

Los Banos USD | BP 5141.4 Students

## **Child Abuse Prevention And Reporting**

### **Child Abuse Prevention**

The Governing Board recognizes the district's responsibility to educate students about the dangers of child abuse so that they will acquire the skills and techniques needed to identify unsafe situations and to react appropriately and promptly.

The district's instructional program may include age-appropriate and culturally sensitive child abuse prevention curriculum.

(cf. 6143 - Courses of Study)

The Superintendent or designee shall seek to incorporate community resources into the district's child abuse prevention programs. To the extent feasible, the Superintendent or designee shall use these community resources to provide parents/guardians with instruction in parenting skills and child abuse prevention.

(cf. 1020 - Youth Services)

### **Child Abuse Reporting**

The Board recognizes that child abuse has severe consequences and that the district has a responsibility to protect students by facilitating the prompt reporting of known and suspected incidents of child abuse. The Superintendent or designee shall establish procedures for the identification and reporting of such incidents in accordance with law.

(cf. 0450 - Comprehensive Safety Plan)

Employees who are mandated reporters, as defined by law and administrative regulation, are obligated to report all known or suspected incidents of child abuse and neglect. Mandated reporters shall not investigate any suspected incidents but rather shall cooperate with agencies responsible for investigating and prosecuting cases of child abuse and neglect.

The Superintendent or designee shall provide training regarding the reporting duties of mandated reporters.

In the event that training is not provided to mandated reporters, the Superintendent or designee shall report to the California Department of Education the reasons that such training is not provided. (Penal Code 11165.7)

Legal Reference:

### **EDUCATION CODE**

32280-32288 Comprehensive school safety plans

33308.1 Guidelines on procedure for filing child abuse complaints

44690-44691 Staff development in the detection of child abuse and neglect

44807 Duty concerning conduct of students

48906 Notification when student released to peace officer

48987 Dissemination of reporting guidelines to parents

49001 Prohibition of corporal punishment

51220.5 Parenting skills education

## PENAL CODE

152.3 Duty to report murder, rape, or lewd or lascivious act

273a Willful cruelty or unjustifiable punishment of child; endangering life or health

288 Definition of lewd or lascivious act requiring reporting

11164-11174.4 Child Abuse and Neglect Reporting Act

## WELFARE AND INSTITUTIONS CODE

15630-15637 Dependent adult abuse reporting

## CODE OF REGULATIONS, TITLE 5

4650 Filing complaints with CDE, special education students

Management Resources:

## CDE LEGAL ADVISORIES

0514.93 Guidelines for parents to report suspected child abuse

## WEB SITES

California Attorney General's Office, Crime and Violence Prevention Center: <http://safestate.org>

California Department of Education, Safe Schools: <http://www.cde.ca.gov/ls/ss>

California Department of Social Services, Children and Family Services Division:  
<http://www.childsworld.ca.gov>

U.S. Department of Health and Human Services, National Clearinghouse on Child Abuse and Neglect  
Information: <http://nccanch.acf.hhs.gov>

## Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: June 12, 1997 Los Banos, California

revised: July 17, 2008

## Los Banos USD | BP 0100 Philosophy, Goals, Objectives and Comprehensive Plans

### **Philosophy**

The Governing Board believes that all students can succeed regardless of race, background or ability. School staff shall embody this philosophy in all district programs and activities.

The district further believes that: (1) the central interest of schools is the learner, (2) learning is an active process, (3) our schools are responsible for each learner, (4) experiencing success is crucial to the learning process, (5) the qualities of teaching and learning are inextricably interwoven, (6) program improvement is a continuing process, (7) providing quality program education is a responsibility of our community, and (8) our community provides an essential resource to the educational program.

In order to create the environment necessary for effective schools, the Board endorses and prescribes strong instructional leadership, a safe and orderly climate, schoolwide emphasis on basic skills, high teacher expectations for student achievement, and continuous assessment of student progress.

The Superintendent or designee shall keep the Board fully informed regarding the district's efforts to achieve effective schools and any hindrances to meeting district goals.

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: September 5, 1996 Los Banos, California

Los Banos USD | BP 4119.21, 4219.21,4319.21 Personnel

## **Codes Of Ethics**

The Governing Board expects district employees to maintain the highest ethical standards, to follow district policies and regulations, and to abide by state and national laws. Employee conduct should enhance the integrity of the district and the goals of the educational program.

The Board encourages district employees to accept as guiding principles the codes of ethics published by professional associations to which they may belong.

(cf. 9271 - Code of Ethics)

Legal Reference:

CODE OF REGULATIONS, TITLE 5

80331-80338 Rules of Conduct for Professional Educators

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: January 9, 1997 Los Banos, California



## Los Banos USD | BB 9271 Board Bylaws

### Code Of Ethics

This code of ethics expresses the personal ideals which the Governing Board believes should guide each school Board member's activities.

In all actions as a school Board member, the member's first commitment is to the well-being of our youth. His/her primary responsibility is to every student in the district.

Board members also have other major commitments to:

- The Community. Each Board member is responsible to all residents of the district and not solely to those who elected him/her; nor solely to any organization to which he/she may belong, or which may have supported his/her election.
- Individuals. Each Board member has a direct concern for every individual in the community. As an integral part of his/her duties, he/she represents the authority and responsibility of government. This authority must be exercised with as much care and concern for the least influential as for the most influential member of the community.
- Employees. The Board member's actions may affect the capability of district employees to practice their trade or profession and should encourage their increasing competence and professional growth.
- Laws, Policies. Each Board member must be aware of, and comply with, the constitutions of State and Nation, the Education Code of the State of California, other laws pertaining to public education, and the established policies of the district.
- Decision Making. Each Board member is obliged by law to participate in decisions pertaining to education in the district. As an elected representative of the people, the Board member can neither relinquish nor delegate this responsibility to any other individual or group.
- Individual Feelings and Philosophy. Every individual Board member has something to contribute to society.

Understanding and acting upon the foregoing premises, each Board member shall:

- Consider his/her position on the Board as a public trust and not use it for private advantage or personal gain.
- Be constantly aware that he/she has no legal authority except when acting as a member of the Board. Board members shall present their concerns and concepts through the process of Board debate. If in the minority of any decision, they shall abide by and support the majority decision. When in the majority, they shall respect divergent opinions.
- Encourage ideas and opinions from the residents of the district and endeavor to incorporate community views into the deliberations and decisions of the Board.
- Devote sufficient time, thought, and study to proposed actions so as to be able to base decisions upon all available facts and vote in accordance with honest convictions, unswayed by partisan bias of any kind.
- Remember that the basic functions of the Board are to establish the policies by which district schools are administered and to select the Superintendent or designee and staff who will implement those policies.
- Promote and participate actively in a concerted program of timely exchange of information with all district residents, parents/ guardians, employees and students.

- Recognize that the deliberations of the Board in closed session may be released or discussed in public only with Board approval.
- Make use of opportunities to enlarge his/her potential as a Board member through participation in educational conferences, workshops and training sessions made available by local, state and national agencies.

Bylaw LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: December 11, 1997 Los Banos, California

## Los Banos USD | BP 4020 Personnel

### Drug And Alcohol-Free Workplace

The Governing Board believes that the maintenance of drug- and alcohol-free workplaces is essential to school and district operations.

No employee shall unlawfully manufacture, distribute, dispense, possess, use or be under the influence of any alcoholic beverage, drug or controlled substance as defined in 21 USC 81 at any school district workplace. These prohibitions apply before, during and after school hours. A school district workplace is any place where school district work is performed, any school-owned or school-approved vehicle used to transport students to and from school or school activities; any off-school sites when accommodating a school-sponsored or school-approved activity or function where students are under district jurisdiction; or during any period of time when an employee is supervising students on behalf of the district or otherwise engaged in district business.

(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)

(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)

The Superintendent or designee shall notify employees of these prohibitions. (Government Code 8355; 41 USC 702)

An employee shall abide by the terms of this policy and notify the district, within five days, of any criminal drug or alcohol statute conviction which he/she receives for a violation occurring in the workplace. (41 USC 702)

The Superintendent or designee shall notify the appropriate federal granting or contracting agencies within 10 days after receiving notification, from an employee or otherwise, of any conviction for a violation occurring in the workplace, pursuant to (41 USC 701), and initiate disciplinary action within 30 days after receiving notice of a conviction for a violation in the workplace from an employee or otherwise. Such action shall be consistent with state and federal law, the appropriate employment contract, the applicable collective bargaining agreement, and district policy and practices.

(cf. 4112 - Appointment and Conditions of Employment)

(cf. 4212 - Appointment and Conditions of Employment)

A classified employee may be reemployed after conviction of such an offense if the Board determines, from the evidence presented, that the person has been rehabilitated for at least five years. (Education Code 45123)

The Board may take appropriate disciplinary action, up to and including termination, or require the employee to satisfactorily participate in and complete a drug assistance or rehabilitation program approved by a federal, state or local health, law enforcement or other appropriate agency.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

The Superintendent or designee shall establish a drug- and alcohol-free awareness program to inform employees about: (Government Code 8355)

1. The dangers of drug and alcohol abuse in the workplace
2. The district policy of maintaining drug- and alcohol-free workplaces

- 3. Any available drug and alcohol counseling, rehabilitation, and employee assistance programs  
(cf. 4159/4259/4359 - Employee Assistance Programs)
4. The penalties that may be imposed on employees for drug and alcohol abuse violations

Legal Reference:

#### EDUCATION CODE

44011 Controlled substance offense

44425 Conviction of controlled substance offenses as grounds for revocation of credential

44836 Employment of certificated persons convicted of controlled substance offenses

44940 Compulsory leave of absence for certificated persons

44940.5 Procedures when employees are placed on compulsory leave of absence

45123 Employment after conviction of controlled substance offense

45304 Compulsory leave of absence for classified persons

#### GOVERNMENT CODE

8350-8357 Drug-free workplace

#### UNITED STATES CODE, TITLE 20

7111-7117 Safe and Drug Free Schools and Communities Act

#### UNITED STATES CODE, TITLE 21

812 Schedule of controlled substances

#### UNITED STATES CODE, TITLE 41

701-707 Drug-Free Workplace Act

#### CODE OF FEDERAL REGULATIONS, TITLE 21

1308.01-1308.49 Schedule of controlled substances

#### Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: May 11, 2006 Los Banos, California

## Los Banos USD | E 4020 Personnel

### Drug And Alcohol-Free Workplace

#### Notice To Employees

YOU ARE HEREBY NOTIFIED that it is a violation of Board policy for any employee at a school district workplace to unlawfully manufacture, distribute, dispense, possess, use or be under the influence of any alcoholic beverage, drug or controlled substance as defined in the Controlled Substances Act and Code of Federal Regulations.

"School district workplace" is defined as any place where school district work is performed, including a school building or other school premises; any school-owned or school-approved vehicle used to transport students to and from school or school activities; any off-school sites when accommodating a school-sponsored or school-approved activity or function, such as a field trip or athletic event, where students are under district jurisdiction; or during any period of time when an employee is supervising students on behalf of the district or otherwise engaged in district business.

As a condition of your continued employment with the district, you will comply with the district's policy on Drug and Alcohol-Free Workplace and will, any time you are convicted of any criminal drug or alcohol statute violation occurring in the workplace, notify your supervisor of this conviction no later than five days after such conviction.

Pursuant to the federal Omnibus Transportation Employee Testing Act of 1991, school bus drivers shall be subject to a drug and alcohol testing program that fulfills the requirements of the Code of Federal Regulations, Title 49, Part 382.

(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)

Pursuant to California Education Code 44836 and 45123, the Board may not employ or retain in employment persons convicted of a controlled substance offense as defined in Education Code 44011. If any such conviction is reversed and the person acquitted in a new trial or the charges dismissed, his/her employment is no longer prohibited.

Pursuant to Education Code 45123, the district may employ for classified service a person who has been convicted of a controlled substance offense only if it determines, from evidence presented, that the person has been rehabilitated for at least five years. The Board shall determine the type and manner of presentation of the evidence, and the Board's determination as to whether or not the person has been rehabilitated is final.

Pursuant to Education Code 44425, whenever the holder of any credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing has been convicted of a controlled substance offense as defined in Education Code 44011, the commission shall forthwith suspend the credential. When the conviction becomes final or when imposition of sentence is suspended, the commission shall revoke the credential. (Education Code 44425)

Pursuant to Education Code 44940, the district must immediately place on compulsory leave of absence any certificated employee charged with involvement in the sale, use or exchange to minors of certain controlled substances.

Pursuant to Education Code 44940, the district may immediately place on compulsory leave of absence any certificated employee charged with certain controlled substance offenses.

Pursuant to Education Code 45304, the district must immediately place on compulsory leave of absence any classified employee charged with involvement in the sale, use or exchange to minors of certain controlled

substances.

Pursuant to Education Code 45304, the district may immediately place on compulsory leave of absence any classified employee charged with certain controlled substance offenses.

The following drug and alcohol counseling, rehabilitation, and/or employee assistance programs are available locally:

(cf. 4159 - Employee Assistance Programs)

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(Employee Signature)

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(Date)

LOS BANOS UNIFIED SCHOOL DISTRICT

Los Banos, California

## Los Banos USD | BP 4040 Personnel

### Employee Use Of Technology

The Governing Board recognizes that technology can enhance employee performance by improving access to and exchange of information, offering effective tools to assist in providing a quality instructional program, and facilitating operations. The Board expects all employees to learn to use the available electronic resources that will assist them in their jobs. As needed, staff shall receive training in the appropriate use of these resources.

