

Book           BCSD Board Policies  
Section        0500 Personnel  
Title          NONDISCRIMINATION IN EMPLOYMENT  
Code          0500.49  
Status         Active  
Adopted       September 9, 2003  
Last Revised   November 15, 2022

The Governing Board desires to provide a safe, positive work environment where all District employees are assured of full and equal 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 the District to provide services, as applicable.

(cf. BP 500.01 – Personnel Recruitment, Selection and Employment)  
(cf. BP 604.11 – Volunteer Assistance)  
(cf. BP 700.11 – Contracts)

The Board prohibits unlawful discrimination against and/or harassment of District employees 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 characteristics of age, ethnicity or race, which is inclusive of traits historically associated with race, including but not limited to, hair texture and protective hairstyles, such as braids, locks, and twists, color, ancestry, nationality, national origin, immigration status, ethnic group identifications, religion, pregnancy, marital status, parental status, physical disability, mental disability, sex (including sexual harassment), sexual orientation, gender, gender identity, gender expression, medical information, genetic information, homelessness, foster status, military veteran status, political affiliation, or any other characteristic identified in Education Code 200 or 220, Penal Code 422.55, Government Code 11135, and Title IX, or based on association with a person or group with one or more of these actual or perceived characteristics. Equal employment opportunity shall be provided to all employees and applicants. Employees and applicants with disabilities should notify their supervisor and/or Human Resources Department if they have a disability that requires reasonable accommodation.

(cf. BP 300.63 – Nondiscrimination in District Programs and Activities)  
(cf. BP 500.13 – Lactation Accommodation)  
(cf. BP 500.38 – Sexual Harassment)

The District 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 it is necessary to comply with federal immigration law (Title 2, California Code of Regulations Section 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. Discrimination in hiring, compensation, terms, conditions, and other privileges of employment

(cf. BP 500.09 – Salary Schedules)  
(cf. BP 500.20 – Health Benefits)

2. Taking of an adverse employment action, such as termination or the 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 individual'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 Section 12940 or Title 2, California Code of Regulations Sections 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

(cf. BP 500.13 – Lactation Accommodation)

(cf. BP 500.38 – Sexual Harassment)

- 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. Requirement for a medical or psychological examination of a job applicant, or 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

The Board also prohibits retaliation against any District employee, who opposes any discriminatory employment practice by the district or its employees, agents, or representatives or who complains, testifies, assists, or in any way participates in the District'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 Section 12940; Title 2, California Code of Regulations Section 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 the District 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 employment acts in the workplace, including any conduct that the employee has reasonable cause to believe is unlawful (Government Code Section 12964.5).

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 Superintendent or designated District coordinator as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately.

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

Any District employee who engages or participates in unlawful discrimination, harassment, or retaliation, or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in such behavior, is in violation of this policy and is subject to disciplinary action, up to and including dismissal.

The District 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 District is notified that a complaint has been filed with the California Department of Fair Employment and Housing, 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 Section 12946).

**Legal Reference:**

**CIVIL CODE**

51.7 Freedom from violence or intimidation

**EDUCATION CODE**

200-262.4 Prohibition of discrimination

**GOVERNMENT CODE**

11135 Unlawful discrimination  
11138 Rules and regulations  
12900-12996 Fair Employment and Housing Act  
12940-12952 Unlawful employment practices  
12960-12976 Unlawful employment practices; complaints

**PENAL CODE**

422.56 Definitions, hate crimes

**CODE OF REGULATIONS, TITLE 2**

11006-11086 Discrimination in employment, especially:  
11013 Recordkeeping  
11019 Terms, conditions and privileges of employment  
11023 Harassment and discrimination prevention and correction  
11024 Sexual harassment training and education  
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

**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  
2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended  
2000h-2-2000h-6 Title IX, 1972 Education Act Amendments  
2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008  
12101-12213 Americans With Disabilities Act  
6101-6107 Age discrimination in federally assisted programs

**CODE OF FEDERAL REGULATIONS, TITLE 28**

35.101-35.190 American with Disabilities Act  
36.101-36.608 Nondiscrimination on the basis of disability by public facilities

**CODE OF FEDERAL REGULATIONS, TITLE 34**

100.6 Compliance information  
104.7 Designation of responsible employee for Section 504  
104.8 Notice  
106.8 Designation of responsible employee and adoption of grievance procedures  
106.9 Dissemination of policy  
110.1-110.39 Nondiscrimination on the basis of age

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### **Administrative Regulation**

All allegations of discrimination in employment, including those involving an employee, job applicant, intern, volunteer, or other person contracted to provide services to the District shall be investigated and resolved in accordance with procedures specified in this administrative regulation.

