

Ann N. Bonitalibus, Ed.D.
Superintendent

Mark McLaughlin
Assistant Superintendent, Personnel Services



MEMORANDUM

TO: All District Employees

FROM: Mark McLaughlin, Assistant Superintendent, Personnel Services

DATE: October 26, 2015

RE: **Policy/Regulation 1312.1: Complaints Concerning District Employees**
Policy/Regulation 1312.3: Uniform Complaint Procedures
Policy 4020: Drug and Alcohol-Free Workplace
Policy/Regulation 4030: Nondiscrimination In Employment
Regulation 4032: Reasonable Accommodation
Policy 4119.11, Sexual Harassment: Definition and Complaint
4219.11 & 4319.11: Procedure

The attached information is of significant importance to all District employees and students. Please read these policies and regulations so that you can be well informed in your activities as an employee.

MM:ecl

CVUSD

Board Policy

BP 1312.1

Community Relations

Complaints Concerning District Employees

The Governing Board accepts responsibility for providing a means by which the public can hold employees accountable for their actions. The Board desires that complaints be resolved expeditiously without disrupting the educational process.

The Superintendent or designee shall develop regulations which permit the public to submit complaints against district employees in an appropriate way. These regulations shall protect the rights of involved parties. The Board may serve as an appeals body if the complaint is not resolved.

(cf. 1312.2 - Complaints Concerning Instructional Material)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 3515.2 - Disruptions)

The Board prohibits retaliation against complainants. The Superintendent or designee at his/her discretion may keep a complainant's identity confidential, except to the extent necessary to investigate the complaint. The district will not investigate anonymous complaints unless it so desires.

Legal Reference:

EDUCATION CODE

33308.1 Guidelines on procedure for filing child abuse complaints

35146 Closed sessions

44031 Personnel file contents and inspection

44811 Disruption of public school activities

44932-44949 Resignation, dismissal and leaves of absence (rights of employee; procedures to follow)

48987 Child abuse guidelines

GOVERNMENT CODE

54957 Closed session; complaints re employees

54957.6 Closed session; salaries or fringe benefits

PENAL CODE

273 Cruelty or unjustifiable punishment of child

11164-11174.3 Child Abuse and Neglect Reporting Act

WELFARE AND INSTITUTIONS CODE

300 Minors subject to jurisdiction of juvenile court

Management Resources:

CDE LEGAL ADVISORIES

0910.93 Guidelines for parents to report suspected child abuse by school district employees or other persons against a pupil at school site (LO:4-93)

CSBA (6/92 6/93) 6/94 Errata changes 10/96

Adoption: April 15, 2008

CVUSD

Administrative Regulation

AR 1312.1

Community Relations

Complaints Concerning District Employees

The Superintendent or designee shall determine whether a complaint should be considered a complaint against the district and/or an individual employee, and whether it should be resolved by the district's process for complaints concerning personnel and/or other district procedures.

(cf. 1312.2 - Complaints Concerning Instructional Materials)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 4144/4244/4344 - Complaints)

To promote prompt and fair resolution of the complaint, the following procedures shall govern the resolution of complaints against district employees:

1. *Parent-Employee Meeting*

Every effort should be made to resolve a complaint at the earliest possible stage. Whenever possible, the complainant should communicate directly to the employee in order to resolve concerns (*e.g., principal, assistant principal, or coordinator*).

2. *Parent Complaint to Employee's Supervisor (Site Level Resolution)*

If a complainant is unable or unwilling to resolve the complaint directly with the employee, he/she may submit an oral or written complaint to the employee's immediate supervisor (*e.g. the site principal or his/her designee at the secondary school.*)

A copy of the written complaint will be provided to the affected employee and the supervisor will attempt to resolve the complaint.

3. *Parent Complaint to Supervisor of Site Level Administrator (District Level Resolution)*

When a parent complaint has not been resolved by the immediate supervisor (site level) of the employee, the written complaint, accompanied by the written response of the supervisor to the parent (a copy of which will be provided to the affected employee), may be brought by the parent to the supervisor (district level) of the site administrator; e.g. Director of Elementary Education, Director of Secondary Education, Assistant Superintendent of Instruction, or his/her designee, and the administrator will attempt to resolve the complaint.

4. *Parent Complaint to the Superintendent*

When a parent complaint to the district level supervisor has not been resolved by the designated district level administrator of the supervisor of the affected employee, the written complaint, accompanied by the written responses of the supervisors who have attempted to resolve the complaint at the second and third steps (copies of which will be

provided to the affected employee) may be brought by the parent to the Superintendent or his/her designee who will attempt to resolve the complaint.

5. *Parent Complaint to the Board of Education*

When a parent complaint to the Superintendent has not resulted in a resolution of the complaint, the Board of Education may elect to review the complaint if requested by the parent.

If the Board of Education elects to review the complaint, the written complaint, accompanied by the written responses of the administrators at the second, third, and fourth steps (copies of which have been provided to the affected employee), will be reviewed in Closed Session of the Board of Education and a written response provided to both the parent making the complaint and the affected employee.

All complaints related to district personnel other than administrators shall be submitted in writing to the principal or immediate supervisor. If the complainant is unable to prepare the complaint in writing, administrative staff shall help him/her to do so. Complaints related to a principal or central office administrator shall be initially filed in writing with the Superintendent or designee. Complaints related to the Superintendent shall be initially filed in writing with the Board.

(cf. 9321 - Closed Session Purposes and Agendas)

(cf. 9323 - Meeting Conduct)

The decision of the Board shall be final.

Any complaint of child abuse or neglect alleged against a district employee shall be reported to the appropriate local agencies in accordance with law, Board policy and administrative regulation.

(cf. 5141.4 - Child Abuse Prevention and Reporting)

CSBA (12/88 6/94) 3/01

Adopted: April 15, 2008

Board Policy

BP 1312.3

Community Relations

Uniform Complaint Procedures

The Governing Board recognizes that the district has the primary responsibility to ensure compliance with applicable state and federal laws and regulations governing educational programs. The district shall investigate and seek to resolve any complaints alleging failure to comply with such laws and/or alleging unlawful discrimination, harassment, intimidation, or bullying in accordance with the uniform complaint procedures.