(cf. 0440 - District Technology Plan)

(cf. 4032 - Reasonable Accommodation)

(cf. 4131/4231/4331 - Staff Development)

(cf. 6162/7 - Use of Technology in Instruction)

Employees shall be responsible for the appropriate use of technology and shall use the district's electronic resources only for purposes related to their employment. Such use is a privilege which may be revoked at any time.

(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)

Employees should be aware that computer files and communications over electronic networks, including e-mail and voice mail, are not private. This technology should not be used to transmit confidential information about students, employees, or district affairs.

To ensure proper use, the Superintendent or designee may monitor the district's technological resources, including e-mail and voice mail systems, at any time without advance notice or consent. If passwords are used, they must be known to the Superintendent or designee so that he/she may have system access when the employee is absent.

The Superintendent or designee shall establish administrative regulations which outline employee obligations and responsibilities related to the use of technology. Employees who fail to abide by these regulations shall be subject to disciplinary action, revocation of the user account, and legal action as appropriate.

(cf. 4118 - Suspension/Disciplinary Action)

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

The Superintendent or designee may establish guidelines and limits on the use of technological resources. He/she shall ensure that all employees using these resources receive copies of related policies, regulations and guidelines. Employees shall be asked to acknowledge in writing that they have read and understood these policies, regulations and guidelines.

(cf. 4112.9/4212.9/4312.9 - Negotiations/Consultation)

In the event that the use of an electronic resource affects the working conditions of one or more employees, the Superintendent or designee shall notify the employees' exclusive representative.

(cf. 4143/4243 - Negotiations/Consultations)

Legal Reference:

EDUCATION CODE

11600-11609 Education Technology Grant Program Act of 1996

51870-51874 Education Technology

GOVERNMENT CODE

3543.1 Rights of employee organizations

PENAL CODE

632 Eavesdropping on or recording confidential communications

VEHICLE CODE

23123.5 Mobile communication devices; text messaging while driving

UNITED STATES CODE, TITLE 20

6751-6777 Enhancing Education Through Technology Act, No Child Left Behind Act, Title II, Part D

6777 Internet safety

Management Resources:

CDE PUBLICATIONS

K-12 Network Technology Planning Guide: Building the Future, 1994

CDE PROGRAM ADVISORIES

1223.94 Acceptable Use of Electronic Information Resources

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: January 9, 1997 Los Banos, California



Los Banos USD | BP 4119.41, 4219.41,4319.41 Personnel

## **Employees With Infectious Disease**

The Governing Board encourages each employee to inform the district as soon as possible if he/she contracts an infectious disease which creates a physical or mental disability. The Board will reasonably accommodate the needs of such individuals.

The Board may reassign or grant disability leave to an employee who is unable to perform his/her job responsibilities because of illness or because the employee's illness significantly endangers his/her health or safety or the health or safety of others.

(cf. 4161.1/4361.1 - Personal Illness and Injury Leave)

(cf. 4261.1 - Personal Illness and Injury Leave)

No employee will be discriminated against because of his/her disability. Legal protections established for disabled persons extend to individuals significantly impaired by infectious diseases.

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

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4112.4/4212.4/4312.4 - Health Examinations)

When informed that an employee has a disabling infectious disease, the Superintendent or designee may request that the employee sign a release form to provide confidential medical information and records.

In determining a reasonable accommodation of the employee's condition, the Superintendent or designee may consult with public health officials or physicians with expertise in the diagnosis and treatment of infectious disease. The Superintendent or designee may also communicate with the employee's physician regarding the employee's ability to perform the essential requirements of the job with reasonable accommodation and without posing significant health or safety risks to the employee or others.

The Superintendent or designee shall prepare a confidential report which includes his/her recommendation and the medical information upon which it is based. These recommendations shall take into consideration:

1. The nature of the disease and the probability of its being transmitted, including the duration and severity of the risk.
2. The physical condition of the employee, including diagnosis, treatment, and prognosis of the condition.
3. The actual requirements of the employee's job and the expected type of interaction with others in the school setting.

This report shall be forwarded to the Board for confidential review and action.

The job assignment of an employee with a disabling infectious disease shall be reevaluated whenever there is a change in medical knowledge or in the employee's medical regimen or health which might affect his/her assignment.

## **Confidentiality**

The Board and the Superintendent or designee shall ensure that employee rights to confidentiality are strictly observed. The district shall disclose medical record information only to the extent required or permitted by law.

\* The medical records of any employee with a disabling infectious disease shall be held in strict confidence.

Legal Reference:

CIVIL CODE

56-56.37 Confidentiality of medical information

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

HEALTH AND SAFETY CODE

120975-121020 Mandated blood testing and confidentiality to protect public health

CODE OF REGULATIONS, TITLE 2, 7293.5 et seq.

REHABILITATION ACT OF 1983, 29 U.S.C. 701 et seq.

AMERICANS WITH DISABILITIES ACT, 42 U.S.C. 12101 et seq.

School Board of Nassau County, Fla. v. Arline, 408 U.S. 273 (1987)

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: February 6, 1997 Los Banos, California

Los Banos USD | BP 4161.8, 4261.8,4361.8 Personnel

## **Family Care And Medical Leave**

In accordance with state and federal law, the Governing Board shall grant family care and medical leave to eligible employees, without discrimination. Employees who are granted such leave shall be employed in the same or a comparable position upon returning from family care or medical leave, subject to any exceptions or limitations provided by law.

### **Nonindustrial Disability Leave/Benefits**

An employee who is unable to work due to a nonindustrial disabling illness or injury shall be entitled to leave as provided by the applicable provisions of the Education Code and the applicable collective bargaining agreement.

An employee who is "disabled" as defined in California Unemployment Insurance Code section 2627 may also apply for state disability insurance benefits at the time of placement on differential pay leave.

While in differential pay status, the employee continues to accrue sick leave and vacation and the district will maintain his or her employment benefits. Upon exhaustion of all paid and unpaid leave, a classified employee who is unable to assume the duties of his or her position shall be notified of his or her opportunity to request additional unpaid leave. If the superintendent elects not to grant additional leave, the employee shall be placed on a reemployment list for a period of 39 months. At this time, the district will terminate employment benefits for the employee. During the 39 months, if the classified employee is able to assume the duties of his or her position, the employee shall be reemployed in the first vacancy in the classification of his or her previous assignment.

Upon exhaustion of all paid and unpaid leave, any continued absence by a certificated employee shall be considered unauthorized leave unless the certificated employee requests and is granted an additional leave of absence by the superintendent. A certificated employee may also apply for a STRS disability leave of absence for not more than 39 months in accordance with Education Code section 44986.

### **Pregnancy Disability Leave**

An employee who is required to be absent from duties because of pregnancy, miscarriage, childbirth, and recovery therefrom as determined by the employee and the employee's physician shall be entitled to paid and unpaid leave to the same extent as other employees with disabling nonindustrial illnesses or injuries. Such an employee shall be entitled to leave for a reasonable period of time not to exceed the period of time authorized by the district's applicable collective bargaining agreement. Classified confidential employees shall have the same rights as bargaining unit members.

Any such employee shall be required to exhaust any accrued paid sick leave during the period of the pregnancy disability leave. An employee may elect, but is not required, to use vacation or other accumulated paid time off during the period of the pregnancy disability leave.

### **Legal Reference:**

#### **GOVERNMENT CODE**

12940 Unlawful employment practices

12945 Pregnancy; childbirth or related medical condition; unlawful practice

12945.1-12945.2 California Family Rights Act

19702.3 Family care leave; exercise of rights

## CODE OF REGULATIONS, TITLE 2

7291.2-7291.16 Sex discrimination: pregnancy and related medical conditions

7297.0-7297.11 Family care leave

## UNITED STATES CODE, TITLE 29

2601-2654 Family and Medical Leave Act of 1993

## CODE OF FEDERAL REGULATIONS, TITLE 29

825.100-825.800 Family and Medical Leave Act of 1993

## Management Resources:

## WEB SITES

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division:  
<http://www.dol.gov>

## Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: September 14, 2000 Los Banos, California

Los Banos USD | E 4161.8, 4261.8,4361.8 Personnel

## **Family Care And Medical Leave**

Your Rights Under The Family And Medical Leave Act Of 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

### **REASONS FOR TAKING LEAVE**

Unpaid leave must be granted for any of the following reasons:

- œto care for the employee's child after birth, or placement for adoption or foster care;
- œto care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- œfor a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

### **ADVANCE NOTICE AND MEDICAL CERTIFICATION**

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

œThe employee ordinarily must provide 30 days' advance notice when the leave is "foreseeable."

œAn employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

### **JOB BENEFITS AND PROTECTION**

œFor the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."

œUpon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits and other employment terms.

œThe use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

### **UNLAWFUL ACTS BY EMPLOYERS**

FMLA makes it unlawful for any employer to:

- œinterfere with, restrain, or deny the exercise of any right provided under FMLA;
- œdischarge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

### **ENFORCEMENT**

œThe U.S. Department of Labor is authorized to investigate and resolve complaints of violations.

œAn eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

#### FOR ADDITIONAL INFORMATION

Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

#### FAMILY CARE AND MEDICAL LEAVE (CFRA LEAVE)

#### AND PREGNANCY DISABILITY LEAVE

Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with us and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, you may have a right to an unpaid family care or medical leave (CFRA leave). This leave may be up to 12 work weeks in a 12-month period for the birth, adoption or foster care placement of your child or for your own serious health condition or that of your child, parent or spouse.

Even if you are not eligible for CFRA leave, if you are disabled by pregnancy, childbirth or related medical conditions, you are entitled to take a pregnancy disability leave of up to four months, depending on your period(s) of actual disability. If you are CFRA-eligible, you have certain rights to take BOTH a pregnancy disability leave and a CFRA leave for reason of the birth of your child. Both leaves contain a guarantee of reinstatement to the same or to a comparable position at the end of the leave, subject to any defense allowed under law.

If possible, you must provide at least 30 days' advance notice for foreseeable events (such as the expected birth of a child or planned medical treatment for yourself or of a family member). For events which are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave.

Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

We may require certification from your health care provider before allowing you a leave for pregnancy or your own serious health condition or certification from the health care provider of your child, parent or spouse who has a serious health condition before allowing you a leave to take care of that family member. When medically necessary, leave may be taken on an intermittent or reduced work schedule.

If you are taking a leave for the birth, adoption or foster care placement of a child, the basic minimum duration of the leave is two weeks and you must conclude the leave within one year of the birth or placement for adoption or foster care.

Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. If you want more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits, please contact office of Human Resources.

Authority Cited: Sections 12935, subd. (a) and 12945.2,

Government Code

LOS BANOS UNIFIED SCHOOL DISTRICT

Los Banos, California

## Los Banos USD | BP 4030 Personnel

**Nondiscrimination In Employment**

The Governing Board prohibits unlawful discrimination against and/or harassment of district employees and job applicants on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, physical or mental disability, medical condition, gender or sexual orientation at any district site and/or activity. The Board also prohibits retaliation against any district employee or job applicant who complains, testifies or in any way participates in the district's complaint procedures instituted pursuant to this policy.

Equal employment opportunity shall be provided to all employees and applicants. Physically or mentally disabled employees or applicants may request reasonable accommodation.

(cf. 4031 - Complaints Concerning Discrimination in Employment)

(cf. 4032 - Reasonable Accommodation)

(cf. 4119.11 - Sexual Harassment)

(cf. 4119.41 - Employees with Infectious Disease)

All employees are expected to carry out their responsibilities in a manner that is free from discriminatory statements or conduct. Employees who permit or engage in discrimination or harassment may be subject to disciplinary action up to and including dismissal.

The Superintendent or designee shall regularly publicize, within the district and in the community, the district's nondiscrimination policy and the availability of complaint procedures. Such publication shall be included in each announcement, bulletin or application form that is used in employee recruitment.

The district's policy and administrative regulation shall be posted in all schools and offices including staff lounges and student government meeting rooms.

(cf. 4111.1 - Affirmative Action)

**Legal Reference:****CIVIL CODE**

51.7 Freedom from violence or intimidation

**GOVERNMENT CODE**

11135 Unlawful discrimination

12900-12996 Fair Employment and Housing Act

**PENAL CODE**

422.56 Definitions, hate crimes

**CODE OF REGULATIONS, TITLE 2**

7287.6 Terms, conditions and privileges of employment

**CODE OF REGULATIONS, TITLE 5**



4900-4965 Nondiscrimination in elementary and secondary education programs receiving state financial assistance

## UNITED STATES CODE, TITLE 20

1681-1688 Discrimination based on sex or blindness, Title IX

## UNITED STATES CODE, TITLE 29

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

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

104.8 Notice

106.8 Designation of responsible employee and adoption of grievance procedures

106.9 Dissemination of policy

## COURT DECISIONS

Carter v. California Department of Veterans Affairs (2003) 2003 Cal.LEXIS 5694

Shephard v. Loyola Marymount (2002) 102 CalApp.4th 837

Management Resources:

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, March, 1999

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

Notice of Non-Discrimination, January, 1999

## WEB SITES

EEOC: <http://www.eeoc.gov>



· OCR: <http://www.ed.gov/offices/OCR>

DFEH: <http://www.dfeh.ca.gov>

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: June 10, 2004 Los Banos, California

revised: September 13, 2007

Los Banos USD | AR 4112.3, 4212.3, 4312.3 Personnel

## **Oath Or Affirmation**

All public employees are disaster service workers. As such, before beginning employment with the district, employees must take the oath or affirmation required by law. In the event of natural, manmade or war-caused emergencies which result in conditions of disaster or extreme peril to life, property and resources, all district employees are subject to disaster service activities as assigned to them by their supervisors. (Government Code 3100-3102)

(cf. 6114 - Emergencies and Disaster Preparedness Plan)

The Superintendent or designee shall administer the above oath when district employees are hired.

