

VENTURA COUNTY OFFICE OF EDUCATION

SUPERINTENDENT POLICY NO. 4030

ADOPTED: 03/24/97

CLASSIFICATION: Personnel

REVISED: 04/10/23

SUBJECT: Nondiscrimination in Employment

07/10/23

The County Superintendent is determined to provide a safe, positive environment where all VCOE employees/educators 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/educators include job applicants, interns, volunteers, and persons who contracted with VCOE to provide services, as applicable.

No VCOE employee/educator shall be discriminated against or harassed by any coworker, supervisor, manager, or other person with whom the employee/educator comes in contact in the course of employment, on the basis of the employee's/educator'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 group with one or more of these actual or perceived characteristics.

Employers are also prohibited from discrimination against employees/educators 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)

VCOE shall not inquire into any employee's/educator's immigration status nor discriminate against an employee/educator on the basis of immigration status, unless there is clear and convincing evidence that VCOE 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/educator's employment opportunities or that has the purpose or effect of unreasonably interfering with the employee's/educator'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/educator's pregnancy, childbirth, breastfeeding, or any related medical condition or on an employee's/educator's gender, gender expression, or gender identity, including transgender status
 - b. Religious creed discrimination based on an employee's/educator'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/educator'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/educator or to engage in a timely, good faith, interactive process with an employee/educator who has requested such accommodations in order to determine the effective reasonable accommodations, if any, to be provided to the employee/educator
 - e. Requiring an applicant or employee/educator to disclose information relating to the employee's/educator's reproductive health decision-making

The County Superintendent also prohibits retaliation against any VCOE employee/educator who opposes any discriminatory employment practice by VCOE or its employees/educators, agents, or representatives or who complains, reports an incident, testifies, assists, or in any way participates in VCOE's complaint process pursuant to this policy. No employee/educator 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/educator 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/educator's claim or right to file a claim against VCOE or a non-disparagement agreement or other document that has the purpose or effect of preventing the employee/educator from disclosing information about harassment, discrimination, or other unlawful acts in the workplace, including any conduct that the employee/educator has reasonable cause to believe is unlawful. (Government Code 12964.5)

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

Any supervisory or management employee/educator who observes or has knowledge of an incident of prohibited discrimination or harassment, including harassment of an employee/educator by a nonemployee, shall report the incident to the Chief Human Resource Officer as soon as practical after the incident. All other employees/educators are encouraged to report such incidents to their supervisor immediately.

The Chief Human Resource Officer shall use all appropriate means to reinforce VCOE's nondiscrimination policy, including providing training and information to employees/educators about how to recognize harassment, discrimination, or other prohibited conduct, how to respond appropriately, and components of VCOE's policies and regulations regarding discrimination. The Chief Human Resource Officer shall regularly review VCOE's employment practices and, as necessary, shall take action to ensure county compliance with the nondiscrimination laws.

Any VCOE employee/educator 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.

VCOE 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/educator, for four years after the date the employment action was taken. However, when VCOE is notified that a complaint has been filed with the California Civil Rights Department, records related to the employee/educator 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

CALIFORNIA 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
11246-11375	Equal Employment Opportunity

CALIFORNIA CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance

CALIFORNIA CONSTITUTION

Article 1, Section 1 Inalienable rights

Article 1, Section 31 Employment & Services

CIVIC CODE 51.7 Freedom from violence or intimidation

GOVERNMENT CODE

11135 Prohibition of discrimination

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

UNITED STATES CODE, TITLE 20

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

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

UNITED STATES CODE, TITLE 29

621-634 Age Discrimination in Employment Act

794 Rehabilitation Act of 1973; Section 504

UNITED STATES CODE, TITLE 38

2011 et seq. Vietnam Era Veterans' Act

4212 Vietnam Era Veterans' Readjustment Assistance Act of 1974

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

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

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

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

UNITED STATES CONSTITUTION

Amendment 1 Free exercise, free speech, and establishment clauses

GENERAL DISCRIMINATION PROVISIONS:

Title VI of the Civil Rights Act of 1964, Section 2000d

-As amended, prohibiting discrimination based on race, color, or national origin in federally funded programs.

Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.)

-Prohibiting discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin in the sale or rental of housing.

Age Discrimination Act of 1975 (45 CFR 90),

-As amended (42 USC Sections 6101-6107), which prohibits discrimination on the basis of age.

Age Discrimination in Employment Act (29 CFR Part 1625)

Title I of the Americans with Disabilities Act (29 CFR Part 1630)

-Prohibiting discrimination against the disabled in employment.

Title II of the Americans with Disabilities Act (28 CFR Part 35)

-Prohibiting discrimination against the disabled by public entities.

Title III of the American with Disabilities Act (28 CFR Part 36)

-Regarding access.

Section 504 of the Rehabilitation Act of 1973

-As amended (29 USC Section 794), prohibiting discrimination on the basis of individuals with disabilities.

Executive Order 11246 (42 USC 2000(e) et seq. and 41 CFR Part 60)

-Regarding non-discrimination in employment under federal contracts and construction contracts greater than \$10,000 funded by federal financial assistance.

Executive Order 13166 (67 FR 41455)

-Improve access to federal services for those with limited English proficiency.

The Drug Abuse Office and Treatment Act of 1972

-As amended, relating to non-discrimination on the basis of drug abuse.

Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2, Subparts A-E)

Management Resources:

COURT DECISIONS

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

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

Thomson v. North American Stainless LP (2011) 62 U.S. 170

USDOE OFFICE FOR CIVIL RIGHTS PUBLICATION

Notice of Non-Discrimination, August 2010

US EQUAL EMPLOYMENT OPPORTUNITY COMM PUBLICATION

Know Your Rights: Workplace Discrimination is Illegal, October 2022

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

EEOC Compliance Manual

WEBSITES

US Department of Labor, Office of Federal Contract Compliance Program

CSBA District and County Office of Education Legal Services

California Civil Rights Department

US Department of Education, Office for Civil Rights

US Equal Employment Opportunity Commission