The following paragraph lists types of discrimination prohibited by state and federal law, as well as the protected groups listed in 5 CCR 4610.

The district shall use the uniform complaint procedures to resolve any complaint alleging unlawful discrimination, harassment, intimidation, or bullying in district programs and activities based on actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other characteristic identified in Education Code 200 or 220, Penal Code 422.55, or Government Code 11135, or based on association with a person or group with one or more of these actual or perceived characteristics.

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

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.2 - Complaints Concerning Instructional Materials)

(cf. 5131.2 - Bullying)

cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

Uniform complaint procedures shall also be used to address any complaint alleging the district's failure to comply with the prohibition against requiring students to pay fees, deposits, or other charges for participation in educational activities, the requirements for the development and adoption of a school safety plan, and state and/or federal laws in adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, and special education programs.

(cf. 0450 - Comprehensive Safety Plan)

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.2 - Complaints Concerning Instructional Materials)

(cf. 3260 - Fees and Charges)

(cf. 3320 - Claims and Actions Against the District)

(cf. 3553 - Free and Reduced Price Meals)
(cf. 3555 - Nutrition Program Compliance)
(cf. 5141.4 - Child Abuse Prevention and Reporting)
(cf. 5148 - Child Care and Development)
(cf. 6159 - Individualized Education Program)
(cf. 6171 - Title I Programs)
(cf. 6174 - Education for English Language Learners)
(cf. 6175 - Migrant Education Program)
(cf. 6178 - Career Technical Education)
(cf. 6178.1 - Work-Based Learning)
(cf. 6178.2 - Regional Occupational Center/Program)
(cf. 6200 - Adult Education)

The Board encourages the early, informal resolution of complaints at the site level whenever possible. In investigating complaints, the confidentiality of the parties involved and the integrity of the process shall be protected. As appropriate for any complaint alleging discrimination, harassment, intimidation, or bullying, the Superintendent or designee may keep the identity of a complainant confidential to the extent that the investigation of the complaint is not obstructed.

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)
(cf. 5125 - Student Records)
(cf. 9011 - Disclosure of Confidential/Privileged Information)

The Board prohibits any form of retaliation against any complainant in the complaint process, including but not limited to a complainant's filing of a complaint or the reporting of instances of discrimination, harassment, intimidation, or bullying. Such participation shall not in any way affect the status, grades, or work assignments of the complainant.

The Superintendent shall issue regulations establishing procedures for receiving, investigating, and resolving complaints in compliance with Title V California Code of Regulations.

The District annually will disseminate a written notice of the District's complaint procedures to students, employees, parents/guardians, school and district advisory committees, appropriate private school officials, and other interested parties.

The district's Williams uniform complaint procedures, AR 1312.4, shall be used to investigate and resolve any complaint related to the following:

1. Sufficiency of textbooks or instructional materials
2. Emergency or urgent facilities conditions that pose a threat to the health or safety of students or staff

3. Teacher vacancies and misassignments

(cf. 1312.4 - Williams Uniform Complaint Procedures)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

8200-8498 Child care and development programs

8500-8538 Adult basic education

18100-18203 School libraries

32289 School safety plan, uniform complaint procedure

35186 Williams uniform complaint procedure

41500-41513 Categorical education block grants

48985 Notices in language other than English

49010-49013 Student fees

49060-49079 Student records

49490-49590 Child nutrition programs

52160-52178 Bilingual education programs

52300-52499.6 Career-technical education

52500-52616.24 Adult schools

52800-52870 School-based coordinated programs

54000-54028 Economic impact aid programs

54100-54145 Miller-Unruh Basic Reading Act

54400-54425 Compensatory education programs

54440-54445 Migrant education

54460-54529 Compensatory education programs

56000-56867 Special education programs

59000-59300 Special schools and centers

64000-64001 Consolidated application process

CODE OF REGULATIONS, TITLE 5

3080 Application of section

4600-4687 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

PENAL CODE

422.6 Interference with constitutional right or privilege

GOVERNMENT CODE

11135 Nondiscrimination in programs or activities funded by state

12900-12996 Fair Employment and Housing Act

UNITED STATES CODE, TITLE 20

6301-6577 Title I basic programs

6601-6777 Title II preparing and recruiting high quality teachers and principals

6801-6871 Title III language instruction for limited English proficient and immigrant students

7101-7184 Safe and Drug-Free Schools and Communities Act

7201-7283g Title V promoting informed parental choice and innovative programs

7301-7372 Title V rural and low-income school programs

Management Resources:

WEB SITES

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

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

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

CSBA (3/03 11/04) 1/06

CVUSD (7/9/92 3/11/93 7/10/01 3/8/05 1/23/07) 4/08 4/13 10/14

Administrative Regulation

AR 1312.3

Community Relations

Uniform Complaint Procedures

Compliance Officers

One of the ancillary purposes of the District Advisory Council and School Site Council system is to provide an orderly and responsible means by which parents and other community members can have their concerns considered. This is consistent with the intent that the District Advisory Council be a mechanism through which interested individuals and groups may make suggestions and recommendations to improve State and Federal funded programs.

Except as the Governing Board may otherwise specifically provide in other Board policies, the uniform complaint procedures shall be used only to investigate and resolve complaints alleging violations of federal or state laws or regulations governing specific educational programs, the prohibition against requiring students to pay fees, deposits, or other charges for participating in educational activities, and unlawful discrimination, harassment, intimidation, or bullying, as specified in accompanying Board policy.

- (cf. 1312.1 - Complaints Concerning District Employees)
- (cf. 1312.2 - Complaints Concerning Instructional Materials)
- (cf. 1312.4 - Williams Uniform Complaint Procedures)
- (cf. 4031 - Complaints Concerning Discrimination in Employment)

The district's uniform complaint procedures policy and administrative regulation shall be posted in all district schools and offices, including staff lounges and student government meeting rooms. If 15 percent or more of students enrolled in a particular district school speak a single primary language other than English, the district's policy, regulation, forms, and notices concerning uniform complaint procedures shall be translated into that language.

- (cf. 5145.6 - Parental Notifications)

The Governing Board designates the following compliance officer(s) to receive and investigate complaints and to ensure district compliance with law:

Deputy Superintendent, Instructional Services
1400 E. Janss Road
Thousand Oaks, CA 91362
805-497-9511, ext. 238

The Superintendent or designee shall ensure that employees designated to investigate complaints are knowledgeable about the laws and programs for which they are responsible. Designated employees may have access to legal counsel as determined by the Superintendent or designee.