Legally employed noncitizens shall be exempt from taking this oath. (Government Code 3101)

At the advice of legal counsel, the Superintendent or designee may exempt a prospective employee from taking the above oath if he/she raises a valid religious objection.

Legal Reference:

### **EDUCATION CODE**

60 Persons authorized to administer and certify oaths

44334 Oath or affirmation

44354 Administration of oath

### **GOVERNMENT CODE**

3100-3109 Oath or affirmation of allegiance

### **CONSTITUTION OF THE STATE OF CALIFORNIA**

Article 20, Section 3 Oath of office

Vogel v. County of Los Angeles (1967) 68 Cal. 2d 18, 22

Chilton v. Contra Costa Community College District 55 Cal. App. 3d 544 (1976)

Regulation LOS BANOS UNIFIED SCHOOL DISTRICT

approved: January 9, 1997 Los Banos, California

Legal Resources | Education Code | EC 44334

## Oath

Except as provided in this code, no certification document shall be granted to any person unless and until he has subscribed to the following oath or affirmation: "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, the Constitution of the State of California, and the laws of the United States and the State of California." The oath or affirmation shall be subscribed and certified or declared, pursuant to Section 2015.5 of the Code of Civil Procedure, and shall be filed with the commission. Any certificated person who is a citizen or subject of any country other than the United States, and who is employed in any capacity in any of the public schools of the state shall, before entering upon the discharge of his duties, subscribe to an oath to support the institutions and policies of the United States during the period of his sojourn within the state. Upon the violation of any of the terms of the oath or affirmation, the commission shall suspend or revoke the credential which has been issued.

(Enacted by Stats. 1976, Ch. 1010.)

## Los Banos USD | AR 4032 Personnel

### Reasonable Accommodation

#### Purpose

The purpose of this Administrative Regulation is to establish uniform district procedures for processing requests for reasonable accommodation from qualified disabled employees and job applicants. These procedures are intended to ensure district compliance with the Americans with Disabilities Act of 1990 ("ADA"), Section 504 of the Rehabilitation Act of 1973, California Government Code sections 12926 and 12940 ("FEHA"), and California Code of Regulations sections 7293-7294.

#### Accommodation Procedure for Job Applicants

1. A job applicant who is an individual with a disability may request a reasonable accommodation in order to participate in the application and selection process for available district positions.
2. The applicant requesting accommodation must first put the request in writing by completing the district's form entitled, "Request for Reasonable Accommodation - Job Applicant." These forms are available from the District Personnel Office. The form must be returned to the Personnel Office.
3. An applicant requesting reasonable accommodation must submit with his or her request the district's "Disability Certification Form" which has been completed by an appropriate medical professional. The district reserves the right to require that the applicant's need for accommodation in the application process be verified by a district-approved physician at the district's expense.
4. Upon receiving the required paperwork from the applicant, the Personnel Director will make a determination as to whether the applicant is entitled to reasonable accommodation. If the applicant qualifies for reasonable accommodation, the Personnel Director, in consultation with other appropriate management personnel, shall consider the applicant's request in the following manner:
  - a. Analyze the application and selection process
  - b. Consider the accommodation requested by applicant and assess its cost and effectiveness
  - c. Identify potential alternate accommodations and assess the cost-effectiveness of each

The Personnel Director may consult with the applicant, state and local rehabilitation agencies, and disability constituent organizations in order to make a determination regarding a reasonable accommodation.

5. The applicant will be notified in writing by the Personnel Director, or designee, of the district's final decision regarding his or her request for reasonable accommodation in the application or selection process.

#### Accommodation Procedure for Employees:

1. An employee who is a qualified individual with a disability may request a reasonable accommodation in order to perform the essential job duties of his or her position or in order to enjoy the benefits of employment equivalent to those available to non-disabled employees.
2. The employee must first put the request in writing by completing the district form entitled, "Request for Reasonable Accommodation - Employee." These forms are available from the District Personnel Office. The form must be returned to the Personnel Office.
3. An employee requesting reasonable accommodation must submit with his or her request, the district's "Disability Certification Form" which has been completed by an appropriate medical professional. The district

reserves the right to require that the employee's need for accommodation be verified by a district-approved occupational physician at the district's expense.

4. Upon receiving the required paperwork from the employee, the Personnel Director will make a determination as to whether the employee is entitled to reasonable accommodation. If the employee qualifies for reasonable accommodation, the Personnel Director in consultation with other appropriate management personnel, shall consider the employee's request in the following manner:

- a. Analyze the particular job involved and determine its essential functions and/or analyze the benefits of employment allegedly made unavailable because of employee's disability.
- b. Arrange a meeting between the employee and the Personnel Director to discuss the employee's functional limitations and how those limitations may be overcome with a reasonable accommodation.
- c. Consider the employee's requested accommodation and identify other potential accommodations, assessing their cost and effectiveness. Rehabilitation agencies, disability constituent organizations and employee representatives may be consulted for assistance in this process.
- d. Arrange a meeting between the employee and appropriate management personnel in an effort to reach consensus on an acceptable accommodation.
- e. If consensus is reached, the accommodation will be memorialized in writing and sent to the employee and appropriate management personnel. A copy of the agreed-upon accommodation will be placed with the employee's medical records in a separate envelope within the employee's personnel file.
- f. If consensus is not reached, the Personnel Director will notify the employee in writing of the district's final decision regarding his or her request for reasonable accommodation.

5. Failure of the employee to cooperate with the reasonable accommodation process shall suspend the district's efforts to process the employee's Request for Accommodation.

6. An employee who is dissatisfied with the district's decision may file a Complaint of Unlawful Discrimination with the Personnel Director. Copies of the Complaint forms are available at the Personnel Office.

#### Legal Reference:

UNITED STATES CODE, TITLE 29

701-794e Vocational Rehabilitation Act

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act, especially:

35.107 Designation of employee

36.101-36.608 Nondiscrimination on the basis of disability by public facilities

CODE OF FEDERAL REGULATIONS, TITLE 29

1630.2 Direct threat

## COURT DECISIONS

Sutton v. United Airlines, Inc., 1999 D.A.R. 6277

Murphy v. United Parcel Service, Inc., 1999 D.A.R. 6259

Albertsons Inc. v. Kirkingburg, 1999 D.A.R. 6243

Management Resources:

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, March, 1999

## WEB SITES

EEOC: <http://www.eeoc.gov>

Regulation LOS BANOS UNIFIED SCHOOL DISTRICT

approved: September 14, 2000 Los Banos, California

## Los Banos USD | BP 3515 Business and Noninstructional Operations

### School Safety And Security

The Governing Board is fully committed to preventing violence and crime on school grounds. The Superintendent and staff shall strictly enforce all Board policies related to crime, campus disturbances, campus intruders, student safety, student conduct and student discipline.

(cf. 3523 - Security of Buildings/Keys)

(cf. 4158/4258/4358 - Employee Security)

(cf. 5119 - Students Expelled from Other Districts)

(cf. 5131 - Conduct)

(cf. 5131.4 - Campus Disturbances)

(cf. 5131.5 - Vandalism, Theft and Graffiti)

(cf. 5131.6 - Alcohol and Other Drugs)

(cf. 5131.7 - Weapons and Dangerous Instruments)

(cf. 5136 - Gangs)

(cf. 5141.4 - Child Abuse Reporting Procedures)

(cf. 5142 - Safety)

(cf. 5144 - Discipline)

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

(cf. 6114 - Emergencies and Disaster Preparedness Plan)

The Superintendent or designee shall establish procedures for securing records and funds and for protecting buildings against vandalism and burglary during nonbusiness hours. The Superintendent or designee also shall investigate ways that school grounds can be made more secure.

The Superintendent or designee shall arrange for law enforcement authorities or school security staff to regularly monitor security around the perimeter of all district schools to prevent outsiders from entering school grounds.

The principal of each school shall ensure that his/her school has a comprehensive school safety plan which includes strategies for preventing crime and violence on school premises. The Board encourages principals to solicit the participation of local law enforcement agencies, staff, parents/ guardians and students in the development of these plans.

Legal Reference:

#### EDUCATION CODE

32020 Access gates

32211 Threatened disruption or interference with classes

32280-32288 School safety plans

39670-39675 Security patrols

PENAL CODE

469-469.1 Unauthorized making, duplicating or possession of key to public building

626-626.10 Crimes on school grounds

CALIFORNIA STATE CONSTITUTION

"Right to Safe Schools" Article 1, Section 28(c)

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: December 12, 1996 Los Banos, California



## Los Banos USD | AR 3515 Business and Noninstructional Operations

### School Safety And Security

The Superintendent or designee shall ensure that campus security procedures are developed which are consistent with the goals and objectives of the district's comprehensive safety plan and site-level safety plans.

(cf. 0450 - Comprehensive Safety Plan)

These procedures shall include strategies and methods to:

1. Secure the campus perimeter and school facilities in order to prevent criminal activity. These strategies shall include an analysis of the building security system, lighting system, and campus fencing. Procedures to ensure unobstructed views and eliminate blind spots caused by doorways and landscaping shall also be considered. In addition, parking lot design may be studied, including methods to discourage through traffic.

2. Secure buildings from outsiders and discourage trespassing. These procedures may include requiring visitor registration, requiring staff and student identification tags, and patrolling places used for congregating and loitering.

(cf. 1250 - Visitors/Outsiders)

(cf. 3515.2 - Disruptions)

(cf. 5112.5 - Open/Closed Campus)

3. Discourage vandalism and graffiti. These methods may include plans to immediately cover graffiti as well as campus beautification projects and shall also include students and the community in these projects.

(cf. 3515.4 - Recovery for Property Loss or Damage)

(cf. 5131.5 - Vandalism, Theft and Graffiti)

4. Control access to keys and other school inventory.

(cf. 3440 - Inventories)

5. Detect and intervene with school crime. These procedures may include the creation of a school watch program, an anonymous crime reporting system, analysis of school crime incidents, and collaboration and communication with local law enforcement agencies.

All staff shall receive training in building and grounds security procedures.

(cf. 3515.3 - District Police Department)

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

These procedures shall be regularly reviewed and updated in order to reflect changed circumstances and to assess progress in achieving safe school objectives.

### Keys

All keys used in a school shall be the responsibility of the principal or designee. Keys shall be issued only to those employees who regularly need a key in order to carry out normal activities of their position.

The person issued a key shall be responsible for its safekeeping. If a key is lost, the person responsible shall report the loss to the principal or designee immediately and shall pay for a replacement key.

Keys shall be used only by authorized employees and shall never be loaned to students.

The master key shall not be loaned and the duplication of school keys is prohibited.

Legal Reference:

#### EDUCATION CODE

32020 Access gates

32211 Threatened disruption or interference with classes

35294-35294.9 School safety plans

38000-38005 Security patrols

#### PENAL CODE

469 Unauthorized making, duplicating or possession of key to public building

626-626.10 Disruption of schools

Management Resources:

#### CDE PUBLICATIONS

Safe Schools: A Planning Guide for Action, 1995

#### CSBA PUBLICATIONS

Protecting Our Schools: Governing Board Strategies to Combat School Violence, 1995

#### Regulation LOS BANOS UNIFIED SCHOOL DISTRICT

approved: December 12, 1996 Los Banos, California

## Los Banos USD | BP 4119.11 Personnel

### Sexual Harassment

The Governing Board prohibits sexual harassment. The Board also prohibits retaliatory behavior or action against district employees or other persons who complain, testify or otherwise participate in the complaint process established pursuant to this policy and administrative regulation.

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

(cf. 4030 - Nondiscrimination in Employment)

(cf. 5145.7 - Sexual Harassment of or by Students)

The Superintendent or designee shall take all action necessary to ensure the prevention, investigation, and correction of sexual harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation;
2. Publicizing and disseminating the district's sexual harassment policy to staff;
3. Ensuring prompt, thorough and fair investigation of complaints;
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent necessary actions.

(cf. 4112.9 - Employee Notifications)

All complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions. (5 CCR 4964)

Any district employee who permits, engages in or participates in sexual harassment shall be in violation of this policy and is subject to disciplinary action, up to and including dismissal. An employee shall be deemed to have permitted sexual harassment where he/she has knowledge that a student or employee has engaged in sexual harassment and fails to report such student or employee to the appropriate authorities, whether or not the victim makes a complaint.

Any district employee, job applicant or student who feels that he/she has been sexually harassed or who has knowledge of any incident of sexual harassment by or against another employee, a job applicant or a student, shall immediately report the incident to his/her supervisor, the principal, district administrator or Superintendent.

Complaints of sexual harassment shall be filed in accordance with AR 4119.11.

