

# Butte County Office of Education

## SUPERINTENDENT'S POLICY AND ADMINISTRATIVE REGULATIONS

### SP 4030

#### NON-DISCRIMINATION IN EMPLOYMENT

The Butte County Office of Education (BCOE) is determined to provide a safe, positive environment where all 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 BCOE to provide services, as applicable.

No BCOE 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 one, or a combination of two or more, protected characteristics which include, but may not be limited to the employee's actual or perceived race or ethnicity; color; ancestry; ethnic group identification; nationality; national origin immigration status; age; religion; religious creed; parental, marital and family status; pregnancy, false pregnancy, childbirth, termination of pregnancy, or related conditions of recovery; reproductive health decision-making; breastfeeding or related medical conditions; physical or mental disability; medical condition; genetic information, military and veteran status; sex; sexual orientation; sex stereotype; gender; gender identity; gender expression; or association with a person or group with one or more of these actual or perceived characteristic.

Employers are also prohibited from discriminating 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.

BCOE 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. (2 CCR 11028)

In addition, unless otherwise provided for in law, BCOE may not discriminate against an employee in any term or condition of employment, or otherwise penalize a person, including termination, based on the person's use of cannabis off the job and away from the workplace, or on a drug screening which finds that the person has nonpsychoactive cannabis metabolites in the person's hair, blood, urine, or other bodily fluid. However, BCOE retains the right to maintain drug-free schools or prohibit employees from possession, being impaired by, or using cannabis while on the job.

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 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 12940 or 2 CCR 11006-11086, such as:
  - a. Sex discrimination based on one, or a combination of two or more protected characteristics, which include, but may not be limited to an employee's pregnancy, childbirth, breastfeeding, or any related medical condition, or on an employee's gender, gender expression, or gender identity, or sexual orientation

Although complaints of sexual harassment may be addressed through this Nondiscrimination in Employment policy, any complaint that meets the more stringent definition of sexual harassment pursuant to 34 CFR 106.30 shall be investigated and resolved in accordance with 34 CFR 106.44-106.45.

- b. Religious creed discrimination based on an employee's religious belief or observance and practice, including religious dress or grooming practices, or based on the BCOE's failure or refusal to use

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reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement

- c. Requiring 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 accommodation, if any, to be provided to the employee
- e. Requiring an applicant or employee to disclose information relating to the employee's reproductive health decision-making
- f. Including a statement in a job advertisement, posting, application, or other material that an applicant is required to have a driver's license, unless BCOE reasonably expects driving to be one of the job functions for the position and reasonably believes that satisfying the job function using an alternative form of transportation would not be comparable in travel time or cost to BCOE

BCOE also prohibits retaliation against any employee who opposes any discriminatory employment practice by BCOE or its employees, agents, or representatives, or who complains, reports an incident, testifies, assists, or in any way participates in BCOE's complaint process 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 any document that releases the employee's right to file a claim against BCOE or a non-disparagement agreement or other document that has the purpose or effect of preventing the employee from disclosing information about harassment, discrimination or other unlawful employment practices including any conduct that the employee has reasonable cause to believe is unlawful (Government Code 12964.5)

Complaints concerning employment discrimination, harassment, or retaliation shall immediately be investigated in accordance with procedures specified in the accompanying administrative regulation. However, complaints alleging sexual harassment under Title IX shall be investigated and resolved in accordance with the procedures specified in Administrative Regulation 4119.12/4219.12/4319.12 – Title IX Sexual Harassment Complaint Procedures.

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 County Superintendent or designee within one workday.

All other employees shall report such incidents to their supervisor within one workday.

BCOE shall protect any employee who reports such incidents from retaliation.

The County Superintendent or designee shall use all appropriate means to reinforce BCOE'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 BCOE's policies and regulations regarding discrimination. The County Superintendent or designee shall regularly review BCOE's employment practices and, as necessary, shall take action to ensure compliance with the nondiscrimination laws.

Any 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.

BCOE shall maintain and preserve all applications, personnel, membership, or employment 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

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after the date the employment action was taken. However, when BCOE 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.