(cf. 9124 – Attorney)

Notifications

The Superintendent or designee shall annually provide written notification of the district's uniform complaint procedures to students, employees, parents/guardians, the district advisory committee, school advisory committees, appropriate private school officials or representatives, and other interested parties. (Education Code 262.3, 49013; 5 CCR 4622)

(cf. 0420 - School Plans/Site Councils)

(cf. 1220 - Citizen Advisory Committees)

(cf. 3260 - Fees and Charges)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

(cf. 5145.6 - Parental Notifications)

The Superintendent or designee shall make available copies of the district's uniform complaint procedures free of charge. (5 CCR 4622)

The Superintendent or designee shall annually provide written notification of the district's uniform complaint procedures to students, employees, parents/guardians, the district advisory committee, school advisory committees, appropriate private school officials or representatives, and other interested parties.

Accordingly, if an individual or group should have a complaint against a State or Federal funded program as listed in Board Policy 1312.3, the following procedures should be used:

1. Identify the person(s), position(s), or unit(s) responsible for receiving complaints
2. Advise the complainant of any civil law remedies that may be available to him/her under state or federal discrimination laws, if applicable
3. Advise the complainant of the appeal process pursuant to Education Code 262.3, including the complainant's right to take a complaint directly to the California Department of Education (CDE) or to pursue remedies before civil courts or other public agencies

4. Include statements that:
 - a. The district is primarily responsible for compliance with state and federal laws and regulations governing educational programs
 - b. The complaint review shall be completed within 60 calendar days from the date of receipt of the complaint unless the complainant agrees in writing to an extension of the timeline
 - c. A complaint alleging unlawful discrimination, harassment, intimidation, or bullying must be filed not later than six months from the date it occurred, or six months from the date the complainant first obtained knowledge of the facts of the alleged discrimination, harassment, intimidation, or bullying.
 - d. The complainant has a right to appeal the district's decision to the CDE by filing a written appeal within 15 days of receiving the district's decision
 - e. The appeal to the CDE must include a copy of the complaint filed with the district and a copy of the district's decision

(cf. 5145.6 - Parental Notifications)

Procedures

The following procedures shall be used to address all complaints which allege that the district has violated federal or state laws or regulations governing educational programs. Compliance officers shall maintain a record of each complaint and subsequent related actions, including all information required for compliance with 5 CCR 4631 and 4633.

All parties involved in allegations shall be notified when a complaint is filed, when a complaint meeting or hearing is scheduled, and when a decision or ruling is made.

Step 1: Filing of Complaint

Any individual, public agency or organization may file a written complaint of alleged noncompliance by the district. (5 CCR 4630)

A complaint concerning unlawful discrimination, harassment, intimidation, or bullying may be filed only by a person who alleges that he/she personally suffered unlawful discrimination, harassment, intimidation, or bullying or by a person who believes that an individual or any specific class of individuals has been subjected to it. The complaint shall be initiated no later than six months from the date when the alleged discrimination, harassment, intimidation, or bullying occurred, or six months from the date when the complainant first obtained knowledge of the facts of the alleged discrimination,

harassment, intimidation, or bullying. However, upon written request by the complainant, the Superintendent or designee may extend the filing period for up to 90 calendar days. (5 CCR 4630)

The complaint shall be presented to the compliance officer who shall maintain a log of complaints received, providing each with a code number and a date stamp.

A complaint alleging noncompliance with the law regarding the prohibition against requiring students to pay student fees, deposits, and charges may be filed anonymously if the complaint provides evidence or information leading to evidence to support an allegation of noncompliance.

A pupil fee complaint shall be filed no later than one year from the date the alleged violation occurred. (5CCR 4600(u))

The District will attempt in good faith by engaging in reasonable efforts to identify and fully reimburse all pupils, parents, and guardians who paid a pupil fee within one year prior to the filing of the complaint. (5 CCR 4630 (c)(2))

If a complainant is unable to put a complaint in writing due to conditions such as a disability or illiteracy, district staff shall assist him/her in the filing of the complaint. (5 CCR 4600)

Step 2: Investigation of Complaint

Within 10 calendar days of receiving the complaint, the compliance officer shall provide the complainant and/or his/her representative an opportunity to present the complaint and any evidence, or information leading to evidence, to support the allegations in the complaint. The compliance officer also shall collect all documents and interview all witnesses with information pertinent to the complaint.

This meeting shall provide an opportunity for the complainant and/or his/her representative to repeat the complaint orally.

A complainant's refusal to provide the district's investigator with documents or other evidence related to the allegations in the complaint, or his/her failure or refusal to cooperate in the investigation or his/her engagement in any other obstruction of the investigation, may result in the dismissal of the complaint because of a lack of evidence to support the allegation. (5 CCR 4631)

The district's refusal to provide the investigator with access to records and/or other information related to the allegation in the complaint, or its failure or refusal to cooperate in the investigation or its engagement in any other obstruction of the investigation, may result in a finding, based on evidence collected, that a violation has occurred and may result in the imposition of a remedy in favor of the complainant. (5 CCR 4631)

Step 3: Response

Within 30 calendar days of receiving the complaint, the compliance officer shall prepare and send to the complainant a written report of the district's investigation and decision, as described in Step #4 below. If the complainant is dissatisfied with the compliance officer's decision, he/she may, within five business days, file his/her complaint in writing with the Board.

The Board may consider the matter at its next regular Board meeting or at a special Board meeting convened in order to meet the 60-day time limit within which the complaint must be answered. The Board may decide not to hear the complaint, in which case the compliance officer's decision shall be final.

If the Board hears the complaint, the compliance officer shall send the Board's decision to the complainant within 60 calendar days of the district's initial receipt the complaint or within the time period that has been specified in a written agreement with the complainant. (5 CCR 4631)

Step 4: Final Written Decision

The district's decision shall be in writing and sent to the complainant. (5 CCR 4631)

The district's decision shall be written in English and in the language of the complainant whenever feasible or as required by law.