Legal Reference:

#### EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

#### GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act, especially:

12940 Prohibited discrimination

## 12950.1 Sexual harassment training

### LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

### CODE OF REGULATIONS, TITLE 2

7287.8 Retaliation

7288.0 Sexual harassment training and education

### CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs receiving state financial assistance

### 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

### CODE OF FEDERAL REGULATIONS, TITLE 34

106.9 Dissemination of policy

### COURT DECISIONS

Department of Health Services v. Superior Court of California, (2003) 31 Cal.4th 1026

Faragher v. City of Boca Raton, (1998) 118 S.Ct. 2275

Burlington Industries v. Ellreth, (1998) 118 S.Ct. 2257

Gebser v. Lago Vista Independent School District, (1998) 118 S.Ct. 1989

Oncale v. Sundowner Offshore Serv. Inc., (1998) 118 S.Ct. 998

Meritor Savings Bank, FSB v. Vinson et al., (1986) 447 U.S. 57

Management Resources:

### OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Protecting Students from Harassment and Hate Crime, January, 1999

### WEB SITES

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

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

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

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: September 13, 2007 Los Banos, California

The definition of sexual harassment includes many forms of offensive behavior.

- such as a lead, supervisor, manager or agent;
- the employer had no knowledge of the harassment;

- there was a program to prevent harassment; and
- once aware of any harassment, the employer took immediate and appropriate corrective action to stop the harassment.

### Filing a Complaint

Employees or job applicants who believe that they have been sexually harassed may file a complaint of discrimination with DFEH within **one year** of the harassment.

DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes.

If DFEH finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a civil complaint in state or federal court on behalf of the complaining party. The DFEH may seek punitive damages is entitled to attorney's fees and costs if it prevails in litigation.

Remedies include:

- Fines or damages for emotional distress from each employer or person found to have violated the law
- Hiring or reinstatement
- Back pay or promotion
- Changes in the policies or practices of the involved employer

Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with DFEH and a Right-to-Sue Notice has been issued.

For more information, see publication DFEH-159 "Guide for Complainants and Respondents."

For more information, contact DFEH toll free at  
(800) 884-1684

TTY number at (800) 700-2320  
or visit our Web site at [www.dfeh.ca.gov](http://www.dfeh.ca.gov)

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State of California  
Department of Fair Employment & Housing

DFEH-185 (11/14)

# Sexual Harassment

## The Facts About Sexual Harassment

The *Fair Employment and Housing Act* (FEHA) defines sexual harassment as harassment based on sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions. The definition of sexual harassment includes many forms of offensive behavior, including harassment of a person of the same gender as the harasser. The following is a partial list of types of sexual harassment:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Actual or threatened retaliation
- Leering; making sexual gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters
- Making or using derogatory comments, epithets, slurs, or jokes
- Sexual comments including graphic comments about an individual's body; sexually degrading words used to describe an individual; or suggestive or obscene letters, notes, or invitations
- Physical touching or assault, as well as impeding or blocking movements
- Sexual desire is not necessary

The mission of the Department of Fair Employment and Housing is to protect the people of California from unlawful discrimination in employment, housing and public accommodations, and from the perpetration of acts of hate violence.

### Employers' Obligations

All employers must take the following actions against harassment:

- Take all reasonable steps to prevent discrimination and harassment from occurring. If harassment does occur, take effective action to stop any further harassment and to correct any effects of the harassment.
- Develop and implement a sexual harassment prevention policy with a procedure for employees to make complaints and for the employer to investigate complaints. Policies should include provisions to:
  - Fully inform the complainant of his/her rights and any obligations to secure those rights.
  - Fully and effectively investigate. The investigation must be thorough, objective, and complete. Anyone with information regarding the matter should be interviewed. A determination must be made and the results communicated to the complainant, to the alleged harasser and, as appropriate, to all others directly concerned.
  - Take prompt and effective corrective action if the harassment allegations are proven. The employer must take appropriate action to stop the harassment and ensure it will not continue. The employer must also communicate to the com-

plainant that action has been taken to stop the harassment from recurring. Finally, appropriate steps must be taken to remedy the complainant's damages, if any.

- Post the Department of Fair Employment and Housing (DFEH) employment poster (DFEH - 162) in the workplace (available through the DFEH publications line [916] 478-7201 or Web site).
- Distribute an information sheet on sexual harassment to all employees. An employer may either distribute this pamphlet (DFEH 185) or develop an equivalent document that meets the requirements of Government Code section 12950(b). This pamphlet may be duplicated in any quantity. **However, this pamphlet is not to be used in place of a sexual harassment prevention policy, which all employers are required to have.**
- All employees should be made aware of the seriousness of violations of the sexual harassment policy and must be cautioned against using peer pressure to discourage harassment victims from complaining.
- Employers who do business in California and employ 50 or more part-time or full-time employees *must* provide at least two hours of sexual harassment training every two years to each supervisory employee and to all new supervisory employees within six months of their assumption of a supervisory position.

### Employer Liability

All employers, regardless of the number of employees, are covered by the harassment section of the FEHA.

Employers are generally liable for harassment by their supervisors or agents. Harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassing an employee or coworker or for aiding and abetting harassment.

Additionally, the law requires employers to take "all reasonable steps to prevent harassment from occurring." If an employer has failed to take such preventive measures, that employer can be held liable for the harassment. A victim may be entitled to damages, even though no employment opportunity has been denied and there is no actual loss of pay or benefits.

In addition, if an employer knows or should have known that a **non-employee** (e.g. client or customer) has sexually harassed an employee, applicant, or person providing services for the employer and fails to take immediate and appropriate corrective action, the employer may be held liable for the actions of the non-employee.

An employer might avoid liability if

- the harasser is not in a position of authority,



## FAIR HOUSING FACT SHEET

# Sexual Harassment

## *California Fair Housing Laws Protect You From Sexual Harassment!*

Under the *California Fair Employment and Housing Act*, you are entitled to live in an environment free of sexual harassment. A housing provider may not subject you to sexual harassment or retaliate against you for refusing sexual advances or for objecting to other forms of sexual harassment.

### *What is considered "sexual harassment" under California law?*

Sexual harassment includes, but is not limited to, the following actions:

- Comments, epithets, slurs, or jokes of a sexual nature; graphic statements about an individual's body; suggestive or obscene letters, notes, or invitations
- Leering; making offensive gestures; or displaying offensive or suggestive objects, pictures, cartoons, or posters
- Unwanted physical touching or assault, as well as impeding or blocking movements
- Making unwanted verbal sexual advances or propositions
- Offering certain housing rights or privileges in exchange for sexual favors
- Threatening or taking adverse action (such as eviction) in retaliation for a negative response to sexual advances

### *What about harassment that is not sexual in nature?*

California fair housing laws also prohibit housing providers from harassing you or otherwise discriminating against you because of your race, color, religion, sex (gender, gender identity, gender expression), sexual orientation, marital status, national origin (including language limitations), ancestry, familial status (households with children under age 18), source of income, disability (mental and physical, including HIV and AIDS), medical condition (cancer/genetic characteristics), or age. The law also covers situations where you are **perceived** to have these characteristics, or you **associate** with a person who has, or is believed to have, these characteristics.

### *What should I do if I have been harassed?*

If you believe you have been illegally harassed, you can explore filing a complaint with the Department of Fair Employment and Housing (DFEH) by taking the following steps within **one year** of the incident:

- Contact us in writing or at our toll-free number **(800) 884-1684**
- Provide specific facts about the incident
- Provide copies of documents that support the charges in your complaint
- Keep records and documents about the complaint, such as a diary or log of incidents, rent receipts, applications, and other potential proof of discrimination

### *What will DFEH do?*

If your complaint is accepted, DFEH will conduct an impartial investigation. DFEH is a neutral fact-finder and does not represent you or the parties named in your complaint. DFEH tries to assist both parties to resolve the complaint.



If DFEH is unable to resolve the complaint, and there is evidence that indicates a violation of the law, the matter may be litigated by the Department in civil court. Examples of resolutions could include:

- Orders to immediately cease the harassment
- Requirement that the housing provider receive training in laws prohibiting harassment and discrimination to prevent future discrimination
- Compensation for out-of-pocket expenses and/or emotional distress
- Other actions to eliminate the effects of discrimination, such as penalties and fines

***Can I file a lawsuit before or after I file a complaint with DFEH?***

You have the right to file a lawsuit on your own behalf in a California court within **two years** of the alleged discriminatory act. It is not necessary to file a complaint with DFEH prior to the filing of a lawsuit. The time that a complaint is pending with DFEH will not count when computing the two-year period.

***Are there other agencies that can help?***

Yes. The U. S. Department of Housing and Urban Development (HUD) enforces laws that prohibit harassment and discrimination in housing. HUD also monitors subsidized housing programs. For further information, call (800) 347-3739, or visit the web site at [www.hud.gov](http://www.hud.gov).

The State of California Department of Consumer Affairs can help with questions or complaints regarding landlord/tenant relationships, including repairs, safety violations, and Health and Safety Code violations. For further information, call (800) 952-5210, or visit the web site at [www.dca.ca.gov](http://www.dca.ca.gov).

The Mobile Home Ombudsperson at the California Department of Housing and Community Development can help with questions or complaints pertaining to mobile homes, including health and safety issues, maintenance issues, and warranty issues. For further information, call (800) 952-5275, or visit the web site at [www.hcd.ca.gov](http://www.hcd.ca.gov).

For more information, contact DFEH toll free at **(800) 884-1684**  
TTY number at **(800) 700-2320**, or visit our web site at [www.dfeh.ca.gov](http://www.dfeh.ca.gov)

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**State of California**

Department of Fair Employment & Housing 2218 Kausen Drive, Suite 100 Elk Grove, CA 95758

## Los Banos USD | BP 3513.3 Business and Noninstructional Operations

### **Tobacco-Free Schools**

The Governing Board recognizes that smoking and other uses of tobacco and nicotine products constitute a serious public health hazard and are inconsistent with district goals to provide a healthy environment for students and staff.

(cf. 3514 - Environmental Safety)

(cf. 4159/4259/4359 - Employee Assistance Programs)

(cf. 5030 - Student Wellness)

(cf. 5131.62 - Tobacco)

(cf. 5141.23 - Asthma Management)

(cf. 6142.8 - Comprehensive Health Education)

(cf. 6143 - Courses of Study)

The Board prohibits the use of tobacco products at any time in district-owned or leased buildings, on district property, and in district vehicles. (Health and Safety Code 104420; Labor Code 6404.5; 20 USC 6083)

This prohibition applies to all employees, students, and visitors at any school-sponsored instructional program, activity, or athletic event held on or off district property. Any written joint use agreement governing community use of district facilities or grounds shall include notice of the district's tobacco-free schools policy and consequences for violations of the policy.

(cf. 1330 - Use of School Facilities)

(cf. 1330.1 - Joint Use Agreements)

The products prohibited include any product containing tobacco or nicotine, including, but not limited to, cigarettes, cigars, miniature cigars, smokeless tobacco, snuff, chew, clove cigarettes, betel, electronic cigarettes, electronic hookahs, and other vapor-emitting devices, with or without nicotine content, that mimic the use of tobacco products.

This policy does not prohibit the use or possession of prescription products and other cessation aids that have been approved by the U.S. Department of Health and Human Services, Food and Drug Administration, such as nicotine patch or gum.

Smoking or use of any tobacco-related product or disposal of any tobacco-related waste is prohibited within 25 feet of any playground, except on a public sidewalk located within 25 feet of the playground. In addition, any form of intimidation, threat, or retaliation against a person for attempting to enforce this policy is prohibited. (Health and Safety Code 104495)

Legal Reference:

#### EDUCATION CODE

48900 Grounds for suspension/expulsion

48901 Prohibition against tobacco use by students

## HEALTH AND SAFETY CODE

39002 Control of air pollution from nonvehicular sources

104350-104495 Tobacco use prevention, especially:

104495 Prohibition of smoking and tobacco waste on playgrounds

119405 Unlawful to sell or furnish electronic cigarettes to minors

## LABOR CODE

3300 Employer, definition

6304 Safe and healthful workplace

6404.5 Occupational safety and health; use of tobacco products

## UNITED STATES CODE, TITLE 20

6083 Nonsmoking policy for children's services

7100-7117 Safe and Drug Free Schools and Communities Act

## CODE OF FEDERAL REGULATIONS, TITLE 21

1140.1-1140.34 Unlawful sale of cigarettes and smokeless tobacco to minors

## PERB RULINGS

Eureka Teachers Assn. v. Eureka City School District (1992) PERB Order #955 (16 PERC 23168)

CSEA #506 and Associated Teachers of Metropolitan Riverside v. Riverside Unified School District (1989)  
PERB Order #750 (13 PERC 20147)

Management Resources:

## WEB SITES

California Department of Education, Alcohol, Tobacco and Other Drug Prevention:

<http://www.cde.ca.gov/ls/he/at>

California Department of Education, Tobacco-Free School District Certification:

<http://www.cde.ca.gov/ls/he/at/tobaccofreecert.asp>

California Department of Public Health, Tobacco Control: <http://www.cdph.ca.gov/programs/tobacco>

Occupational Safety and Health Standards Board: <http://www.dir.ca.gov/OSHSB/oshsb.html>

U.S. Environmental Protection Agency: <http://www.epa.gov>

## Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: June 10, 2004 Los Banos, California

revised: October 9, 2014

Los Banos USD | BP 4244, 4244,4344 Personnel

## Complaints

The Governing Board recognizes the need to establish a process to allow employees and job applicants to have their concerns heard in an expeditious and unbiased manner. The Board expects that employees will make every effort to resolve complaints and disagreements informally before filing a formal complaint.

