

Fresno Unified Board Policy (BP) 5145.3 Nondiscrimination/Harassment

The Governing Board desires to provide a safe school environment that allows all students equal access and opportunities in the district's academic, extracurricular, and other educational support programs, services, and activities. The Board prohibits, at any district school or school activity, programs, practices, or school attendance within a school under the jurisdiction of the Superintendent, unlawful discrimination, including discriminatory harassment (including sexual harassment), intimidation, and bullying targeted at any student by anyone, based on the student's actual or perceived sex, sexual orientation, gender, gender identity, gender expression, genetic information, race, ancestry, nationality, national origin, immigration status, ethnicity, ethnic group identification, age, religious creed, religion, political belief or affiliation, color, marital status, pregnancy, parental status, childbirth, breastfeeding/lactation status, medical condition, physical or mental disability, or the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

This policy shall apply to all acts constituting unlawful discrimination or harassment related to school activity or to school attendance occurring within a district school 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. (Education Code 234.1)

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)

(cf. 5137 - Positive School Climate)

(cf. 5145.9 - Hate-Motivated Behavior)

(cf. 5146 - Married/Pregnant/Parenting Students)

(cf. 6164.6 - Identification and Education under Section 504)

Unlawful discrimination, including discriminatory harassment, intimidation, or bullying may result from physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also includes the creation of a hostile environment through prohibited conduct that 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 school programs or activities or the provision or receipt of educational benefits or services.

The Governing Board shall ensure equal opportunities for all students in admission and access to the educational program, guidance and counseling programs, athletic programs, testing procedures, and other activities. School staff and volunteers shall carefully guard against segregation, bias and stereotyping in instruction, guidance, and supervision. The district may provide male and female students with separate shower rooms and sexual health and HIV/AIDS prevention classes in order to protect student modesty.

(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)

(cf. 6145 - Extracurricular and Cocurricular Activities)

(cf. 6145.2 - Athletic Competition)

(cf. 6164.2 - Guidance/Counseling Services)

The Board also prohibits any form of retaliation against any student who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a complaint or investigates or

participates in the investigation of a complaint or report alleging unlawful discrimination, harassment, intimidation, or bullying. Staff shall be alert and immediately responsive to student conduct which may interfere with another student's ability to participate in or benefit from school services, activities, or privileges. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

The district shall ensure that all complainants are protected from retaliation and that the identity of a complainant alleging discrimination, harassment, intimidation, or bullying remains confidential, as appropriate. (EC Section 234.1(g))

(cf. 5145.2 - Freedom of Speech/Expression)
(cf. 5145.7 - Sexual Harassment)

The Superintendent or designee shall facilitate students' access to the educational program by publicizing the district's nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. Staff shall provide training and information on the scope and use of the policy and complaint procedures and take other measures designed to increase the school community's understanding of the requirements of law related to discrimination. The Superintendent or designee shall regularly review the implementation of the district's nondiscrimination policies and practices and, as necessary, shall take action to remove any identified barrier to student access to or participation in the district's educational program. They shall report their findings and recommendations to the Board after each review.

The district has provided, incident to the publicizing of policies against discrimination, harassment, intimidation and bullying described in *EC* Section 234.1(c), to certificated school site employees who serve pupils in any of grades 7 to 12, inclusive, who are employed by the district, information on existing school site and community resources related to the support of LGBTQ pupils, or related to the support of pupils who may face bias or bullying on the basis of religious affiliation, or perceived religious affiliation.

(a) School site resources may include, but are not limited to, peer support or affinity clubs and organizations, safe spaces for LGBTQ, or other at-promise pupils, counseling services, staff who have received anti-bias or other training aimed at supporting these pupils or who serve as designated support to these pupils, health and other curriculum materials that are inclusive of, and relevant to, these pupils, online training developed pursuant to *EC* Section 32283.5, and other policies adopted pursuant to this article, including related complaint procedures.

(b) Community resources may include, but are not limited to, community-based organizations that provide support to LGBTQ, or other at-promise pupils and their families, and physical and mental health providers with experience or training in treating or supporting these pupils. (*EC* Section 234.1(d))

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 1330 - Use of Facilities)
(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)
(cf. 6145 - Extracurricular and Cocurricular Activities)
(cf. 6145.2 - Athletic Competition)
(cf. 6164.2 - Guidance/Counseling Services)

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, bullying, or retaliation in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline, which may include counseling, suspension and/or expulsion for behavior that is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, bullying, or retaliation may be

subject to disciplinary action, up to and including dismissal.

(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4119.21/4219.21/4319.21 - Professional Standards)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)
(cf. 5131 - Conduct)
(cf. 5144 - Discipline)
(cf. 5144.1 - Suspension and Expulsion/Due Process)
(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))
(cf. 5145.2 - Freedom of Speech/Expression)

Grievance Procedures

The Board hereby designates the following positions as Coordinator(s) for Nondiscrimination to ensure compliance with nondiscrimination in educational equity, to handle complaints regarding discrimination, harassment, intimidation, or bullying, and to answer inquiries regarding the district's nondiscrimination policies:

Executive Director/Equity Compliance Officer Constituent Services Office Fresno Unified School District 2309 Tulare Street Fresno, California 93721 (559) 457-3736 Constituent.Services@fresnounified.org	Chief of Human Resources Title IX Officer/Age Discrimination Act Fresno Unified School District 2309 Tulare Street Fresno, California 93721 (559) 457-3528 titleix@fresnounified.org
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District 504 Coordinator Fresno Unified School District 1301 M Street Fresno, CA 93726 (559) 457-3220 504@fresnounified.org	Instructional Superintendent Special Education Office Fresno Unified School District 1301 M Street Fresno, CA 93721 (559) 457-3220 Spedleadership@fresnounified.org
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(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 1312.3 - Uniform Complaint Procedures)

Any student who feels that they have been subjected to discrimination, harassment, intimidation, or bullying should immediately contact the Coordinator for Nondiscrimination, the principal, or any other staff member. Any student who observes an incident should report the incident to the Coordinator or principal, whether or not the victim files a complaint.

Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, all complaints brought to the attention of staff, alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students.

In addition, the employee shall immediately intervene when safe to do so. (Education Code 234.1)

Any complaints of discrimination or any behavior prohibited by this policy, shall be addressed in accordance with the Administrative Regulation 5145.7 Sexual Harassment.

If dissatisfied with the district's decision, the complainant may submit their appeal in writing to the Office of Constituent Services within 15 calendar days of receiving the district's decision. The written concerns shall specify the basis for the appeal of the decision and whether the facts are incorrect and/or the law has been misapplied. The district shall investigate in accordance with AR 1312.3 - Uniform Complaint Procedures. Employees who observe an incident of discrimination, harassment, intimidation, or bullying or to whom

such an incident is reported shall immediately report the incident to any of the designated Coordinators for Nondiscrimination, or principal, whether or not the victim files a complaint. Upon receiving a complaint of discrimination or harassment, intimidation, or bullying, the Coordinator shall immediately investigate the complaint in accordance with the district's uniform complaint procedures specified in AR 1312.3 - Uniform Complaint Procedures. Where the Coordinator finds that harassment has occurred, they shall take prompt, appropriate action to end the harassment and address its effects on the victim.

The Superintendent or designee shall ensure that the student handbook clearly describes the district's nondiscrimination policy, procedures for filing a complaint regarding discrimination, harassment, intimidation, or bullying, and the resources that are available to students who feel that they have been the victim of any such behavior. The district's nondiscrimination, harassment, intimidation, and bullying policies shall readily accessible in a prominent location on the district's existing internet website in a manner that is easily accessible to parents/guardians and pupils. (EC Section 234.6(b)(8))

The district must post the established policies prohibiting discrimination, harassment, intimidation, and bullying in all schools and offices, which include staff lounges and pupil government meeting rooms. (EC Section 234.1(e); 5 CCR Section 4960(b))

The district must publicize adopted policies that prohibit discrimination, harassment, intimidation, and bullying, including information about the manner in which to file a complaint, to pupils, parents/guardians, employees, the governing board, and the general public. The information shall be translated pursuant to EC section 48985. The district shall also include a notice of nondiscrimination policies in any publications used in connection with the recruitment of pupils or employees. The district must identify the officer responsible for nondiscrimination and education equity compliance in such publicity. (EC Section 234.1(c); 5 CCR Sections 4960(b) and 4961; 34 CFR Section and 106.8)

The district shall post a link to statewide resources, including community-based organizations, which shall be readily accessible in a prominent location on the district's existing internet website in a manner that is easily accessible to parents/guardians and pupils. The district shall also include any additional information deemed important for preventing bullying and harassment. (EC Section 234.6(b)(11-12))

(cf. 1113 - District and School Web Sites)
(cf. 1114 - District-Sponsored Social Media)
(cf. 6163.4 - Student Use of Technology)

If 15 percent or more of the pupils enrolled in a public school that provides instruction in kindergarten or any of grades 1 to 12, inclusive, speak a single primary language other than English, all notices, reports, statements, and records sent to the parent/guardian of any such pupil by the district shall, in addition to being written in English, be written in the primary language, and may be responded to in either English or primary language. (EC Section 48985(a))

Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, to enable the district to monitor, address, and prevent repetitive prohibited behavior in district schools. The district shall maintain documentation of complaints and their resolution must be maintained for a minimum of one review cycle. (EC Section 234.1(f))

(cf. 3580 - District Records)

Fresno Unified School District prohibits discrimination, harassment (including sexual harassment), intimidation, and bullying based on actual or perceived race, color, ethnicity, national origin, immigration status, ancestry, age (40 and above), religious creed, religion, political belief or affiliation, gender, gender identity, gender expression, genetic information, mental or physical disability, sex, sexual orientation, marital status, pregnancy or parental status, childbirth, breastfeeding/lactation status, medical condition, military and veteran status, or association with a person or a group with

one or more of these actual or perceived characteristics or any other basis protected by law or regulation, in its educational program(s) or employment.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex, especially:
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
PENAL CODE
422.55 Definition of hate crime
422.6 Crimes, harassment
CODE OF REGULATIONS, TITLE 5
432 Student record
4600-4687 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
99.31 Disclosure of personally identifiable information
100.3 Prohibition of discrimination on basis of race, color or national origin
106.7 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
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:

U.S. DEPARTMENT OF EDUCATION, OFFICE OF CIVIL RIGHTS PUBLICATIONS Dear Colleague Letter: Transgender Students, May 2016
Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016 Dear Colleague Letter: Title IX Coordinators, April 2015
Dear Colleague Letter: Harassment and Bullying, October 2010 Notice of Non-Discrimination, January 1999

WEB SITES

U.S. Department of Education, Office of Civil Rights: <http://www.ed.gov/offices/OCR>
California Department of Education: <http://www.cde.ca.gov>

Policy FRESNO UNIFIED SCHOOL DISTRICT

Adopted: August 26, 1993 Fresno, California
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