The decision shall include:

1. The findings of fact based on the evidence gathered (5 CCR 4631)
2. The conclusion(s) of law (5 CCR 4631)
3. Disposition of the complaint (5 CCR 4631)
4. Rationale for such disposition (5 CCR 4631)
5. Corrective actions, if any are warranted (5 CCR 4631)
6. Notice of the complainant's right to appeal the district's decision within 15 calendar days to the CDE and procedures to be followed for initiating such an appeal (5 CCR 4631)
7. Any decision concerning discrimination, harassment, intimidation, or bullying complaint based on state law shall include a notice that the complainant must wait until 60 calendar days have elapsed from the filing of an appeal with the CDE before pursuing civil law remedies. (Education Code 262.3)

If an employee or student is disciplined as a result of the complaint, the decision shall simply state that effective action was taken and that the employee or student was informed of district expectations. The report shall not give any further information as to the nature of the disciplinary action.

If a complaint alleging noncompliance with the laws regarding student fees, deposits, and other charges is found to have merit, the district shall provide a remedy to all affected students and parents/guardians, which, where applicable, shall include reasonable efforts to ensure full reimbursement to them. (Education Code 49013)

Appeals to the California Department of Education

If dissatisfied with the district's decision, the complainant may appeal in writing to the CDE within 15 calendar days of receiving the district's decision. When appealing to the CDE, the complainant must specify the basis for the appeal of the decision and whether the facts are incorrect and/or the law has been misapplied. The appeal shall be accompanied by a copy of the locally filed complaint and a copy of the district's decision. (5 CCR 4632)

Upon notification by the CDE that the complainant has appealed the district's decision, the Superintendent or designee shall forward the following documents to the CDE: (5 CCR 4633)

1. A copy of the original complaint
2. A copy of the decision
3. A summary of the nature and extent of the investigation conducted by the district, if not covered by the decision
4. A copy of the investigation file, including but not limited to all notes, interviews, and documents submitted by the parties and gathered by the investigator
5. A report of any action taken to resolve the complaint
6. A copy of the district's complaint procedures
7. Other relevant information requested by the CDE

The CDE may directly intervene in the complaint without waiting for action by the district when one of the conditions listed in 5 CCR 4650 exists; including cases in which the district has not taken action within 60 calendar days of the date the complaint was filed with the district.

Civil Law Remedies

A complainant may pursue available civil law remedies outside of the district's complaint procedures. Complainants may seek assistance from mediation centers or public/private interest attorneys. Civil law remedies that may be imposed by a court include, but are not limited to, injunctions and restraining orders.

For complaints alleging discrimination, harassment, intimidation, and bullying based on state law, a complainant shall wait until 60 calendar days have elapsed from the filing of an appeal with the CDE before pursuing civil law remedies, provided the district has appropriately and in a timely manner apprised the complainant of his/her right to file a complaint in accordance with 5 CCR 4622. The moratorium does not apply to injunctive relief and to discrimination complaints based on federal law. (Education Code 262.3)

CSBA (10/97 3/02) 1/06

CVUSD (9/18/90 5/5/92 8/6/01 4/9/02 1/23/07 4/08 4/13 10/14

CVUSD Board Policy

BP 4020

Personnel

Drug And Alcohol-Free Workplace

Note: Government Code 8350-8357 mandates state grant recipients, such as school districts, to adopt a drug-free workplace program. Federal grantees are also subject to the same requirements under the federal Drug-Free Workplace Act (41 USC 701-707).

Note: Government Code 8355 requires districts to notify employees of the policy on this topic and to certify to the state contracting agency that they have adopted a policy which includes the provisions specified below. Contracts and grants are subject to suspension and termination and the contractors or grantees subject to suspension and debarment if false certification is made or if the certification is violated by failure to carry out the requirements of these laws.

The Governing Board believes that the maintenance of drug- and alcohol-free workplaces is essential to school and district operations.

No employee shall unlawfully manufacture, distribute, dispense, possess, use or be under the influence of any alcoholic beverage, drug or controlled substance as defined in 21 USC 81 at any school district workplace. These prohibitions apply before, during and after school hours. A school district workplace is any place where school district work is performed, any school-owned or school-approved vehicle used to transport students to and from school or school activities; any off-school sites when accommodating a school-sponsored or school-approved activity or function where students are under district jurisdiction; or during any period of time when an employee is supervising students on behalf of the district or otherwise engaged in district business.

(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)

(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)

The Superintendent or designee shall notify employees of these prohibitions. (Government Code 8355; 41 USC 702)

An employee shall abide by the terms of this policy and notify the district, within five days, of any criminal drug or alcohol statute conviction which he/she receives for a violation occurring in the workplace. (41 USC 702)

The Superintendent or designee shall notify the appropriate federal granting or contracting agencies within 10 days after receiving notification, from an employee or otherwise, of any conviction for a violation occurring in the workplace. (41 USC 701)

Note: Government Code 8355 requires the district to also notify employees of the penalties that may be imposed for violations of these prohibitions. Pursuant to 41 USC 702, violations may result in personnel action "up to and including termination" or requiring the employee to satisfactorily participate in an abuse assistance or rehabilitation program approved for such purposes by an appropriate governmental agency. In addition, Education Code 44836 and 45123 require that employees convicted of certain drug offenses be terminated, as specified below. Disciplinary action and other penalties for drug abuse convictions of school bus drivers are covered in BP/AR 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers.

The Board may not employ or retain in employment persons convicted of a controlled substance offense as defined in Education Code 44011. If any such conviction is reversed and the person acquitted in a new trial or the charges dismissed, his/her employment is no longer prohibited. A plea or verdict of guilty, a finding of guilt by a court in a trial without a jury, or a conviction following a plea of nolo contendere shall be deemed to be a conviction. (Education Code 44836, 45123)

(cf. 4112 - Appointment and Conditions of Employment)

(cf. 4212 - Appointment and Conditions of Employment)

A classified employee may be reemployed after conviction of such an offense if the Board determines, from the evidence presented, that the person has been rehabilitated for at least five years. (Education Code 45123)

Note: 41 USC 703 authorizes the Board to discipline an employee who violates the district's drug-free workplace policy or to require the employee to complete a drug rehabilitation program as specified below.