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

(cf. 3320 - Claims and Actions Against the District)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

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

The Board prohibits retaliation against complainants. The Superintendent or designee may keep a complainant's identity confidential, except to the extent necessary to investigate the complaint.

(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

All matters related to a complaint shall be kept confidential and any document, communication, or record regarding the complaint shall be placed in a separate file and shall not be placed in an employee's personnel file.

(cf. 4112.6/4212.6/4312.6 - Personnel Records)

Legal Reference:

### EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

35186 Williams uniform complaint procedures

44110-44114 Reporting by school employees of improper governmental activity

### GOVERNMENT CODE

3543 Public school employees' rights

3543.1 Rights of employee organizations

53296-53299 Disclosure of confidential information; whistleblower

54957 Closed session; personnel matters

### LABOR CODE

1102.5-1106 Whistleblower protections

### CODE OF REGULATIONS, TITLE 5

## 4900-4965 Nondiscrimination in district programs and activities

Management Resources:

### WEB SITES

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

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: September 13, 2007 Los Banos, California

revised: July 17, 2008

Los Banos USD | AR 4144, 4244, 4344 Personnel

## Complaints

Except as specified below, the following procedure shall be used for any complaint by an employee alleging misapplication of the district's policies, regulations, rules, or procedures or for "whistleblower" complaints by an employee or job applicant regarding an improper district activity including, but not limited to, an allegation of gross mismanagement, a significant waste of funds, an abuse of authority, or a specific danger to public health or safety.

(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)

Complaints alleging unlawful discrimination on any basis specified in the district's nondiscrimination policies, including complaints of sexual harassment, shall be resolved in accordance with the district's procedure for complaints regarding discrimination in employment.

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

(cf. 4031 - Complaints Concerning Discrimination in Employment)

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

Complaints regarding unlawful discrimination in district programs or the district's failure to comply with state or federal laws regarding educational programs shall be resolved in accordance with the district's Uniform Complaint Procedures. Complaints regarding sufficiency of textbook materials, teacher vacancy or misassignment, an urgent or emergency facility condition, or the failure to provide intensive instruction to students who did not pass the high school exit examination by the end of grade 12 shall be resolved in accordance with the district's Williams Uniform Complaint Procedures. (Education Code 35186; 5 CCR 4621)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

For complaints regarding working conditions or other subjects of negotiation, the employee shall use the grievance procedure specified in the applicable collective bargaining agreement.

Any of the time limits specified in this procedure may be extended by written agreement between the district and complainant.

### Step 1: Informal Complaint Process

Prior to instituting a formal, written complaint, the employee shall first discuss the issue with his/her supervisor or the principal of the school where the alleged act took place. Formal complaint procedures shall not be initiated until the employee has first attempted to resolve the complaint informally.

### Step 2: Site Level Formal Complaint Process

If a complaint has not been satisfactorily resolved through the informal process in Step 1, the complainant may file a written complaint with his/her immediate supervisor or principal within 60 days of the act or event which is the subject of the complaint. If an employee fails to file a written complaint within 60 days, the complaint shall be considered settled on the basis of the answer given at the preceding step.

In the written complaint, the employee shall specify the nature of the problem, including names, dates, locations, witnesses, the remedy sought by the employee, and a description of informal efforts to resolve the issue.

Within 10 working days of receiving the complaint, the immediate supervisor or principal shall conduct any necessary investigation and meet with the complainant in an effort to resolve the complaint. Within five working days after the meeting, he/she shall prepare and send a written response to the complainant.

### Step 3: District Level Appeal

If a complaint has not been satisfactorily resolved at Step 2, the complainant may file the written complaint with the Superintendent or designee within five working days of receiving the written response from the immediate supervisor or the principal. The complainant shall include all information presented to the immediate supervisor or principal at Step 2.

Within 10 working days of receiving the complaint, the Superintendent or designee shall conduct any necessary investigation, including reviewing the investigation and written response by the immediate supervisor or principal at Step 2, and shall meet with the complainant in an effort to resolve the complaint. Within five working days after the meeting, he/she shall prepare and send a written response to the complainant.

### Step 4: Appeal to the Governing Board

If a complaint has not been satisfactorily resolved at Step 3, the complainant may file a written appeal to the Board within five working days of receiving the Superintendent or designee's response. All information presented at Steps 1, 2, and 3 shall be included with the appeal, and the Superintendent or designee shall submit to the Board a written report describing attempts to resolve the complaint and the district's response.

The Board may uphold the findings by the Superintendent or designee without hearing the complaint or the Board may hear the complaint at a regular or special Board meeting. The hearing shall be held in closed session if the complaint relates to matters that may be addressed in closed session in accordance with law.

(cf. 9321 - Closed Session Purposes and Agendas)

The Board shall make its decision within 30 days of the hearing and shall send its decision to all concerned parties. The Board's decision shall be final.

Regulation LOS BANOS UNIFIED SCHOOL DISTRICT

approved: September 13, 2007 Los Banos, California

revised: July 17, 2008



## Los Banos USD | BP 1312.3 Community Relations

### Uniform Complaint Procedures

The Governing Board recognizes that the district has the primary responsibility to ensure compliance with applicable state and federal laws and regulations governing educational programs. The Board encourages the early, informal resolution of complaints whenever possible and appropriate. To resolve complaints which cannot be resolved through such informal process, the Board shall adopt a uniform system of complaint processes specified in 5 CCR 4600-4670 and the accompanying administrative regulation.

The district's uniform complaint procedures (UCP) shall be used to investigate and resolve the following complaints:

1. Any complaint alleging district violation of applicable state or federal law or regulations governing adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, and special education programs (5 CCR 4610)

(cf. 3553 - Free and Reduced Price Meals)

(cf. 3555 - Nutrition Program Compliance)

(cf. 5141.4 - Child Abuse Prevention and Reporting)

(cf. 5148 - Child Care and Development)

(cf. 6159 - Individualized Education Program)

(cf. 6171 - Title I Programs)

(cf. 6174 - Education for English Language Learners)

(cf. 6175 - Migrant Education Program)

(cf. 6178 - Career Technical Education)

(cf. 6178.1 - Work-Based Learning)

(cf. 6178.2 - Regional Occupational Center/Program)

(cf. 6200 - Adult Education)

2. Any complaint alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, in district programs and activities against any person based on his/her actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, 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 any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55, or based on his/her association with a person or group with one or more of these actual or perceived characteristics (5 CCR 4610)

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

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4031 - Complaints Concerning Discrimination in Employment)



(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

3. Any complaint alleging bullying in district programs and activities, regardless of whether the bullying is based on a person's actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, 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 any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55, or based on his/her association with a person or group with one or more of these actual or perceived characteristics

(cf. 5131.2 - Bullying)

4. Any complaint alleging district violation of the prohibition against requiring students to pay fees, deposits, or other charges for participation in educational activities (5 CCR 4610)

(cf. 3260 - Fees and Charges)

(cf. 3320 - Claims and Actions Against the District)

5. Any complaint alleging that the district has not complied with legal requirements related to the implementation of the local control and accountability plan (Education Code 52075)

(cf. 0460 - Local Control and Accountability Plan)

6. Any complaint alleging retaliation against a complainant or other participant in the complaint process or anyone who has acted to uncover or report a violation subject to this policy

7. Any other complaint as specified in a district policy

The Board recognizes that alternative dispute resolution (ADR) can, depending on the nature of the allegations, offer a process to reach a resolution to the complaint that is agreeable to all parties.

In filing and investigating complaints, the confidentiality of the parties involved shall be protected as required by law. As appropriate for any complaint alleging retaliation, unlawful discrimination, or bullying, the Superintendent or designee shall keep confidential the identity of the complainant and/or the subject of the complaint, if he/she is different from the complainant, as long as the integrity of the complaint process is maintained.

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

(cf. 5125 - Student Records)

(cf. 9011 - Disclosure of Confidential/Privileged Information)

When an allegation that is not subject to the UCP is included in a UCP complaint, the district shall refer the non-UCP allegation to the appropriate staff or agency and shall resolve the UCP-related allegation(s) through the district's UCP.

The Superintendent or designee shall provide training to district staff to ensure awareness and knowledge of current law and related requirements, including the steps and timelines specified in this policy and the accompanying administrative regulation.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

The Superintendent or designee shall maintain records of all UCP complaints and the investigations of those complaints. All such records shall be destroyed in accordance with applicable state law and district policy.

(cf. 3580 - District Records)

#### Non-UCP Complaints

The following complaints shall not be subject to the district's UCP but shall be referred to the specified agency: (5 CCR 4611)

1. Any complaint alleging child abuse or neglect shall be referred to the County Department of Social Services, the County Protective Services Division, and the appropriate law enforcement agency.
2. Any complaint alleging health and safety violations by a child development program shall, for licensed facilities, be referred to Department of Social Services and shall, for licensing-exempt facilities, be referred to the appropriate Child Development regional administrator.
3. Any complaint alleging employment discrimination shall be sent to the California Department of Fair Employment and Housing and the compliance officer shall notify the complainant by first class mail of the transfer.
4. Any complaint alleging fraud shall be referred to the California Department of Education.

In addition, the district's Williams Uniform Complaint Procedures, AR 1312.4, shall be used to investigate and resolve any complaint related to sufficiency of textbooks or instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of students or staff, or teacher vacancies and misassignments. (Education Code 35186)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

#### Legal Reference:

##### EDUCATION CODE

200-262.4 Prohibition of discrimination

8200-8498 Child care and development programs

8500-8538 Adult basic education

18100-18203 School libraries

32289 School safety plan, uniform complaint procedures

35186 Williams uniform complaint procedures

48985 Notices in language other than English

49010-49013 Student fees

49060-49079 Student records

49490-49590 Child nutrition programs

52060-52077 Local control and accountability plan, especially

52075 Complaint for lack of compliance with local control and accountability plan requirements

52160-52178 Bilingual education programs

52300-52490 Career technical education

52500-52616.24 Adult schools

52800-52870 School-based program coordination

54400-54425 Compensatory education programs

54440-54445 Migrant education

54460-54529 Compensatory education programs

56000-56867 Special education programs

59000-59300 Special schools and centers

64000-64001 Consolidated application process

#### GOVERNMENT CODE

11135 Nondiscrimination in programs or activities funded by state

12900-12996 Fair Employment and Housing Act

#### PENAL CODE

422.55 Hate crime; definition

422.6 Interference with constitutional right or privilege

#### CODE OF REGULATIONS, TITLE 5

3080 Application of section

4600-4687 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

#### UNITED STATES CODE, TITLE 20

1221 Application of laws

1232g Family Educational Rights and Privacy Act

1681-1688 Title IX of the Education Amendments of 1972

6301-6577 Title I basic programs

6801-6871 Title III language instruction for limited English proficient and immigrant students

7101-7184 Safe and Drug-Free Schools and Communities Act

7201-7283g Title V promoting informed parental choice and innovative programs

7301-7372 Title V rural and low-income school programs

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

99.1-99.67 Family Educational Rights and Privacy

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

110.25 Notification of nondiscrimination on the basis of age

Management Resources:

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

Questions and Answers on Title IX and Sexual Violence, April 2014

Dear Colleague Letter: Bullying of Students with Disabilities, August 2013

Dear Colleague Letter: Sexual Violence, April 2011

Dear Colleague Letter: Harassment and Bullying, October 2010

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

WEB SITES

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

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

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

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: October 2014 Los Banos, California

revised: December 11, 2014

## Los Banos USD | BP 3320 Business and Noninstructional Operations

### Claims And Actions Against The District

Any and all claims for money or damages against the district must be presented to and acted upon in accordance with Governing Board policy and administrative regulation. Compliance with district procedures is a prerequisite to any court action, unless the claim is governed by statutes or regulations which expressly free the claimant from the obligation to comply with this policy and the claims procedures set forth in the Government Code.

This policy is intended to apply retroactively to any existing causes of action and/or claims for money and/or damages.

Legal Reference:

#### EDUCATION CODE

35200 Liability for debts and contracts

35202 Claims against districts; applicability of Government Code

#### GOVERNMENT CODE

800 Cost in civil actions

810-996.6 Claims and actions against public entities

53051 Information filed with secretary of state and county clerk

#### PENAL CODE

72 Fraudulent claims

#### COURT DECISIONS

CSEA v. Azusa Unified School District, (1984) 152 Cal.App.3d 580

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: December 12, 1996 Los Banos, California

Los Banos USD | AR 4261.11 Personnel

### **Industrial Accident/Illness Leave**

Leave of absence for industrial accidents or illnesses shall be provided to classified employees who have served in the district continuously for at least three years.

