

# Morgan Hill USD

## Board Policy

### Nondiscrimination In Employment

BP 4030

#### Personnel

The Governing Board is determined to provide ~~district employees, interns, volunteers, and job applicants~~ a safe, positive environment where ~~they~~ all district employees are assured of full and equal employment access and opportunities, protection from harassment ~~or~~ and intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. ~~This~~ For purposes of this policy shall apply to all district, employees ~~and, to the extent required by law, to include job applicants,~~ interns, volunteers, and ~~job applicants~~ persons who contracted with the district to provide services, as applicable.

(cf. 1240 - Volunteer Assistance)

(cf. 3312 - Contracts)

(cf. 3600 - Consultants)

(cf. 4111/4211/4311 - Recruitment and Selection)

No district 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, ~~religious creed~~, color, ancestry, national origin, ~~ancestry~~, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, military and veteran status, sex, sexual orientation, gender, gender identity, gender expression, ~~sex, or sexual orientation or his/her or~~ association with a person or group with one or more of these actual or perceived characteristics.

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. 4151/4251/4351 - Employee Compensation)

(cf. 4154/4254/4354 - Health and Welfare Benefits)

2. Taking of an adverse employment action, such as termination or the denial of employment, promotion, job assignment, or training

~~(cf. 4151/4251/4351 - Employee Compensation)~~

~~(cf. 4154/4254/4354 - Health and Welfare Benefits)~~

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 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. 4033 - Lactation Accommodation)

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

b. Religious creed discrimination based on an employee's religious belief or observance, including ~~his/her~~ 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. Disability discrimination based on a district requirement~~(cf. 4119.22/4219.22/4319.22 - Dress and Grooming)

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

(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)

d. ~~Disability discrimination based on the district's failure~~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 ~~for, if any, to be provided to~~ the employee, when he/she has requested reasonable accommodation for a ~~known~~ physical or mental disability or ~~medical condition~~religious belief is protected from retaliation as specified below. CSBA recommends that this protection be extended to all protected characteristics, as provided below

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 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 the district or to disclose information about harassment or other unlawful employment practices. (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.

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

The Superintendent or designee shall use all appropriate means to reinforce the district's nondiscrimination policy. ~~He/she shall provide, 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.

~~In addition, the Superintendent or designee shall post, in a conspicuous place on district premises, the California Department of Fair Employment and Housing publication on workplace discrimination and harassment issued pursuant to 2 CCR 11013.~~

Any district 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.

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)

~~The following position is designated as Coordinator for Nondiscrimination in Employment:~~

~~Assistant Superintendent, Human Resources  
15600 Concord Circle  
Morgan Hill, CA 95037  
(408) 201-6015~~

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

~~The Superintendent or designee shall regularly publicize, within the district and in the community, the district's nondiscrimination policy. 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 shall be posted in all district schools and offices including staff lounges. (5 CCR 4960)~~  
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

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:

12940-12952 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, 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 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

COURT DECISIONS

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

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

Management Resources:

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PUBLICATIONS

California Law Prohibits Workplace Discrimination and Harassment, ~~December 2014~~

~~Transgender Rights in the Workplace~~

~~Workplace Harassment Guide for California Employers~~

~~Your Rights and Obligations as a Pregnant Employee~~

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

Notice of Non-Discrimination, August 2010

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

~~Questions and Answers: Religious Discrimination in the Workplace, 2008~~

~~New EEOC Compliance Manual Section 15: Race and Color Discrimination, April 2006~~

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

WEB SITES

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

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

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

~~Policy MORGAN HILL UNIFIED SCHOOL DISTRICT~~

~~adopted: April 17, 2018 Morgan Hill, California (5/16 12/16) 3/19~~