The Board may take appropriate disciplinary action, up to and including termination, or require the employee to satisfactorily participate in and complete a drug assistance or rehabilitation program approved by a federal, state or local health, law enforcement or other appropriate agency.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

Note: Pursuant to Government Code 8355, the district must certify the following information to the state contracting agency.

The Superintendent or designee shall establish a drug- and alcohol-free awareness program to inform employees about: (Government Code 8355)

1. The dangers of drug and alcohol abuse in the workplace
2. The district policy of maintaining drug- and alcohol-free workplaces

3. Any available drug and alcohol counseling, rehabilitation, and employee assistance programs

(cf. 4159/4259/4359 - Employee Assistance Programs)

4. The penalties that may be imposed on employees for drug and alcohol abuse violations

Legal Reference:

EDUCATION CODE

44011 Controlled substance offense

44425 Conviction of controlled substance offenses as grounds for revocation of credential

44836 Employment of certificated persons convicted of controlled substance offenses

44940 Compulsory leave of absence for certificated persons

44940.5 Procedures when employees are placed on compulsory leave of absence

45123 Employment after conviction of controlled substance offense

45304 Compulsory leave of absence for classified persons

GOVERNMENT CODE

8350-8357 Drug-free workplace

UNITED STATES CODE, TITLE 20

7111-7117 Safe and Drug Free Schools and Communities Act

UNITED STATES CODE, TITLE 21

812 Schedule of controlled substances

UNITED STATES CODE, TITLE 41

701-707 Drug-Free Workplace Act

CODE OF FEDERAL REGULATIONS, TITLE 21

1308.01-1308.49 Schedule of controlled substances

CSBA: (12/89 12/90) 7/02

CVUSD Global Adoption: August 19, 2008

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
Shepard 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

CVUSD

Administrative Regulation

AR 4030

Personnel

Nondiscrimination In Employment

Unlawful discrimination or harassment of an individual includes:

1. Slurs, epithets, threats or verbal abuse
2. Derogatory or degrading comments, descriptions, drawings, pictures or gestures
3. Unwelcome jokes, stories, teasing or taunting
4. Any other verbal, written, visual or physical conduct against the individual which:
 - a. Adversely affects his/her employment opportunities, or
 - b. Has the purpose or effect of unreasonably interfering with his/her work performance or creating an intimidating, hostile or offensive work environment

Any employee or job applicant who feels that he/she has been or is being unlawfully discriminated against or harassed should immediately contact his/her supervisor, the nondiscrimination coordinator or the Superintendent in order to obtain procedures for reporting a complaint. Such complaints shall be filed in accordance with AR 4031 - Complaints Concerning Discrimination in Employment. An employee may bypass his/her supervisor when the supervisor is the alleged offender.

(cf. 4031 - Complaints Concerning Discrimination in Employment)

(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

Any supervisor who receives a discrimination/harassment complaint shall immediately notify the nondiscrimination coordinator or the Superintendent, who shall ensure that the complaint is appropriately investigated in accordance with district policy and regulations.

The Superintendent or designee shall ensure that annual training is provided to all employees regarding the issues of discrimination.

CSBA: (12/92) 6/99

CVUSD Global Adoption: August 19, 2008

CVUSD

Administrative Regulation

AR 4032

Personnel

Reasonable Accommodation

Note: Pursuant to the federal Americans with Disabilities Act (ADA) (42 USC 12101-12213) and the state's Fair Employment and Housing Act (FEHA)(Government Code 12900-12996), employers have a duty to reasonably accommodate qualified employees and job applicants with known disabilities, except when such accommodation would cause an undue hardship to the employer. This accommodation is not required for individuals who are not otherwise qualified for the job.

Note: Pursuant to 28 CFR 35.150 and 35.160, the district must also afford individuals with disabilities (including community members, students, and employees) an equal opportunity to participate in or enjoy the benefits of a service, program or activity. To this end, the district may need to provide auxiliary aids and services and ensure that existing services and facilities are readily accessible to and usable by individuals with disabilities. See BP 0410 - Nondiscrimination in District Programs and Activities. See BB 9320 - Meetings and Notices. See BB 9322 - Agenda/Meeting Materials.

Definitions

***Note: The following section contains some basic definitions of terminology used in the ADA. Government Code 12926.1 (FEHA) is intended to provide additional protections independent from those in the ADA. For example, Government Code 12926 and 12926.1 provide definitions of "physical disability" and "mental disability" that require a "limitation of a major life activity," but do not require, as does the ADA, a "substantial limitation." Government Code 12926 and 12926.1 also provide that, beyond the federal law, a condition limiting a major life activity shall be determined without respect to any mitigating measures (e.g., medications, assistive devices), unless the mitigating measure itself limits an individual's ability to participate in a major life activity. ***

Disability, with respect to an individual, is defined as any of the following: (Government Code 12926; 29 CFR 1630.2)

1. A physical or mental impairment that limits one or more of the major life activities
2. A record of such an impairment
3. Being regarded as having such an impairment

Limits shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (Government Code 12926)

Note: The following definition and examples of "reasonable accommodation" are further described in the EEOC Guidance. Pursuant to 29 CFR 1630.2 and the EEOC Guidance, evidence as to whether a function is "essential" includes the employer's judgment, written job descriptions, the consequences of not requiring the incumbent to perform the function, the terms of a collective bargaining agreement, and work experience of past and current employees in the job. These considerations underscore the importance of developing and maintaining detailed, up-to-date job descriptions, preferably signed by individuals holding the position.