The District designates the position identified below as its coordinator for nondiscrimination in employment ("coordinator") to organize and manage the District's efforts to comply with state and federal nondiscrimination laws and to answer inquiries regarding the District's nondiscrimination policies. The coordinator may be contacted at:

Director I, Human Resources  
Bakersfield City School District  
1300 Baker Street  
Bakersfield, California 93305  
Telephone: (661) 631-4663  
Email: johnstone@bcسد.com

### **Measures to Prevent Discrimination**

To prevent unlawful discrimination, harassment, and retaliation in District employment, the Superintendent or designee shall implement the following measures:

1. Display in a prominent and accessible location at every work site where the District has employees, and post electronically in a conspicuous location on computers for employee use, up-to-date California Department of Fair Employment and Housing (DFEH) posters on the prohibition of workplace discrimination and harassment, the rights of transgender employees, and the rights and obligations of employees who are pregnant, have a related medical condition, or are recovering from childbirth (Government Code Section 12950; Title 2, California Code of Regulations Sections 11013, 11023 & 11049).
2. Publicize the District's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, by: (Title 5, California Code of Regulations Section 4960; Title 34, Code of Federal Regulations Sections 100.6 & 106.9)
  - a. Including them in each announcement, bulletin, or application form that is used in employee recruitment.
  - b. Posting them in all District schools and offices, including staff lounges and other prominent locations.
  - c. Posting them on the District's web site and providing easy access to them through District-supported social media, when available.
3. Disseminate the District's nondiscrimination policy and administrative regulation to all employees by one or more of the following methods: (Title 2, California Code of Regulations Section 11023)
  - a. Printing and providing a copy to all employees, with an acknowledgment form for each employee to sign and return.
  - b. Sending a copy via email with an acknowledgment return form.
  - c. Posting a copy on the District intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies.
  - d. Discussing the policy and regulation with employees upon hire and/or during a new hire orientation session.
  - e. Any other way that ensures employees receive and understand the policy.

4. Provide to employees a handbook which contains information that clearly describes the District's nondiscrimination policy, procedures for filing a complaint, and resources available to employees who believe they have been the victim of any discriminatory or harassing behavior.
5. Provide training regarding the District's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made.

The District may also provide bystander intervention training to employees which includes information and practical guidance on how to recognize potentially problematic behaviors and which may motivate them to take action when they observe such behaviors. The training and education may include exercises to provide employees with the skills and confidence to intervene as appropriate and to provide them with resources they can call upon that support their intervention (Government Code Section 12950.2).

6. Periodically review the District's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure District compliance with law.
7. For any District facility where ten (10) percent of employees have a language other than English as their spoken language, translate the policy into every language spoken by at least ten (10) percent of the workforce (Title 2, California Code of Regulations Section 11023).

### **Complaint Procedures**

Any employee or job applicant who feels that they have been or are being unlawfully discriminated against or harassed in violation of District policy should immediately contact their supervisor, the nondiscrimination coordinator, or the Superintendent who shall advise the employee or applicant about the District's procedures for filing, investigating, and resolving any such complaint. Complaints that meet the definition of sexual harassment under Title IX (Title 34, Code of Federal Regulations Section 106.30) shall be investigated and resolved in accordance with Administrative Regulation 500.57 – Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to the following procedures:

1. **Notice and Receipt of Complaint:** A complainant may inform a direct supervisor, another supervisor, the coordinator, or the Superintendent. The complainant's direct supervisor may be bypassed in filing a complaint when the supervisor is the subject of the complaint.

The complainant may first attempt to resolve the situation informally with the complainant's supervisor before filing a written complaint.

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the coordinator, whether or not the complainant files a written complaint.

