy04KHplusGkqvA== |

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