Essential functions are the fundamental job duties of the position the individual with a disability holds or desires. The term does not include the marginal functions of the position. (29 CFR 1630.2)

Reasonable accommodations that an employer may need to provide in connection with modifications to the work environment or adjustments in how and when a job is performed that enable an individual with a disability to enjoy equal employment opportunities include, but are not limited to: (29 CFR 1630.2)

1. Making existing facilities accessible and usable
2. Restructuring the job duties
3. Offering part-time or modified work schedules
4. Acquiring or modifying equipment or devices
5. Changing tests, training materials or policies
6. Providing qualified readers or interpreters
7. Reassigning the employee to a vacant position

Qualified individual with a disability means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position and who, with or without reasonable accommodation, can perform the essential functions of such position. (29 CFR 1630.2)

Undue hardship is a determination based on an individualized assessment of current circumstances that shows that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors, including: (29 CFR 1630.2)

1. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding
2. The overall financial resources of the facility making the reasonable accommodation, the number of persons employed at this facility, the effect on expenses and resources of the facility, or the impact on the operations of the facility
3. The overall financial resources, size, number of employees, and the number, type and location of facilities of the district
4. The type of operation of the district, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation
5. The impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

Requests for Reasonable Accommodation

***Note: Pursuant to 28 CFR 35.107, each district having 50 or more (full- or part-time) employees must designate at least one employee to coordinate its efforts to comply with the ADA, including complaint investigation. This coordinator may be the same individual designated by the district, pursuant to 34 CFR 106.8, to coordinate efforts to comply and to investigate complaints regarding Title IX (discrimination on the basis of gender). A sample complaint procedure is provided in AR 4031 - Complaints Concerning Discrimination in Employment. Districts that have not so designated an individual in BP 4030 - Nondiscrimination in Employment should modify the following paragraph to include the title of the individual designated by the district. ***

The district designates the position specified in BP 4030 - Nondiscrimination in Employment as the coordinator of its efforts to comply with the Americans with Disabilities Act (ADA) and to investigate any and all related complaints.

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

Note: The ADA applies to both qualified district employees and job applicants. The EEOC's Enforcement Guidance clarifies that, in order for a request for reasonable accommodation to be valid, the employee or applicant need not mention the ADA, use the term "reasonable accommodation," nor put the request in writing. Government Code 12940 provides that the employer and employee engage in an informal, interactive process to clarify the individual's needs and identify the appropriate reasonable accommodation.

***Note: Generally, according to the EEOC Guidance, a district is not obligated to ask an employee whether a reasonable accommodation is needed when the employee has not informed the district that an accommodation is necessary. However, the district should initiate the reasonable accommodation interactive process without being asked if the district (1) knows that the employee has a disability, (2) knows, or has reason to know, that the employee is experiencing workplace problems because of the disability, and (3) knows, or has reason to know, that the disability prevents the employee from requesting a reasonable accommodation.

Note: With regard to job applicants, the EEOC Guidance states that the district may tell applicants what the hiring process involves and may ask applicants whether they will need reasonable accommodation for the process. Generally, the district may not ask the applicant whether he/she needs a reasonable accommodation for the job.

When requesting reasonable accommodation, the employee or employee's representative shall inform the employee's supervisor that he/she needs a change at work for a reason related to a medical condition.

When requesting reasonable accommodation during the hiring process, a job applicant shall inform the coordinator that he/she will need a reasonable accommodation for the process.

Employees' requests for reasonable accommodation may first be considered informally by the site administrator. The site administrator shall consult with the coordinator before any decision as to accommodation is made.

Note: According to the EEOC Guidance, the district may ask the individual for reasonable documentation about his/her disability when the need for accommodation is not obvious. The following paragraph is consistent with the EEOC Guidance.

When the disability and/or the need for accommodation is not obvious, the coordinator may ask the employee to supply reasonable documentation about his/her disability. In requesting this documentation, the coordinator shall specify the types of information that are being sought about the employee's condition, the employee's functional limitations and the need for reasonable accommodation. The employee may be asked to sign a limited release allowing the district to submit a list of specific questions to the health care or vocational professional.

Note: The EEOC Guidance states that if the employee provides insufficient documentation, the district may require the employee to undergo a medical examination, as specified below. However, before requiring the employee to submit to such an examination, the district should specify why the documentation is insufficient and give him/her an opportunity to provide the missing information in a timely manner.

If the documentation submitted by the employee does not specify the existence of a qualifying disability and explain the need for reasonable accommodation, the district may require the employee to submit to an examination by a health care professional selected and paid for by the district.

Note: The following process is consistent with 29 CFR 1630.2 and the EEOC Guidance.

Upon receiving a request to reasonably accommodate a qualified employee with a disability, the coordinator shall:

1. Determine the essential functions of the job
2. Engage in an informal, interactive process with the employee to review the request for accommodation, identify the precise limitations resulting from the disability, identify potential means for providing accommodation, and assess their effectiveness

Note: According to the EEOC Guidance, the district is not required to provide the reasonable accommodation preferred by the individual. Rather, the district must only provide an accommodation that is "effective." Pursuant to 29 CFR 1630.2, an "effective accommodation" is one which allows the employee to perform the essential functions of the job or to gain equal access to a benefit or privilege of employment.

Note: Pursuant to 42 USC 12112, the district must provide reasonable accommodation to qualified individuals unless the district can prove that to do so would cause undue hardship. Undue hardship is determined on a case-by-case basis and includes any action that is unduly costly, extensive, substantial, disruptive, or that fundamentally alters the nature or operation of the district. The burden of proving undue hardship rests with the district, and what may be an undue hardship for one district may not be an undue hardship for another, depending on factors such as cost and district size. Even if the cost of an accommodation does pose an undue hardship, the disabled person should have the opportunity to pay for the portion of the cost that constitutes an undue hardship, or to personally provide the accommodation.

3. Develop a plan for reasonable accommodation which is effective and allows the employee to perform the essential functions of the job or to gain equal access to a benefit or privilege of employment and does not impose undue hardship on the district

Note: According to EEOC regulations, employers may require that in order to be qualified for a job, a person must not pose a "direct threat" to the health and safety of himself/herself, or others, in the workplace. In 2002, the U.S. Supreme Court in *Chevron USA v. Echazabal* upheld the regulation as it relates to the health and safety of the employee requesting the accommodation. Employers considering refusing an accommodation based solely on the "direct threat" to the worker requesting accommodation should be extremely cautious and consult legal counsel before acting.

Note: Pursuant to 29 CFR 1630.2, a "direct threat" is a significant risk that cannot be eliminated or reduced by reasonable accommodation. Before finding that a person is not qualified by reason of posing such a threat, the employer must consider whether reasonable accommodation could reduce the risk of harm to an acceptable level. If no such accommodation exists, the district may refuse to hire the applicant or may discharge the employee in question.

