

# **SAN LUIS OBISPO COUNTY BOARD OF EDUCATION**

## **Board Policy**

### **Nondiscrimination/Harassment**

BP 5145.3

#### **Students**

The County Board of Education is committed to working with the County Superintendent of Schools to provide a safe school environment that allows all students equal access and opportunities in academic and other educational support programs, services, and activities. Unlawful discrimination against a student in any county office of education (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.

(cf. 0410 - Nondiscrimination in County Office Programs and Activities)  
(cf. 5145.7 - Sexual Harassment)

This policy shall apply to all acts related to school activity or to school attendance occurring within a COE school or program, and 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.

Unlawful discrimination includes physical, verbal, nonverbal, or written conduct based on a 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, 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 includes the creation of a hostile environment 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 one of the categories above with respect to the provision of opportunities to participate in any COE school, program, or activity, or the provision or receipt of educational benefits or services, such as prohibiting a student from enrolling in a class or course on the basis of the student's sex.

When, as permitted by law, the COE maintains sex-segregated facilities, such as restrooms and locker rooms, or sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs, students shall be allowed to access

facilities and participate in programs and activities, class discussions, yearbook pictures, and field trips consistent with their gender identity. Each student's gender identity shall be the gender asserted by the student. Transgender and gender-nonconforming students shall be afforded the same rights, benefits, and protections as all COE students.

Complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, or retaliation may be filed in accordance with the County Board's uniform complaint procedures and the processes established by the County Superintendent for investigating and resolving such complaints. 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.

(cf. 1312.3 - Uniform Complaint Procedures)

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, or bullying, or retaliation in violation of law, County Board policy, or other related COE 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.

#### County Superintendent's Antidiscrimination Measures

The County Board hereby incorporates by reference the policies, procedures, and measures implemented by the County Superintendent to prevent or address unlawful discrimination in COE schools, programs, and activities, including, but not limited to, the following:

1. Designation of a coordinator/compliance officer to handle complaints alleging unlawful discrimination
2. Posting of information regarding Title IX prohibitions against discrimination based on a student's sex, gender, gender identity, pregnancy, and parental status in a prominent and conspicuous location on the COE's web site, as required pursuant to Education Code 221.61
3. Publicizing of the COE's nondiscrimination policies and complaint procedures
4. Provision of training and information about the COE's nondiscrimination policies and complaint procedures, including information related to state and federal laws pertaining to the rights of transgender and gender-nonconforming students, to students, parents/guardians, COE employees, and others as applicable
5. Establishment of a complaint process that ensures a prompt and fair resolution of complaints
6. Provision of annual notification required by law

7. Maintenance of student records in accordance with law

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

48900.3 Suspension or expulsion for act of hate violence

48900.4 Suspension or expulsion for threats or harassment

48904 Liability of parent/guardian for willful student misconduct

48907 Student exercise of free expression

48950 Freedom of speech

48985 Translation of notices

49020-49023 Athletic programs

51500 Prohibited instruction or activity

51501 Prohibited means of instruction

60044 Prohibited instructional materials

CIVIL CODE

1714.1 Liability of parents/guardians for willful misconduct of minor

GOVERNMENT CODE

11135 Nondiscrimination in programs or activities funded by state

PENAL CODE

422.55 Definition of hate crime

422.6 Crimes, harassment

CODE OF REGULATIONS, TITLE 5

432 Student record

4600-4670 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

12101-12213 Title II equal opportunity for individuals with disabilities

UNITED STATES CODE, TITLE 29

794 Section 504 of Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000d-2000e-17 Title VI and Title VII Civil Rights Act of 1964, as amended

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

6101-6107 Age Discrimination Act of 1975

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

CODE OF FEDERAL REGULATIONS, TITLE 34

100.3 Prohibition of discrimination on basis of race, color or national origin

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

106.9 Notification of nondiscrimination on basis of sex

110.25 Prohibition of discrimination based on age

## COURT DECISIONS

Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567

Flores v. Morgan Hill Unified School District, (2003) 324 F.3d 1130

## Management Resources:

### CSBA PUBLICATIONS

Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Sex Discrimination, July 2016

### CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS

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

### FIRST AMENDMENT CENTER PUBLICATIONS

Public Schools and Sexual Orientation: A First Amendment Framework for Finding Common Ground, 2006

### U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Dear Colleague Letter: Title IX Coordinators, April 2015

Dear Colleague Letter: Harassment and Bullying, October 2010

Notice of Non-Discrimination, Fact Sheet, August 2010

### WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

California Office of the Attorney General: <http://oag.ca.gov>

California Safe Schools Coalition: <http://www.casafeschools.org>

First Amendment Center: <http://www.firstamendmentcenter.org>

National School Boards Association: <http://www.nsba.org>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>