The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, any available evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

2. **Investigation Process:** The coordinator shall initiate an impartial investigation of an allegation of discrimination or harassment within five business days of receiving notice of the alleged discriminatory or harassing behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The coordinator shall meet with the complainant to describe the District's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The coordinator shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. The coordinator shall also inform the parties that the investigation will be kept confidential to the extent possible, but that some information may be disclosed as necessary to conduct an effective investigation.

If the coordinator determines that a detailed fact-finding investigation is necessary, the investigation shall begin immediately. As part of this investigation, the coordinator should interview the complainant, the person accused, and other persons who could be expected to have relevant information.

The coordinator shall track and document the progress of the investigation to ensure reasonable progress and shall inform the parties as necessary.

When necessary to carry out the investigation or to protect employee safety, the coordinator may discuss the complaint with the Superintendent or designee, District legal counsel, or the District's risk manager.

The coordinator shall also determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed in order to prevent further incidents. The coordinator shall ensure that such interim measures do not constitute retaliation.

3. **Written Report on Findings and Remedial/Corrective Action:** As soon as practicable, but no more than sixty (60) business days after receiving the complaint, the coordinator shall conclude the investigation and prepare a written report of the findings. This timeline may be extended for good cause. If an extension is needed, the coordinator shall notify the parties and explain the reasons for the extension.

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the report shall also include any corrective action(s) that have been or will be taken to address the behavior, provide appropriate options for remedial actions and resolutions for the complainant, and ensure that retaliation or further discrimination or harassment is prevented. The report shall be presented to the Superintendent or designee.

A summary of the findings shall be presented to the complainant and the person accused.

4. **Appeal to the Governing Board:** The complainant or the person accused may appeal any findings to the Board within ten (10) business days of receiving the written report of the coordinator's findings. The Superintendent or designee shall provide the Board with all information presented during the investigation. Upon receiving an appeal, the Board shall schedule a hearing as soon as practicable. Any complaint against a District employee shall be addressed in closed session in accordance with law. The Board shall render its decision within ten (10) business days.

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.

(cf. BP 300.13 – Complaints Against District Employees)  
(cf. BP 500.38 – Sexual Harassment)  
(cf. BP 500.49 – Uniform Complaint Procedures)

Any District employee who observes or has knowledge of an incident of unlawful discrimination or harassment shall report the incident to their supervisor, the nondiscrimination coordinator, or the Superintendent as soon as practical after the incident. Failure of a District employee to report discrimination or harassment may result in disciplinary action.

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

### **Other Remedies**

In addition to filing a discrimination or harassment complaint with the District, a person may file a complaint with either the DFEH or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

1. For filing a complaint with DFEH alleging a violation of Government Code Sections 12940-12952, within three years of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code Section 12960 (Government Code Section 12960).
2. For filing a complaint with EEOC, within one hundred eighty (180) days of the alleged discriminatory act(s) (Title 42, United States Code Section 2000e-5).
3. For filing a complaint with EEOC after first filing a complaint with DFEH, within three hundred (300) days of the alleged discriminatory act(s) or within thirty (30) days after the termination of proceedings by DFEH, whichever is earlier (Title 42, United States Code Section 2000e-5).

### **Reasonable Accommodations**

Except when undue hardship would result to the District, the Superintendent or designee shall provide reasonable accommodation:

1. In the job application process, to any qualified job applicant with a disability.
2. To enable any qualified employee with a disability to perform the essential functions of the position the employee holds or desires to hold or to enjoy equal benefits or other terms, conditions, and privileges of employment as other similarly situated employees without disabilities.

No employee or job applicant who requests an accommodation for the employee's physical or mental disability shall be subjected to discrimination or to any punishment or sanction, regardless of whether the request for accommodation was granted (Government Code Section 12940).

The District designates the position of Coordinator for Nondiscrimination in Employment specified herein to coordinate its efforts to comply with the Americans with Disabilities Act (ADA) and to investigate any and all related complaints.

### **Definitions**

"Disability," with respect to an individual, is defined as any of the following: (Government Code Section 12926; Title 29, Code of Federal Regulations Section 1630.2)

1. A physical or mental impairment that limits one or more of the major life activities.
2. A record of such 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 section 12926).

"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 (Title 29, Code of Federal Regulations Section 1630.2).