In each fiscal year, allowable leave for any single industrial accident or illness shall be for 60 working days. (Education Code 45192)

(cf. 4113.4/4213.4/4313.4 - Temporary/Modified Light-Duty Assignment)

(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)

(cf. 4157.2/4257.2/4357.2 - Ergonomics)

(cf. 4161/4261/4361 - Leaves)

Allowable leave shall not accumulate from year to year. (Education Code 45192)

When a classified employee is absent from his/her duties because of an industrial accident or illness: (Education Code 45192)

1. Industrial accident or illness leave shall start on the first day of absence.
2. Payment for wages lost on any day shall not, when added to an award granted the employee under the workers' compensation laws of this state, exceed the normal wage for the day.
3. Industrial accident or illness leave shall be reduced by one day for each day of authorized absence, regardless of a compensation award made under workers' compensation.
4. If an industrial accident or illness leave overlaps into the next fiscal year, the employee is entitled to only that amount remaining at the end of the fiscal year in which the injury or illness occurred, for the same illness or injury.

Upon expiration of allowable leave for an industrial accident or illness, the employee shall use personal illness and injury leave as provided by Education Code 45191. If the employee continues to receive workers' compensation, he/she shall be entitled to use only

as much of his/her accumulated or available sick leave, accumulated compensating time, vacation or other available leave as, when added to the employee's workers' compensation award, will provide for a full day's wage or salary. (Education Code 45192)

(cf. 4261.1 - Personal Illness/Injury Leave)

During any paid leave of absence, the employee shall endorse to the district the workers' compensation checks received on account of his/her industrial accident or illness. In those cases, the district shall issue appropriate salary warrants for payment of the employee's salary and shall deduct normal retirement and other authorized contributions. (Education Code 45192)

When available paid leave has been exhausted, the employee shall be so notified in writing and shall be offered an opportunity to request additional leave. (Education Code 45192)

When all available leaves of absence, paid or unpaid, have been exhausted and the employee is not medically able to assume the duties of his/her position, the employee shall be placed either in another position or on a

reemployment list for a period of 39 months. If during this time the employee becomes medically able, he/she shall be employed in a vacant position in the class of his/her previous assignment over all other available candidates, except for a reemployment list established because of lack of work or lack of funds, in which case the employee shall be listed in accordance with appropriate seniority regulations. An employee who has been placed on a reemployment list and has been medically released for return to duty, but fails to accept an appropriate assignment, shall be dismissed. (Education Code 45192)

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

Any employee receiving benefits under this leave shall, during periods of injury or illness, remain within the State of California unless the Governing Board authorizes travel outside the state. (Education Code 45192)

During this leave, the employee may return to his/her position without suffering any loss of status or benefits. Periods of leave of absence, paid or unpaid, shall not be considered to be a break in service of the employee. (Education Code 45192)

Legal Reference:

EDUCATION CODE

45191 Leave of absence for illness or injury

45192 Industrial accident and illness leaves for classified employees

Regulation LOS BANOS UNIFIED SCHOOL DISTRICT

approved: January 8, 2009 Los Banos, California



Legal Resources | Education Code | EC 45192

**Leaves; Industrial Accident or Illness**

(a) The governing board of a school district shall provide by rules and regulations for industrial accident or illness leaves of absence for employees who are a part of the classified service. The governing board of a district that is created or whose boundaries or status is changed by an action to organize or reorganize districts completed after the effective date of this section shall provide by rules and regulations for these leaves of absence on or before the date on which the organization or reorganization of the district becomes effective for all purposes.

(b) The rules and regulations shall include the following provisions:

(1) Allowable leave shall not be for less than 60 working days in any one fiscal year for the same accident.

(2) Allowable leave shall not be accumulative from year to year.

(3) Industrial accident or illness leave will commence on the first day of absence.

(4) Payment for wages lost on any day shall not, when added to an award granted the employee under the workers' compensation laws of this state, exceed the normal wage for the day.

(5) Industrial accident leave will be reduced by one day for each day of authorized absence regardless of a compensation award made under workers' compensation.

(6) When an industrial accident or illness occurs at a time when the full 60 days will overlap into the next fiscal year, the employee shall be entitled to only that amount remaining at the end of the fiscal year in which the injury or illness occurred, for the same illness or injury.

(c) The industrial accident or illness leave of absence is to be used in lieu of entitlement acquired under Section 45191. When entitlement to industrial accident or illness leave has been exhausted, entitlement or other sick leave will then be used; but if an employee is receiving workers' compensation the employee shall be entitled to use only so much of his or her accumulated or available sick leave, accumulated compensating time, vacation or other available leave that, when added to the workers' compensation award, provide for a full day's wage or salary.

(d) The governing board of a district may, by rule or regulation, provide for as much additional leave of absence, paid or unpaid, as it deems appropriate and during this leave the employee may return to his or her position without suffering any loss of status or benefits. The employee shall be notified, in writing, that available paid leave has been exhausted, and shall be offered an opportunity to request additional leave.

(e) A period of leave of absence, paid or unpaid, shall not be considered to be a break in service of the employee.

(f) During a paid leave of absence, whether industrial accident leave as provided in this section, sick leave, vacation, compensated time off, or other available leave provided by law or the action of a governing board of a district, the employee shall endorse to the district wage loss benefit checks received under the workers' compensation laws of this state. The district, in turn, shall issue the employee appropriate warrants for payment of wages or salary and shall deduct normal retirement and other authorized contributions. Reduction of entitlement to leave shall be made only in accordance with this section.

(g) When all available leaves of absence, paid or unpaid, have been exhausted and if the employee is not medically able to assume the duties of his or her position, the employee shall, if not placed in another position, be placed on a reemployment list for a period of 39 months. When available, during the 39-month period, the employee shall be employed in a vacant position in the class of the employee's previous assignment over all

other available candidates except for a reemployment list established because of lack of work or lack of funds, in which case the employee shall be listed in accordance with appropriate seniority regulations.

(h) The governing board of a district may require that an employee serve or have served continuously a specified period of time with the district before the benefits provided by this section are made available to the employee provided that this period shall not exceed three years and that all service of the employee prior to the effective date of this section shall be credited in determining compliance with the requirement.

(i) In the absence of rules and regulations adopted by the governing board of a district, pursuant to this section, an employee shall be entitled to industrial and accident or illness leave as provided in this section but without limitation as to the number of days of this leave and without any requirement of a specified period of service.

(j) An employee who has been placed on a reemployment list, as provided in this section, who has been medically released for return to duty and who fails to accept an appropriate assignment shall be dismissed.

(k) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240).

(Amended by Stats. 2015, Ch. 58, Sec. 2.)

Los Banos USD | BP 4119.25, 4219.25, 4319.25 Personnel

## **Political Activities Of Employees**

The Governing Board respects the right of school employees to engage in political discussions and activities on their own time. On such occasions, employees shall make it clear that they are acting as individuals and not as representatives of the district.

Like other citizens, employees may use school facilities for meetings under the Civic Center Act.

(cf. 1330 - Use of School Facilities)

Employees shall refrain from prohibited activities identified in law and administrative regulations. Employees who engage in these activities shall be subject to disciplinary action and/or criminal penalties.

(cf. 1160 - Political Processes)

(cf. 1325 - Advertising and Promotion)

(cf. 4118 - Suspension/Disciplinary Action)

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

(cf. 6144 - Controversial Issues)

Legal Reference:

### **EDUCATION CODE**

7050-7057 Political activities of school officers and employees

38130-38139 Civic Center Act

51520 Prohibited solicitations on school premises

### **GOVERNMENT CODE**

3543.1 Rights of employee organizations

### **COURT DECISIONS**

Downs v. Los Angeles Unified School District, (9th Cir. 2000) 228 F.3d 1003

California Teachers Association v. Governing Board of San Diego Unified School District, (1996) 45 Cal.App. 4th 1383

L.A. Teachers Union v. L.A. City Board of Education, (1969) 71 Cal.2d 551

### **ATTORNEY GENERAL OPINIONS**

84 Ops.Cal.Atty.Gen. 106 (2001)

84 Ops.Cal.Atty.Gen. 52 (2001)

77 Ops.Cal.Atty.Gen. 56 (1994)

## PERB RULINGS

California Federation of Teachers, Local 1931 v. San Diego Community College District (2001) PERB Order #1467 (26 PERC 33014)

Management Resources:

## CSBA PUBLICATIONS

Political Activities of School Districts: Legal Issues, 1998, revised 2001

## WEB SITES

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

Office of the Attorney General, Dept. of Justice: <http://caag.state.ca.us/>

Public Employment Relations Board: <http://www.perb.ca.gov>

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: January 9, 1997 Los Banos, California

## Los Banos USD | BP 5131.2 Students

### **Bullying**

The Governing Board recognizes the harmful effects of bullying on student learning and school attendance and desires to provide safe school environments that protect students from physical and emotional harm. District employees shall establish student safety as a high priority and shall not tolerate bullying of any student.

No individual or group shall, through physical, written, verbal, or other means, harass, sexually harass, threaten, intimidate, retaliate, cyberbully, cause bodily injury to, or commit hate violence against any student or school personnel.

(cf. 5131 - Conduct)

(cf. 5136 - Gangs)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

(cf. 5145.9 - Hate-Motivated Behavior)

Cyberbullying includes the creation or transmission of harassing communications, direct threats, or other harmful texts, sounds, or images on the Internet, social media, or other technologies using a telephone, computer, or any wireless communication device. Cyberbullying also includes breaking into another person's electronic account and assuming that person's identity in order to damage that person's reputation.

(cf. 5145.2 - Freedom of Speech/Expression)

Strategies for addressing bullying in district schools shall be developed with involvement of key stakeholders, including students, parents/guardians, and staff, and may be incorporated into the comprehensive safety plan, the local control and accountability plan, and other applicable district and school plans.

(cf. 0420 - School Plans/Site Councils)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 0460 - Local Control and Accountability Plan)

(cf. 1220 - Citizen Advisory Committees)

(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)

(cf. 6020 - Parent Involvement)

As appropriate, the Superintendent or designee may collaborate with law enforcement, courts, social services, mental health services, other agencies, and community organizations in the development and implementation of joint strategies to promote safety in schools and the community and to provide services for alleged victims and perpetrators of bullying.

(cf. 1020 - Youth Services)

### **Bullying Prevention**

To the extent possible, district schools shall focus on the prevention of bullying by establishing clear rules for student conduct and implementing strategies to promote a positive, collaborative school climate. Students shall be informed, through student handbooks and other appropriate means, of district and school rules related to bullying, mechanisms available for reporting incidents or threats, and the consequences for engaging in bullying.

(cf. 5137 - Positive School Climate)

As appropriate, the district shall provide students with instruction, in the classroom or other educational settings, that promotes effective communication and conflict resolution skills, social skills, character/values education, respect for cultural and individual differences, self-esteem development, assertiveness skills, and appropriate online behavior.

(cf. 6142.8 - Comprehensive Health Education)

(cf. 6142.94 - History-Social Science Instruction)

(cf. 6163.4 - Student Use of Technology)

Staff shall receive related professional development, including information about early warning signs of harassing/intimidating behaviors and effective response.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

Based on an assessment of bullying incidents at school, the Superintendent or designee may increase supervision and security in areas where bullying most often occurs, such as classrooms, playgrounds, hallways, restrooms, and cafeterias.

### Intervention

Students are encouraged to notify school staff when they are being bullied or suspect that another student is being victimized. In addition, the Superintendent or designee shall develop means for students to report threats or incidents confidentially and anonymously.

School staff who witnesses an act of bullying shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

When appropriate based on the severity or pervasiveness of the bullying, the Superintendent or designee shall notify the parents/guardians of victims and perpetrators and may contact law enforcement.

The Superintendent, principal, or principal's designee may refer a victim, witness, perpetrator, or other student affected by an act of bullying to a school counselor, school psychologist, social worker, child welfare attendance personnel, school nurse, or other school support service personnel for case management, counseling, and/or participation in a restorative justice program as appropriate. (Education Code 48900.9)

(cf. 6164.2 - Guidance/Counseling Services)

### Complaints and Investigation

Any complaint of bullying, whether it is discriminatory or nondiscriminatory, shall be investigated and resolved in accordance with law and the district's uniform complaint procedures specified in AR 1312.3 - Uniform Complaint Procedures.

(cf. 1312.3 - Uniform Complaint Procedures)

Any student, parent/guardian, or other individual who believes that a student has been subjected to bullying or who has witnessed bullying may report the incident to a teacher, the principal, a compliance officer, or any other available school employee. Within one business day of receiving such a report, a staff member shall notify the principal of the report, whether or not a uniform complaint is filed. In addition, any school employee who observes an incident of bullying involving a student shall, within one business day, report his/her observation to the principal or a district compliance officer, whether or not the alleged victim files a complaint.

When the circumstances involve cyberbullying, individuals with information about the activity shall be encouraged to save and print any electronic or digital messages that they feel

constitute cyberbullying and to notify a teacher, the principal, or other employee so that the matter may be investigated. When a student uses a social networking site or service to bully or harass another student, the Superintendent or designee may file a request with the networking site or service to suspend the privileges of the student and to have the material removed.

When a report of bullying is submitted, the principal or a district compliance officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with AR 1312.3. The student who is the alleged victim of the bullying shall be given an opportunity to describe the incident, identify witnesses who may have relevant information, and provide other evidence of bullying.

## Discipline

Corrective actions for a student who commits an act of bullying of any type may include counseling, behavioral intervention and education, and, if the behavior is severe or pervasive as defined in Education Code 48900, may include suspension or expulsion in accordance with district policies and regulations.