The County Superintendent has designated the following position to be the Coordinator for Nondiscrimination in Employment:

Mikeial Williamson  
Assistant Superintendent – Human Resources  
1859 Bird Street  
Oroville, CA 95965  
530-532-5766  
[mwilliamson@bcoe.org](mailto:mwilliamson@bcoe.org)

#### Legal Reference:

##### EDUCATION CODE

200-262.4 Prohibition of discrimination

##### CIVIL CODE

51.7 Freedom from violence or intimidation

##### GOVERNMENT CODE

11135 Unlawful discrimination

11138 Rules and regulations

12900-12996 Fair Employment and Housing Act, especially:

12940-12954 Unlawful employment practices

12960-12976 Unlawful employment practices; complaints

##### LABOR CODE

1030-1034 Lactation Accommodation

1197.5 Wages, hours, and working conditions

##### 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

218d Fair Labor Standards Act; Providing Urgent Maternal Protections for Nursing Mothers Act

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

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2000gg-2000gg-6 Pregnant Workers Fairness Act

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 29

1636 Implementation of the Pregnant Workers Fairness Act

### CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 Compliance information, Title VI

104.7 Designation of responsible employee for Section 504

104.8 Notice of Nondiscrimination on the Basis of Handicap

106.1-106.82 Discrimination on the basis of sex, effectuating Title IX

106.9 Dissemination of policy

110.1-110.39 Nondiscrimination on the basis of age

COURT DECISIONS Thompson v. North American Stainless LP, (2011) 131 S.Ct. 863

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

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### AR 4030

#### Non-discrimination In Employment Personnel

All allegations of discrimination in employment, including those involving an employee, job applicant, intern, volunteer, or other person contracted to provide services to the Butte County Office of Education (BCOE) shall be investigated and resolved in accordance with procedures specified in this administrative regulation. However, complaints alleging sexual harassment under Title IX shall be investigated and resolved in accordance with the procedures specified in Administrative Regulation 4119.12/4219.12/1319.12 – Title IX Sexual Harassment Complaint Procedures.

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

Mikeial Williamson  
Assistant Superintendent – Human Resources  
1859 Bird Street  
Oroville, CA 95965  
530-532-5766  
[mwilliamson@bcoe.org](mailto:mwilliamson@bcoe.org)

#### Measures to Prevent Discrimination

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

1. Display in a prominent and accessible location at every work site where BCOE has employees, and post electronically in a conspicuous location on computers for employee use, up-to-date California Civil Rights Department (CRD) 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 12950; 2 CCR 11013, 11023, 11049)
2. Publicize BCOE's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, by: (5 CCR 4960; 34 CFR 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 BCOE schools and offices, including staff lounges and other prominent locations
  - c. Posting them on BCOE's website and providing easy access to them through BCOE-supported social media, when available
3. Disseminate BCOE's nondiscrimination policy and administrative regulation to all employees by one or more of the following methods: (2 CCR 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 BCOE 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 BCOE'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 to employees, volunteers, and interns regarding BCOE's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation, and how and to whom a report of an incident should be made
6. Training supervisors of the requirement to report any complaint of misconduct to a designated representative, such as to BCOE's Coordinator, as a topic in the sexual harassment prevention training required pursuant to 2 CCR 11024 (2 CCR 11023) In addition, BCOE 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

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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 12950.2)

7. Periodically review BCOE's recruitment, hiring, and promotion processes and practices, as well as regularly monitor the terms, conditions, and privileges of employment to ensure BCOE compliance with nondiscrimination laws
8. For any BCOE facility where 10 percent of employees have a language other than English as their spoken language, translate the policy into every language spoken by at least 10 percent of the workforce (2 CCR 11023)

### **Complaint Procedure**

Complaints of sexual harassment shall be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures if the alleged conduct meets the definition of sexual harassment pursuant to 34 CFR 106.30.

Any other complaint by an employee, intern volunteer, or job applicant alleging unlawful discrimination or harassment shall be addressed in accordance with the following procedures:

1. **Notice and Receipt of Complaint:** A complainant may inform a direct supervisor, another supervisor, the coordinator, the County Superintendent or, if available, a complaint hotline or an ombudsman. 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 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 BCOE'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 County Superintendent or designee, legal counsel, or BCOE'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.

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3. Written Report on Findings and Remedial/Corrective Action: No more than 20 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 County Superintendent or designee.

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

4. Appeal: The complainant or the person accused may appeal any coordinator's findings to the County Superintendent within 10 business days of receiving the written report of the coordinator's findings. Upon receiving an appeal, the County Superintendent shall schedule a meeting as soon as practicable. The County Superintendent shall attempt to render a decision within 30 days. All appeals shall be resolved within 60 days from the date the appeal was filed.

### Other Remedies

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

1. For filing a complaint with CRD alleging a violation of Government Code 12940-12952, within three years of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960 (Government Code 12960)
2. For filing a complaint with EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)
3. For filing a complaint with EEOC after first filing a complaint with CRD, 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)

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