"Reasonable accommodations" means: (Government Code Section 12926; Title 29, Code of Federal Regulations Section 1630.2)

1. For a qualified job applicant with a disability, modifications or adjustments to the job application process that enable the applicant to be considered for the position the applicant desires.
2. For a qualified employee with a disability, modifications or adjustments to the work environment, or to the manner or circumstances under which the position the employee holds or desires is customarily performed, that enable the employee to perform the essential functions of that position or to enjoy equal benefits and privileges of employment as are enjoyed by the District's other similarly situated employees without disabilities, including but are not limited to:
  - a. Making existing facilities accessible and usable.
  - b. Restructuring the job duties.
  - c. Offering part-time or modified work schedules.
  - d. Acquisition or modification of equipment or devices
  - e. Changing tests, training materials or policies.
  - f. Providing qualified readers or interpreters.
  - g. Reassigning the employee to a vacant position.

"Qualified individual with a disability" means a job applicant or employee with a disability who: (Title 29, Code of Federal Regulations Sections 1630.15 & 1630.2)

1. Satisfies the requisite skill, experience, education and other job-related requirements of the employment position held or desired; and
2. Can perform the essential functions of the position with or without reasonable accommodation; and
3. Would not pose a significant risk of substantial harm, which cannot be eliminated or reduced by reasonable accommodation, to self or others in the job held or desired.

"Undue hardship" is a determination based on an individualized assessment of current circumstances that shows that the provision of a specific reasonable accommodation would cause significant difficulty or expense to the District. (Title 29, Code of Federal Regulations Section 1630.2).



## **Requests for Reasonable Accommodation**

When requesting reasonable accommodation, the employee or employee's representative shall inform the employee's supervisor that the employee needs a change at work for a reason related to a medical condition. The supervisor shall inform the coordinator of the employee's request as soon as practicable.

When requesting reasonable accommodation for the hiring process, a job applicant shall inform the coordinator that they will need a reasonable accommodation for the process.

When the disability and/or the need for accommodation is not obvious, the coordinator may ask the employee to supply reasonable documentation about the employee's 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.

If the documentation submitted by the employee does not specify the existence of a qualifying disability or explain the need for reasonable accommodation, the coordinator shall request additional documentation that specifies the missing information. If the employee does not submit such additional documentation in a timely manner, the coordinator may require the employee to submit to an examination by a health care professional selected and paid for by the District.

The District may make a medical or psychological inquiry of a job applicant or require the applicant to submit to a medical or psychological examination after the applicant has been given a conditional offer of employment but before the commencement of the applicant's job duties, provided the inquiry or examination is job-related, consistent with business necessity, and required for all incoming employees in the same job classification (Government Code Section 12940).

The coordinator shall not request any job applicant's or employee's genetic information except as authorized by law (Title 42, United States Code Section 2000ff-1 & 2000ff-5).

In accordance with law, the coordinator shall take steps to ensure the confidentiality of information related to medical conditions or history. As applicable, the coordinator shall notify the supervisor or manager of the qualified individual of any reasonable accommodation granted the individual and may notify first aid and safety personnel when the disability of the qualified individual may require emergency treatment (Title 42, United States Code Section 12112).

## **Granting Reasonable Accommodations**

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

1. Determine the essential functions of the job involved.
2. Engage in an informal, interactive process with the individual to review the request for accommodation, identify the precise limitations resulting from the disability, identify potential means for providing accommodation, and assess their effectiveness
3. Develop a plan for reasonable accommodation which will enable the individual to perform the essential functions of the job or gain equal access to the benefit or privilege of employment without imposing undue hardship on the District.

A determination of undue hardship should be based on several factors, including: (Title 29, Code of Federal Regulations Section 1630.2)

- a. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding.
- b. The overall financial resources of the facility making the accommodation, the number of persons employed at this facility, and the effect on expenses and resources of the facility.
- c. The overall financial resources, number of employees, and the number, type, and location of facilities of the District.
- d. The type of operation of the District, including the composition, structure, and functions of the workforce and the geographic separateness and administrative or fiscal relationship of the facility making the accommodation to other District facilities.
- e. 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.

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

The coordinator shall notify the employee or applicant of the results of the determination.

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