(cf. 5138 - Conflict Resolution/Peer Mediation)

(cf. 5144 - Discipline)

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

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

(cf. 6159.4 - Behavioral Interventions for Special Education Students)

Any employee who permits or engages in bullying or retaliation related to bullying shall be subject to disciplinary action, up to and including dismissal.

(cf. 4117.3 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

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

## Legal Reference:

### EDUCATION CODE

200-262.4 Prohibition of discrimination

32282 Comprehensive safety plan



32283.5 Bullying; online training

35181 Governing board policy on responsibilities of students

35291-35291.5 Rules

48900-48925 Suspension or expulsion

48985 Translation of notices

52060-52077 Local control and accountability plan

## PENAL CODE

422.55 Definition of hate crime

647 Use of camera or other instrument to invade person's privacy; misdemeanor

647.7 Use of camera or other instrument to invade person's privacy; punishment

653.2 Electronic communication devices, threats to safety

## CODE OF REGULATIONS, TITLE 5

4600-4687 Uniform complaint procedures

## UNITED STATES CODE, TITLE 47

254 Universal service discounts (e-rate)

## CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

## CODE OF FEDERAL REGULATIONS, TITLE 34

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

110.25 Notification of nondiscrimination on the basis of age

## COURT DECISIONS

Wynar v. Douglas County School District, (2013) 728 F.3d 1062

J.C. v. Beverly Hills Unified School District, (2010) 711 F.Supp.2d 1094

Lavine v. Blaine School District, (2002) 279 F.3d 719

Management Resources:

## CSBA PUBLICATIONS

Final Guidance: AB 1266, Transgender and Gender Nonconforming Students, Privacy, Programs, Activities & Facilities, Legal Guidance, March 2014



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

Addressing the Conditions of Children: Focus on Bullying, Governance Brief, December 2012

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

Building Healthy Communities: A School Leaders Guide to Collaboration and Community Engagement, 2009

Cyberbullying: Policy Considerations for Boards, Policy Brief, July 2007

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Health Education Content Standards for California Public Schools: Kindergarten Through Grade Twelve, 2008

Bullying at School, 2003

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

Dear Colleague Letter: Bullying of Students with Disabilities, August 2013

Dear Colleague Letter: Harassment and Bullying, October 2010

#### WEB SITES

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

California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/lr/ss>

Common Sense Media: <http://www.common sense media.org>

National School Safety Center: <http://www.schoolsafety.us>

ON[the]LINE, digital citizenship resources: <http://www.onthelineca.org>

U.S. Department of Education: <http://www.ed.gov>

#### Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: October 2014 Los Banos, California

revised: December 11, 2014

Los Banos USD | BP 4119.43, 4219.43, 4319.43 Personnel

## Universal Precautions

Universal precautions shall be observed throughout the district to protect employees, students and any other persons in the school environment from contact with potentially infectious blood or other body fluids.

Universal precautions are appropriate for preventing the spread of all infectious diseases and shall be used regardless of whether bloodborne pathogens are known to be present.

(cf. 4119.42 / 4219.42 / 4319.42 - Exposure Control Plan for Bloodborne Pathogens)

(cf. 5141.1 - Accidents)

(cf. 5141.23 - Infectious Disease Prevention)

(cf. 6145.2 - Interscholastic Competition)

Legal Reference:

### HEALTH AND SAFETY CODE

120875 Providing information to school districts on AIDS, AIDS-related conditions and Hepatitis B

120880 Information to employees of school district

### CODE OF REGULATIONS, TITLE 8

5193 California Bloodborne Pathogens Standard

### CODE OF FEDERAL REGULATIONS, TITLE 29

1910.1030 OSHA Bloodborne Pathogens Standards

Management Resources:

### CDE ADVISORY

1016.89 Guidelines for Informing School Employees about Preventing the Spread of Infectious Diseases, including Hepatitis B and AIDS/HIV Infections and Policies for Dealing with HIV-Infected Persons in School Settings

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: February 6, 1997 Los Banos, California

Los Banos USD | BP 4157, 4257,4357 Personnel

## Employee Safety

The Governing Board believes that safety is every employee's responsibility. The Board expects all employees to use safe work practices and to report and correct any unsafe conditions which may occur. Supervisors shall constantly promote safety and correct any unsafe work practice through education, training and enforcement.

No employees shall be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety, or well-being. Working conditions and equipment shall be maintained in compliance with standards prescribed by federal, state, and local laws and regulations.

The Superintendent or designee shall establish a written Injury and Illness Prevention Program in accordance with law. The program shall include training in safe and healthful work practices for all employees. (Labor Code 6401.7)

(cf. 3514 - Environmental Safety)

(cf. 3514.1 - Hazardous Substances)

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

(cf. 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens)

(cf. 4158/4258/4358 - Employee Security)

Legal Reference:

### EDUCATION CODE

32066 Safety: public and private institutions

32210-32224 Safety: public institutions

### LABOR CODE

6305 Occupational safety and health standards; special order

6310 Retaliation for filing complaint prohibited

6401.7 Injury prevention programs

### CODE OF REGULATIONS, Title 8

3203 Injury and Illness Prevention Program

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: February 6, 1997 Los Banos, California

Los Banos USD | BP 4119.42, 4219.42, 4319.42 Personnel

## **Exposure Control Plan For Bloodborne Pathogens**

The Superintendent or designee shall meet state and federal standards for dealing with bloodborne pathogens and other potentially infectious materials in the workplace. The Superintendent or designee shall establish a written Exposure Control Plan designed to protect employees from possible infection due to contact with bloodborne viruses, including human immunodeficiency virus (HIV) and hepatitis B virus (HBV).

The Governing Board shall determine which employees have occupational exposure to bloodborne pathogens and other potentially infectious materials. In accordance with the district's Exposure Control Plan, employees having occupational exposure shall be offered the hepatitis B vaccination.

The Superintendent or designee may exempt designated first-aid providers from preexposure hepatitis B vaccination under the conditions specified by state regulations.

Any employee not identified as having occupational exposure in the district's exposure determination may petition to be included in the district's employee inservice and hepatitis B vaccination program. Any such petition should be submitted to the Superintendent or designee who shall evaluate the request and notify the petitioners of his/her decision. The Superintendent or designee may deny a request when there is no reasonable anticipation of contact with infectious material.

(cf. 4119.43/4219.43/4319.43 - Universal Precautions)

(cf. 4157/4257/4357 - Employee Safety)

Legal Reference:

CODE OF REGULATIONS, Title 8

3204 Access to Employee Exposure and Medical Records

5193 California Bloodborne Pathogens Standard

CODE OF FEDERAL REGULATIONS, TITLE 29

1910.1030 OSHA Bloodborne Pathogens Standards

Management Resources:

CDE ADVISORY

1016.89 Guidelines for Informing School Employees about Preventing the Spread of Infectious Diseases, including Hepatitis B and AIDS/HIV Infections and Policies for Dealing with HIV-Infected Persons in School Settings

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: February 6, 1997 Los Banos, California

Los Banos USD | BP 4119.23, 4219.23,4319.23 Personnel

### **Unauthorized Release Of Confidential/Privileged Information**

The Governing Board, administration and staff shall maintain the confidentiality of all confidential records until such time as laws, state regulations and/or bylaws of this district permit disclosure. Information and records pertaining to closed sessions, negotiations and student records are not subject to public disclosure. (Government Code 6252-6260)

Any employee who willfully releases confidential/privileged information about students, staff, or any topic properly confined to a closed session shall be subject to disciplinary action up to and including dismissal from district service. Confidential information includes any information relating to the Board's employer-employee strategies on matters in negotiation or matters to be placed in negotiation.

Any employee who willingly and for monetary gain uses or discloses confidential/privileged information as defined in Government Code 1098 is guilty of a misdemeanor. (Government Code 1098)

Any action by an employee which inadvertently or carelessly results in release of confidential/privileged information shall be recorded, and the record shall be placed in the employee's personnel file. Depending on the circumstances, the Superintendent or designee may deny the employee access to such information and shall take any steps necessary to prevent any further unauthorized release of such information.

(cf. 5125 - Student Records)

(cf. 5125.1 - Release of Directory Information)

(cf. 9321 - Closed Session Purposes and Agendas)

#### **Legal References:**

FEDERAL FAMILY EDUCATION RIGHTS AND PRIVACY ACT of 1974 (20 U.S.C. 1232(g))

#### **EDUCATION CODE**

35010 Control of district; prescription and enforcement of rules

35146 Closed sessions (re student suspension)

44031 Personnel file contents and inspection

44932 Grounds for dismissal of permanent employees

44933 Other grounds for dismissal

45113 Rules and regulations for classified service

49060-49078 Pupil records

#### **GOVERNMENT CODE**

1098 Public officials and employees: confidential information

3540 et seq. Meeting and negotiating in public employment

6252 et seq. Inspection of public records

54957 Closed session; purposes for holding; definition of "employee" exclusion of witnesses

54957.2 Taking of minutes at closed sessions; clerk; minute book

54957.6 Closed session, representatives to employee organization(s); state conciliator

## LABOR CODE

1102.5 Employees: disclosure of information

Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: January 9, 1997 Los Banos, California

Legal Resources | Education Code | EC 45125

**Fingerprinting; noncertificated employees**

(a) (1) Except as provided in Section 45125.01, the governing board of any school district shall require each person to be employed in a position not requiring certification qualifications, except a secondary school pupil employed in a temporary or part-time position by the governing board of the school district having jurisdiction over the school attended by the pupil, to have two fingerprint cards bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description of the applicant prepared by a local public law enforcement agency having jurisdiction in the area of the school district, which agency shall transmit the cards, together with the fee required by subdivision (f), to the Department of Justice; except that any district, or districts with a common board, may process the fingerprint cards if the district so elects.

(2) As used in this section, "local public law enforcement agency" includes any school district and as used in Section 45126 requires the Department of Justice to provide to any school district, upon application, information pertaining only to applicants for employment by the district, including applicants who are employees of another district.

(b) (1) Upon receiving the fingerprint cards, the Department of Justice shall ascertain whether the applicant has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department and forward the information to the employing agency submitting the applicant's fingerprints no more than 15 working days after receiving the fingerprint cards. The Department of Justice shall not forward records of criminal proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the school district that it cannot so ascertain the required information. This notification shall be delivered by telephone or electronic mail to the school district. If a school district is notified by the Department of Justice that it cannot ascertain the required information about a person, the school district may not employ that person until the Department of Justice ascertains that information.

(3) In the case of a person to be employed in a position not requiring certification qualifications who is described in subparagraph (A) or (B), the school district shall request the Department of Justice to forward one copy of the fingerprint cards to the Federal Bureau of Investigation for the purpose of obtaining any record of previous convictions of the applicant.

(A) The person has not resided in the State of California for at least one year immediately preceding the person's application for employment.

(B) The person has resided for more than one year, but less than seven years, in the State of California and the Department of Justice has ascertained that the person was convicted of a sex offense where the victim was a minor or a drug offense where an element of the offense is either the distribution to, or the use of a controlled substance by, a minor.

(c) The governing board of a school district shall not employ a person until the Department of Justice completes its check of the state criminal history file as set forth in this section and Sections 45125.5 and 45126, except that this subdivision does not apply to secondary school pupils who are to be employed in a temporary or part-time position by the governing board of the school district having jurisdiction over the school they attend.

(d) The governing board of each district shall maintain a list indicating the number of current employees, except secondary school pupils employed in a temporary or part-time position by the governing board of the school



district having jurisdiction over the school they attend, who have not completed the requirements of this section. The Department of Justice shall process these cards within 30 working days of their receipt and any cards in its possession on the date of the amendment of this section by Assembly Bill 1610 of the 1997-98 Regular Session within 30 working days of that date. School districts that have previously submitted identification cards for current employees to either the Department of Justice or the Federal Bureau of Investigation shall not be required to further implement the provisions of this section as it applies to those employees.

(e) A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury or forfeiture of bail is deemed to be a conviction within the meaning of this section, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

(f) (1) The school district shall provide the means whereby the fingerprint cards may be completed and may charge a fee determined by the Department of Justice to be sufficient to reimburse the department for the costs incurred in processing the application. The amount of the fee shall be forwarded to the Department of Justice with the required copies of applicant's fingerprint cards. The governing board may collect a reasonable fee payable to the local public law enforcement agency taking the fingerprints and completing the data on the fingerprint cards. In no event shall the fee exceed the actual costs incurred by the agency.

(2) The additional fees shall be transmitted to the city or county treasury. If an applicant is subsequently hired by the board within 30 days of the application, the fee may be reimbursed to the applicant. Funds not reimbursed to applicants shall be credited to the general fund of the district. If the fingerprint cards forwarded to the Department of Justice are those of a person already in the employ of the governing board, the district shall pay the fee required by this section, which fee shall be a proper charge against the general fund of the district, and no fee shall be charged the employee.

(g) This section applies to substitute and temporary employees regardless of length of employment.

(h) Subdivision (c) of this section shall not apply to a person to be employed if a school district determines that an emergency or an exceptional situation exists, and that a delay in filling the position in which the person would be employed would endanger pupil health or safety.

(i) Where reasonable access to the statewide, electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprints and related information required by this section.

(j) A school district shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(k) All information obtained from the Department of Justice is confidential. Each agency handling Department of Justice information shall ensure the following:

(1) No recipient may disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.



