

# Mt. Diablo USD

## Board Policy

### Nondiscrimination/Harassment And Transgender Policy

BP 5145.3

#### Students

The Governing Board ~~is committed~~ desires to providing provide a safe school environment that ~~protects privacy, supports attendance, and~~ allows all students equal access and opportunities in the district's academic, ~~and other educational~~ extracurricular, support programs, services and activities, as well as district services, facilities, and activities. ~~and other educational support programs, services and activities.~~ The Board prohibits, at any district school or school activity, unlawful discrimination, including discriminatory harassment, intimidation, and bullying, ~~of any targeted at any student by anyone,~~ based on the student's actual or perceived race, color, ancestry, nationality, national origin, ethnicity, 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 the perception of one or more of such characteristics;~~ or association with a person or group with one or more of these actual or perceived characteristics.

The policy shall apply to all acts related to school activity or to school attendance occurring within a district school, and to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school. (~~Education Code 234.1~~)

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

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)

(cf. 5137 - Positive School Climate)

(cf. 5145.9 - Hate-Motivated Behavior)

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

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

~~Prohibited~~ Unlawful discrimination, including discriminatory harassment, intimidation or bullying ~~includes~~ may result from physical, verbal, nonverbal, or written conduct based on one of the categories listed above. Unlawful discrimination also includes the creation of a hostile environment through prohibited conduct that is so severe, ~~and~~ persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program ~~facility,~~ service, or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects the student's educational opportunities.

Unlawful discrimination also includes disparate treatment of students based on one of the categories above with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services.

The Board also prohibits any form of ~~relation~~ retaliation against any student individual who reports or participates in the reporting of unlawful discrimination, files or participates in the who files filing of a complaint, or report regarding an incident of discrimination, harassment, intimidation, or bullying or investigates or participates in the investigation of a complaint or report alleging unlawful discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

~~Staff shall be alert and immediately responsive to student conduct which may interfere with another student's ability to participate in or benefit from school services, activities or privileges.~~

~~School staff and volunteers shall carefully guard against segregation, bias, and stereotyping in the delivery of services, including, but not limited to, instruction, guidance, and supervision.~~

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

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

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

~~The principal or designee shall develop a plan to provide students with appropriate accommodations when necessary for their protection from threatened or potentially harassing or discriminatory behavior.~~

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, bullying, or retaliation in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequences or discipline, ~~up to and including~~ which may include counseling, suspension, and/or expulsion, when the behavior is severe or pervasive as defined in Educational Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, bullying, or retaliation shall be subject to disciplinary action, up to and including dismissal.

(cf. 4119.21/4219.21/4319.21- Professional Standards)

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

(cf. 5144 - Discipline)

(cf. 5144.1 - Suspension and Expulsion/Due Process)

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students Disabilities)

(cf. 5145.2 - Freedom of Speech/Expression)

### Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, to enable the district to monitor, address, and prevent repetitive prohibited behavior in district schools.

(cf. 3580 – District Records)

### Legal Reference:

#### EDUCATION CODE

200-262.4 Prohibition of discrimination

48900.3 Suspension or expulsion for act of hate violence

48900.4 Suspension or expulsion for threats or harassment

48904 Liability of parent/guardian for willful student misconduct

48907 Student exercise of free expression

48950 Freedom of speech

48985 Translation of notices

49020-49023 Athletic programs

51500 Prohibited instruction or activity

51501 Prohibited means of instruction

60044 Prohibited instructional materials

#### CIVIL CODE

1714.1 Liability of parents/guardians for willful misconduct of minor

#### PENAL CODE

422.55 Definition of hate crime

422.6 Crimes, harassment

#### CODE OF REGULATIONS, TITLE 5

432 Student record

4600-4687 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

#### UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972  
12101-12213 Title II equal opportunity for individuals with disabilities  
UNITED STATES CODE, TITLE 29  
794 Section 504 of Rehabilitation Act of 1973  
UNITED STATES CODE, TITLE 42  
2000d-2000e-17 Title VI and Title VII Civil Rights Act of 1964, as amended  
2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964  
6101-6107 Age Discrimination Act of 1975  
CODE OF FEDERAL REGULATIONS, TITLE 28  
35.107 Nondiscrimination on basis of disability; complaints  
CODE OF FEDERAL REGULATIONS, TITLE 34  
99.31 Disclosure of personally identifiable information  
100.3 Prohibition of discrimination on basis of race, color or national origin  
104.7 Designation of responsible employee for Section 504  
106.8 Designation of responsible employee for Title IX  
106.9 Notification of nondiscrimination on basis of sex  
COURT DECISIONS  
Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567  
Flores v. Morgan Hill Unified School District, (2003) 324 F.3d 1130

#### Management Resources:

#### CSBA PUBLICATIONS

Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Discrimination, March 2017

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

Final Guidance Regarding Transgender Students, Privacy, and Facilities, March 2014

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

#### FIRST AMENDMENT CENTER PUBLICATIONS

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

#### NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity, 2004

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

Dear Colleague Letter: Title IX Coordinators, April 2015

Dear Colleague Letter: Harassment and Bullying, October 2010

Notice of Non-Discrimination, January 1999

#### WEB SITES

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

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

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

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

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

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

Policy MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: February 8, 2011 Concord, California

revised: May 28, 2014

revise: October 2017