

TULARE COUNTY OFFICE OF EDUCATION

Superintendent Policy

Personnel – All Personnel

SP 4030

Nondiscrimination in Employment

Nondiscrimination in Employment

The County Superintendent is determined to provide a safe, positive environment where all Tulare County Office of Education (TCOE) employees are assured of full and equal employment access and opportunities, protection from harassment and intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. For purposes of this policy, employees include job applicants, interns, volunteers, and persons who contracted with TCOE to provide services, as applicable.

No TCOE employee shall be discriminated against or harassed by any coworker, supervisor, manager, or other person with whom the employee comes in contact in the course of employment, on the basis of the employee's actual or perceived race, color, ancestry, national origin, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran or military status, sex, sexual orientation, gender, gender identity, gender expression, or association with a person or a group with one or more of these actual or perceived characteristics.

Employers are also prohibited from discrimination against employees or job applicants on the basis of reproductive health decision-making, defined as a person's decision to use or access a particular drug, device, product, or medical service for reproductive health. (Government Code 12926, 12940)

The County Superintendent shall not inquire into any employee's immigration status nor discriminate against an employee on the basis of immigration status, unless there is clear and convincing evidence that the district is required to do so in order to comply with federal immigration law. (2 CCR 11028)

Discrimination in employment based on the characteristics listed above is prohibited in all areas of employment and in all employment-related practices, including the following:

1. Hiring, compensation, terms, conditions, and other privileges of employment
2. Taking of adverse employment actions such as termination or denial of employment, promotion, job assignment, or training
3. Unwelcome conduct, whether verbal, physical, or visual, that is so severe or pervasive as to adversely affect an employee's employment opportunities or that has the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive work environment

4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code 12940 or 2 CCR 11006-11086, such as:
 - a. Sex discrimination based on an employee's pregnancy, childbirth, breastfeeding, or any related medical condition or on an employee's gender, gender expression, or gender identity, including transgender status
 - b. Religious creed discrimination based on an employee's religious belief or observance, including religious dress or grooming practices, or based on the district's failure or refusal to use reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement
 - c. Requiring medical or psychological examination of a job applicant or making an inquiry into whether a job applicant has a mental or physical disability or a medical condition or as to the severity of any such disability or condition, without the showing of a job-related need or business necessity
 - d. Failure to make reasonable accommodation for the known physical or mental disability of an employee or to engage in a timely, good faith, interactive process with an employee who has requested such accommodations in order to determine the effective reasonable accommodations, if any, to be provided to the employee
 - e. Requiring an applicant or employee to disclose information relating to the employee's reproductive health decisionmaking

School personnel are required to take immediate steps to intervene when safe to do so when he or she witnesses an act of discrimination, harassment, intimidation, or bullying.

The County Superintendent also prohibits retaliation against any county office employee who opposes any discriminatory employment practice by TCOE or its employees, agents, or representatives or who complains, reports an incident, testifies, assists or in any way participates in the county office's complaint procedures instituted pursuant to this policy. No employee who requests an accommodation for any protected characteristic listed in this policy shall be subjected to any punishment or sanction, regardless of whether the request was granted. (Government Code 12940; 2 CCR 11028)

No employee shall, in exchange for a raise or bonus or as a condition of employment or continued employment, be required to sign a release of the employee's claim or right to file a claim against TCOE or a nondisparagement agreement or other document that has the purpose or effect of preventing the employee from disclosing information about harassment, discrimination, or other unlawful acts in the workplace, including any conduct that the employee has reasonable cause to believe is unlawful. (Government Code 12964.5)

Any employee or job applicant who believes that he/she has been or is being discriminated against or harassed in violation of county office policy should, as appropriate, immediately contact his/her supervisor, the Coordinator, or the County Superintendent who shall advise the employee or applicant about the county office's procedures for filing, investigating, and resolving any such complaint.

Complaints concerning employment discrimination, harassment, or retaliation shall immediately be investigated in accordance with procedures specified in the accompanying administrative regulation.

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment, including harassment of an employee by a nonemployee, shall report the incident to the Coordinator or County Superintendent as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately.

The County Superintendent or designee shall use all appropriate means to reinforce TCOE's nondiscrimination policy, including providing training and information to employees about how to recognize harassment, discrimination, or other prohibited conduct, how to respond appropriately, and components of the county office's policies and regulations regarding discrimination. The County Superintendent or designee shall regularly review TCOE's employment practices and, as necessary, shall take action to ensure district compliance with the nondiscrimination laws.

Any county office employee who engages in prohibited discrimination, harassment or retaliation or who aids, abets, incites, compels or coerces another to engage or attempt to engage in such behavior in violation of this policy shall be subject to disciplinary action, up to and including dismissal.

The county office shall maintain and preserve all applications, personnel, membership, or employment referral records and files for at least four years after the records are initially created or received or, for an applicant or a terminated employee, for four years after the date the employment action was taken. However, when the county office is notified that a complaint has been filed with the California Civil Rights Department, records related to the employee involved shall be maintained and preserved until the later of the first date after the time for filing a civil action has expired or the first date after the complaint has been fully and finally disposed of and all administrative proceedings, civil actions, appeals, or related proceedings have been terminated. (Government Code 12946)

Legal Reference:

EDUCATION CODE

200-262.4 – Prohibition of discrimination

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

11006-11086 – Discrimination in employment

11023 – Harassment and discrimination prevention and correction

11024 – Required training and education on harassment based on sex, gender identity and expression, and sexual orientation

11027-11028 – National origin and ancestry discrimination

CODE OF REGULATIONS, TITLE 5

4900-4965 – Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1681-1688 – Title IX of the Education Amendments of 1972; discrimination based on sex

UNITED STATES CODE, TITLE 29

621-634 – Age Discrimination in Employment Act

794 – Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000d-2000d-7 – Title VI, Civil Rights Act of 1964, as amended

2000e-2000e-17 – Title VII, Civil Rights Act of 1964, as amended

2000ff-2000ff-11 – Genetic Information Nondiscrimination Act of 2008

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

6101-6107 – Age discrimination in federally assisted programs

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 – Title VI; Compliance information

104.7 – Section 504; Designation of responsible employee and adoption of grievances procedures

104.8 – Notice of Nondiscrimination on the Basis of Handicap

106.8 – Designation of coordinator; dissemination of policy, and adoption of grievance procedures

110.1-110.39 – Nondiscrimination on the basis of age

COURT DECISIONS

Kennedy v. Bremerton (2022) 142 S.Ct. 2407

Thompson v. North American Stainless LP (2011) 562 U.S. 170

Shephard v. Loyola Marymount (2002) 102 Cal.App.4th 837

Management Resources:

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

Notice of Non-Discrimination, August 2010

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Know Your Rights: Workplace Discrimination is Illegal, October 2022

EEOC Compliance Manual

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999

WEBSITES

U.S. Department of Labor, Office of Federal Contract Compliance Program:

<https://www.dol.gov/agencies/ofccp/executive-order-11246>

California Civil Rights Department: <https://calcivilrights.ca.gov/>

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

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

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Tulare County Superintendent of Schools
Visalia, CA