To qualify for a job, an individual shall not pose a significant risk of substantial harm to himself/herself or others in the workplace which cannot be eliminated or reduced by reasonable accommodation. (29 CFR 1630.2)

The determination of whether an individual poses a significant risk of substantial harm to himself/herself or others shall be made on a case-by-case basis and shall be based on objective, factual evidence, taking into consideration the duration of the risks, the nature and severity of the potential harm, the likelihood that the potential harm will occur and the imminence of potential harm. (29 CFR 1630.2)

The coordinator may confer with the site administrator, the district medical advisor and/or other district staff before making a final decision as to the accommodation.

Reasonable Accommodation Committee

Note: At the suggestion of the Office for Civil Rights, some districts have established a Reasonable Accommodation Committee to help in planning for the reasonable accommodation requested by an applicant or employee. The following optional section should be modified to reflect district practice and deleted by those districts without a Reasonable Accommodation Committee.

The coordinator may appoint a Reasonable Accommodation Committee to review or assist in the development of appropriate plans to reasonably accommodate an employee or qualified job applicant who has requested an adjustment in work duties or environment because of known physical or mental disabilities. The membership of this committee may change on a case-by-case basis. The committee may include:

1. A district administrator
2. A site administrator
3. A medical advisor or rehabilitation specialist
4. A certificated employee
5. A classified employee

Committee members shall be selected on the basis of their knowledge of the relevant issues, including:

1. The specific functions and duties required in the position
2. The physical work environment
3. Available accommodations

At the coordinator's discretion, the employee or applicant requesting accommodation may participate in or be excluded from committee meetings. If the employee or applicant is excluded from committee meetings, the coordinator shall communicate with him/her so that he/she has the opportunity to interact and contribute to planning the reasonable accommodation.

The coordinator shall take steps to ensure the confidentiality of information related to medical conditions.

Appeal Process

If the employee or applicant is not satisfied with the decision of the coordinator, he/she may appeal in writing to the Superintendent or designee. This appeal shall be made within 10 working days of receiving the decision and shall include:

1. A clear, concise statement of the reasons for the appeal
2. A statement of the specific remedy sought

The Superintendent or designee shall consult with the coordinator and review the appeal, together with any available supporting documents. The Superintendent or designee shall give the employee or applicant his/her decision within 15 working days of receiving the appeal.

Any further appeal for reasonable accommodation shall be considered a complaint concerning discrimination in employment and may be taken to the Governing Board in accordance with the district's procedure for such complaints.

Note: The employee or applicant also may appeal directly to the Office for Civil Rights at any point.

Legal Reference:

CIVIL CODE

51 Unruh Civil Rights Act

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

UNITED STATES CODE, TITLE 29

701-794e Vocational Rehabilitation Act

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act, especially:

35.107 Designation of employee

36.101-36.608 Nondiscrimination on the basis of disability by public facilities

CODE OF FEDERAL REGULATIONS, TITLE 29

1630.2 Direct threat

COURT DECISIONS

Colmenares v. Braemar Country Club, Inc., 2003 Cal.LEXIS 1131

Chevron USA v. Echazabal, (2002) 536 U.S. 73, 122 S.Ct. 2045

US Airways, Inc. v. Barnett, (2002) 535 U.S., 122 S.Ct. 1516

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

WEB SITES

EEOC: <http://www.eeoc.gov>

Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

CSBA: (7/99 3/01) 3/03

CVUSD Global Adoption: August 19, 2008

CVUSD Board Policy

BP 4119.11, 4219.11, 4319.11

Personnel

Sexual Harassment

Note: Education Code 231.5 mandates the district to have a written policy on sexual harassment. As part of this mandate, the district also should adopt a sexual harassment policy related to students; see BP/AR 5145.7 - Sexual Harassment.

Note: Generally, courts recognize two types of conduct as constituting sexual harassment. "Quid Pro Quo" ("this for that") sexual harassment is considered to have occurred when a person in a position of authority makes another individual's educational or employment benefits conditional upon that other person's willingness to engage in unwanted sexual behavior (e.g., promising a promotion for sex). "Hostile environment" sexual harassment, on the other hand, is conduct by the perpetrator that is so severe, persistent, or pervasive that it creates a hostile, intimidating, or abusive educational or professional environment for another. Sexual harassment also covers retaliatory behavior against a complainant, witness, or other participant in the complaint process.

Note: Sexual harassment may be a violation of Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17) and/or Title IX of the Education Amendments of 1972 (42 USC 2000h-2-2000h-6), as well as the California Fair Employment and Housing Act, Government Code 12900-12996.

Note: Government Code 12940 and 34 CFR 106.9 extend protection against sexual harassment to job applicants. In addition, pursuant to Government Code 12940, employers may be held liable for sexual harassment committed against their workers by clients, customers, or other third parties if they knew or should have known of the harassment and failed to take immediate and appropriate corrective action to stop the harassment.

The Governing Board prohibits sexual harassment of district employees and job applicants. The Board also prohibits retaliatory behavior or action against district employees or other persons who complain, testify or otherwise participate in the complaint process established pursuant to this policy and administrative regulation.

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

(cf. 4030 - Nondiscrimination in Employment)

***Note: Pursuant to Government Code 12950.1, as added by AB 1825 (Ch. 933, Statutes of 2004), employers with 50 or more employees are required to provide two hours of sexual harassment training to supervisory employees. See the accompanying administrative regulation for timelines and training requirements. ***

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation
2. Publicizing and disseminating the district's sexual harassment policy to staff

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

3. Ensuring prompt, thorough, and fair investigation of complaints
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments

All complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions. (5 CCR 4964)

***Note: Because an employee's (especially a supervisor's) knowledge or notice of sexual harassment may subject the district to liability, it is recommended that the district require its employees with knowledge or notice of sexual harassment to report the harassment to the appropriate authorities. ***

Any district employee or job applicant who feels that he/she has been sexually harassed or who has knowledge of any incident of sexual harassment by or against another employee, a job applicant or a student, shall immediately report the incident to his/her supervisor, the principal, district administrator or Superintendent.

A supervisor, principal or other district administrator who receives a harassment complaint shall promptly notify the Superintendent or designee.

Complaints of sexual harassment shall be filed in accordance with AR 4031 - Complaints Concerning Discrimination in Employment. An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.

(cf. 4031 - Complaints Concerning Discrimination in Employment)

Any district employee who engages or participates in sexual harassment or who aids, abets, incites, compels, or coerces another to commit sexual harassment against a district employee, job applicant, or student 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)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act, especially:

12940 Prohibited discrimination

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

CODE OF REGULATIONS, TITLE 2

7287.8 Retaliation

7288.0 Sexual harassment training and education

CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs receiving state financial assistance

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

CODE OF FEDERAL REGULATIONS, TITLE 34

106.9 Dissemination of policy

COURT DECISIONS

Department of Health Services v. Superior Court of California, (2003) 31 Cal.4th 1026

Faragher v. City of Boca Raton, (1998) 118 S.Ct. 2275

Burlington Industries v. Ellreth, (1998) 118 S.Ct. 2257

Gebser v. Lago Vista Independent School District, (1998) 118 S.Ct. 1989

Oncale v. Sundowner Offshore Serv. Inc., (1998) 118 S.Ct. 998

Meritor Savings Bank, FSB v. Vinson et al., (1986) 447 U.S. 57

Management Resources:

OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS

GENERAL

Protecting Students from Harassment and Hate Crime, January, 1999

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

Equal Employment Opportunity Commission: <http://www.eeoc.gov>

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

CSBA: (11/01 3/04) 7/05

CVUSD Global Adoption: August 19, 2008

CVUSD

Administrative Regulation

AR 4119.11, 4219.11, 4319.11

Personnel

Sexual Harassment

Definitions

Prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the work or educational setting when: (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment.
2. Submission to or rejection of such conduct by the individual is used as the basis for an employment decision affecting him/her.
3. The conduct has the purpose or effect of having a negative impact upon the individual's work or has the purpose or effect of creating an intimidating, hostile, or offensive work environment. The conduct is sufficiently severe, persistent, pervasive, or objectively offensive so as to create a hostile or abusive working environment or to limit the individual's ability to participate in or benefit from an education program or activity.
4. Submission to or rejection of the conduct by the other individual is used as the basis for any decision affecting him/her regarding benefits, services, honors, programs, or activities available at or through the district.

Note: Pursuant to Government Code 12940, an employer may be held liable for sexual harassment committed against employees by clients, customers, or other third parties if the employer knew, or should have known, of the harassment and failed to take immediate and appropriate corrective action to stop the harassment. The following paragraph clarifies that sexual harassment may include acts by supervisors, co-workers, or other parties and should be modified to reflect district practice.

Other examples of actions that might constitute sexual harassment, whether committed by a supervisor, a co-worker, or a non-employee, in the work or educational setting, include, but are not limited to:

1. Unwelcome verbal conduct such as sexual flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sexual activity; sexual jokes or stories; unwelcome sexual slurs, epithets, threats, innuendoes, derogatory comments, sexually degrading descriptions, or the spreading of sexual rumors

2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit emails; displaying sexually suggestive objects
3. Unwelcome physical conduct such as massaging, grabbing, fondling, stroking, or brushing the body; touching an individual's body or clothes in a sexual way; cornering, blocking, leaning over, or impeding normal movements

Prohibited sexual harassment may also include any act of retaliation against an individual who reports a violation of the district's sexual harassment policy or who participates in the investigation of a sexual harassment complaint.

Training

Note: Government Code 12950.1 requires any district with 50 or more employees to provide two hours of sexual harassment training and education to supervisory employees once every two years. All newly hired supervisors or employees promoted to a supervisory position must receive the training within six months of their hire or assumption of the supervisory position. Compliance with this law does not insulate the district from any liability for harassment.

Note: Pursuant to 2 CCR 7288.0, as added by Register 2007, No. 29, the definition of "supervisor" in Government Code 12926 is applicable to this training requirement. Government Code 12926 defines "supervisor" broadly as any individual having the authority to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees or to effectively recommend that action if the exercise of that authority is not merely routine or clerical in nature. Governing Board members, as elected officials, are not usually considered "supervisors"; however, since Board members have the authority to hire, reward, or discipline the Superintendent and other employees, Board members may also be required to receive sexual harassment training. Districts should consult with legal counsel to ensure that the appropriate individuals receive training.

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment. All newly hired or promoted supervisory employees shall receive training within six months of their assumption of the supervisory position. (Government Code 12950.1)

The district's training and education program for supervisory employees shall include information and practical guidance regarding the federal and state laws on the prohibition against and the prevention and correction of sexual harassment, and the remedies available to the victims of sexual harassment in employment. The training shall also include all of the content specified in 2 CCR 7288.0 and practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation. (Government Code 12950.1; 2 CCR 7288.0)

In addition, the Superintendent or designee shall ensure that all employees receive periodic training regarding the district's sexual harassment policy, particularly the procedures for filing complaints and employees' duty to use the district's complaint procedures.

Notifications

Note: Education Code 231.5 requires that the district provide copies of its policy on sexual harassment to staff, as specified below. In addition, 2 CCR 7288.0, as added by Register 2007, No. 29, requires that supervisory employees undergoing mandatory training receive a copy of the district's policy and acknowledge receipt of the policy.

A copy of the Board policy and this administrative regulation shall: (Education Code 231.5)

1. Be displayed in a prominent location in the main administrative building, district office, or other area of the school where notices of district rules, regulations, procedures, and standards of conduct are posted
2. Be provided to each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year or whenever a new employee is hired

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

3. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct

Note: Government Code 12950 requires the Department of Fair Employment and Housing (DFEH) to develop posters and information sheets on employment discrimination and the illegality of sexual harassment. These documents are available on DFEH's web site.

All employees shall receive either a copy of information sheets prepared by the California Department of Fair Employment and Housing (DFEH) or a copy of district information sheets that contain, at a minimum, components on: (Government Code 12950)

1. The illegality of sexual harassment
2. The definition of sexual harassment under applicable state and federal law
3. A description of sexual harassment, with examples
4. The district's complaint process available to the employee

(cf. 4031 - Complaints Concerning Discrimination in Employment)

5. The legal remedies and complaint process available through DFEH and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact DFEH and the EEOC

7. The protection against retaliation provided by 2 CCR 7287.8 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by DFEH and the EEOC

In addition, the district shall post, in a prominent and accessible location, DFEH's poster on discrimination in employment and the illegality of sexual harassment. (Government Code 12950)

CSBA: (3/04 7/05) 3/08

CVUSD Global Adoption: August 19, 2008