(l) Notwithstanding any other provision of law, the Department of Justice shall process pursuant to this section all requests from a school district, an employer, or a human resource agency for criminal history information on a volunteer to be used in a school.

(Amended by Stats. 1999, Ch. 78, Sec. 31.)

Reference:

Education Code 45125.01

Education Code 45125.5

Education Code 45126

Penal Code 1203.4

Penal Code 11077

Penal Code 11105.2

## Los Banos USD | BP 3260 Business and Noninstructional Operations

### Fees And Charges

The Governing Board recognizes its responsibility to ensure that books, materials, equipment, supplies, and other resources necessary for students' participation in the district's educational program are made available to them at no cost.

No student shall be required to pay a fee, deposit, or other charge for his/her participation in an educational activity which constitutes an integral fundamental part of the district's educational program, including curricular and extracurricular activities. (Education Code 49010, 49011; 5 CCR 350)

(cf. 3100 - Budget)

(cf. 6145 - Extracurricular and Cocurricular Activities)

As necessary, the Board may approve fees, deposits, and other charges which are specifically authorized by law. When approving such fees, deposits, or charges, establishing fee schedules, or determining whether waivers or exceptions should be granted, the Board shall consider relevant data, including the socio-economic conditions of district students' families and their ability to pay.

(cf. 3250 - Transportation Fees)

(cf. 3515.4 - Recovery for Property Loss or Damage)

(cf. 3553 - Free and Reduced Price Meals)

(cf. 5143 - Insurance)

(cf. 9323.2 - Actions by the Board)

The prohibition against student fees shall not restrict the district from soliciting for voluntary donations, participating in fundraising activities, and providing prizes or other recognition for participants in such activities and events. However, the district shall not offer or award to a student any course credit or privileges related to educational activities in exchange for voluntary donations or participation in fundraising activities by or on behalf of the student and shall not remove, or threaten to remove, from a student any course credit or privileges related to educational activities, or otherwise discriminate against the student, due to a lack of voluntary donations or participation in fundraising activities by or on behalf of the student.

(cf. 1321 - Solicitation of Funds from and by Students)

(cf. 3290 - Gifts, Grants and Bequests)

Whenever district employees, volunteers, students, parents/guardians, or educational or civic organizations participate in such events or activities, the Superintendent or designee shall emphasize that participation in the event or activity is voluntary.

A complaint alleging district noncompliance with the prohibition against requiring student fees, deposits, or other charges shall be filed in accordance with the district's procedures in BP/AR 1312.3 - Uniform Complaint Procedures. (Education Code 49013)

(cf. 1312.3 - Uniform Complaint Procedures)

If, upon investigation, the district finds merit in the complaint, the Superintendent or designee shall recommend and the Board shall adopt an appropriate remedy to be provided to all affected students and parents/guardians in

accordance with 5 CCR 4600.

Information related to the prohibition against requiring students to pay fees for participation in an educational activity shall be included in the district's annual notification required to be provided to all students, parents/guardians, employees, and other interested parties pursuant to 5 CCR 4622. (Education Code 49013)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

(cf. 5145.6 - Parental Notifications)

The Superintendent or designee may provide additional information or professional development opportunities to administrators, teachers, and other personnel regarding permissible fees.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

Legal Reference:

#### EDUCATION CODE

8239 Preschool and wraparound child care services

8250 Child care and development services for children with disabilities

8263 Child care eligibility

8482.6 After School Education and Safety programs

8760-8774 Outdoor science and conservation programs

17453.1 District sale or lease of Internet appliances or personal computers to students or parents

17551 Property fabricated by students

19910-19911 Offenses against libraries

32033 Eye protective devices

32221 Insurance for athletic team member

32390 Fingerprinting program

35330-35332 Excursions and field trips

35335 School camp programs

38080-38086 Cafeteria establishment and use

38120 Use of school band equipment on excursions to foreign countries

39801.5 Transportation for adults

39807.5 Payment of transportation costs

39837 Transportation of students to places of summer employment

48050 Residents of adjoining states

48052 Tuition for foreign residents

48904 Liability of parent or guardian

49010-49013 Student fees

49065 Charge for copies

49066 Grades, effect of physical education class apparel

49091.14 Prospectus of school curriculum

51810-51815 Community service classes

52612 Tuition for adult classes

52613 Nonimmigrant aliens

56504 School records; students with disabilities

60410 Students in classes for adults

## GOVERNMENT CODE

6253 Request for copy; fee

## CALIFORNIA CONSTITUTION

Article 9, Section 5 Common school system

## CODE OF REGULATIONS, TITLE 5

350 Fees not permitted

4600-4687 Uniform complaint procedures

## UNITED STATES CODE, TITLE 8

1184 Foreign students

## COURT DECISIONS

Driving School Assn of CA v. San Mateo Union HSD (1993) 11 Cal. App. 4th 1513

Arcadia Unified School District v. State Department of Education (1992) 2 Cal 4th 251

Steffes v. California Interscholastic Federation (1986) 176 Cal. App. 3d 739

Hartzell v. Connell (1984) 35 Cal. 3d 899

CTA v. Glendale School District Board of Education (1980) 109 Cal. App. 3d 738

Management Resources:

## CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Pupil Fees, Deposits, and Other Charges: Cap and Gown for High School Graduation Ceremony, Addendum to Fiscal Management Advisory 12-02, October 4, 2013

Fees, Deposits and Other Charges, Fiscal Management Advisory 12-02, April 24, 2013

## WEB SITES

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

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

## Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: December 12, 1996 Los Banos, California

revised: June 13, 2013

revised: October 9, 2014

Los Banos USD | BP 4112.42, 4212.42, 4312.42 Personnel

## **Drug And Alcohol Testing For School Bus Drivers**

The Governing Board desires to ensure that district-provided transportation is safe for students, staff, and the public. To that end, the Superintendent or designee shall establish a drug and alcohol testing program designed to prevent the operation of buses or the performance of other safety-sensitive functions by a driver who is under the influence of drugs or alcohol, including a driver of a school bus, student activity bus, or other school transportation vehicle or any other employee who holds a commercial driver's license which is necessary to perform duties related to district employment.

(cf. 3540 - Transportation)

(cf. 3542 - School Bus Drivers)

(cf. 3543 - Transportation Safety and Emergencies)

(cf. 4020 - Drug and Alcohol-Free Workplace)

(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)

A driver shall not report for duty or remain on duty when he/she has used any drug listed in 21 CFR 1308.11. A driver is also prohibited from reporting for duty or remaining on duty when he/she has used any drug listed in 21 CFR 1308.12-1308.15, unless he/she is using the drug under the direction of a physician who has advised him/her that the substance will not adversely affect the driver's ability to safely operate a bus. In addition, a driver shall not consume alcohol while on duty or for four hours prior to on-duty time. (49 CFR 382.201-382.209, 382.213)

The district's testing program for drivers shall include pre-employment drug testing and reasonable suspicion, random, post-accident, return-to-duty, and follow-up drug and alcohol testing of drivers. (49 USC 31306; 49 CFR 382.301-382.311)

The Board shall contract for testing services upon verifying that the personnel are appropriately qualified and/or certified and that testing procedures conform to federal regulations.

Except as otherwise provided by law, the Superintendent or designee shall not release individual test results or medical information about a driver to a third party without the driver's specific written consent. (49 CFR 40.321)

### **Consequences Based on Test Results**

Any driver who refuses to take a required drug or alcohol test, tests positive for drugs, or is found to have a blood alcohol concentration level that exceeds the levels specified in law shall be removed from performing safety-sensitive functions in accordance with 49 CFR 40.23 and 382.211.

No driver shall be temporarily removed from the performance of safety-sensitive functions based only on a laboratory report of a confirmed positive test before the certified medical review officer has completed verification of the test results, unless the district has obtained a waiver. (49 CFR 40.21, 382.107, 382.119)

Not later than five days after receiving notification of the test result or refusal to comply, the Superintendent or designee shall report any refusal, failure to comply, or positive test result to the California Department of Motor Vehicles (DMV) using a form approved by the DMV. (Vehicle Code 13376)

Any driver who refuses, fails to comply, or has a positive test result may be referred to an education and treatment program that meets the requirements of 49 CFR 40.281-40.313. If the substance abuse professional recommends that ongoing services are needed to assist the driver to maintain sobriety or abstinence from drug

use, the Superintendent or designee shall require the driver to participate in the recommended services as part of a return-to-duty agreement and shall monitor his/her compliance. Any drop from a rehabilitation or return-to-duty program or a subsequent positive test result shall be reported to the DMV. (Vehicle Code 13376; 49 CFR 40.285, 40.287, 40.303, 382.605)

(cf. 4159/4259/4359 - Employee Assistance Programs)

(cf. 4161/4261 - Leaves)

(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)

(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)

(cf. 4261.1 - Personal Illness/Injury Leave)

A driver who has violated federal drug and alcohol regulations may be subject to disciplinary action up to and including dismissal in accordance with law, administrative regulations, and the district's collective bargaining agreement.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

#### Voluntary Self-Identification

Whenever a driver admits to alcohol or drug misuse under the district's voluntary self-identification program, the Superintendent or designee shall ensure all of the following: (49 CFR 382.121)

1. No adverse action shall be taken against the driver by the district.
2. The driver shall be allowed sufficient opportunity to seek evaluation, education, or treatment to establish control over his/her drug or alcohol problem.
3. The driver shall be permitted to participate in safety-sensitive functions only after:
  - a. Successfully completing an education or treatment program, as determined by a drug and alcohol abuse evaluation expert, such as an employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor
  - b. Undergoing a return-to-duty test with a result indicating an alcohol concentration of less than 0.02 and/or a verified negative result for drug use

A driver who admits to alcohol or drug misuse shall not be subject to federal requirements related to referral, evaluation, and treatment, provided that he/she does not self-identify in order to avoid drug or alcohol testing, makes the admission prior to performing a safety-sensitive function, and does not perform a safety-sensitive function until he/she has been evaluated and has successfully completed education or treatment requirements in accordance with program guidelines. (49 CFR 382.121)

#### Legal Reference:

#### EDUCATION CODE

35160 Authority of governing boards

## GOVERNMENT CODE

8355 Drug-free workplace; employee notification

## VEHICLE CODE

13376 Driver certificates; revocation or suspension

34500-34520.5 Safety regulations

## CODE OF REGULATIONS, TITLE 13

1200-1293 Motor carrier safety, especially:

1213.1 Placing drivers out-of-service

## UNITED STATES CODE, TITLE 41

8101-8106 Drug-Free Workplace Act

## UNITED STATES CODE, TITLE 49

31306 Alcohol and drug testing

## CODE OF FEDERAL REGULATIONS, TITLE 21

1308.11-1308.15 Controlled substances

## CODE OF FEDERAL REGULATIONS, TITLE 49

40.1-40.413 Procedures for transportation workplace drug and alcohol testing programs

382.101-382.605 Drug and alcohol use and testing; especially:

382.205 On-duty use

382.207 Pre-duty use

382.209 Use following an accident

## Management Resources:

## CALIFORNIA HIGHWAY PATROL PUBLICATIONS

Controlled Substances and Alcohol Testing Compliance Checklist, 2007

What is CSAT? Controlled Substances and Alcohol Testing, 2005

## WEB SITES

California Highway Patrol: <http://www.chp.ca.gov>

Federal Motor Carrier Safety Administration: <http://www.fmcsa.dot.gov>

U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance:  
<http://www.dot.gov/ost/dapc>



## Policy LOS BANOS UNIFIED SCHOOL DISTRICT

adopted: September 11, 2014 Los Banos, California

## Los Banos USD | AR 4312.4, 4212.4,4314.4 Personnel

### Health Examinations

#### New Employees

1. No person shall be initially employed unless he/she has placed on file with the district a certificate from a physician licensed under the Business and Professions Code indicating that a tuberculosis examination within the past 60 days shows that he/she is free from active tuberculosis. The tuberculosis examination shall consist of an approved intradermal tuberculin test. An x-ray of the lungs shall be required only if the intradermal test is positive. (Education Code 49406)

Persons transferring from another district may fulfill tuberculosis examination requirements in either of the following ways: (Education Code 49406)

- a. By producing a certificate showing that the employee was examined within the last four years and found free of active tuberculosis, or
- b. By having the last employing school verify that it has on file a current certificate which contains that showing.

2. When a new employee in a position requiring certification has not previously been employed in such a position in California, he/she must have a medical certificate on file with the district. The certificate will state that the employee is free from any disabling disease which would render him/her unfit to instruct or associate with children. The certificate form may be obtained from the personnel services office. It must be filled out by a licensed physician and returned to the personnel services office by the physician. The medical examination referred to in the certificate must have been conducted within six months of the time when the certificate is filed. (Education Code 44839)

The cost of preemployment examinations shall be borne by the applicant. (Education Code 44839, 45122, 49406)

When an employee's religious belief prevents him/her from undergoing a physical examination, the district shall follow provisions of Education Code 49406.

#### Continuing Employees

Continuing employees who test negative on tuberculin skin tests shall undergo a tuberculosis examination at least once every four years. (Education Code 49406)

Tuberculosis tests and other medical examinations required by the Superintendent or designee shall be administered by a physician licensed under the Business and Professions Code and shall be provided by the district or at district expense. (Education Code 44839, 45122, 49406)

#### Food Service Workers

All food service workers who cook, serve or handle food are required to obtain a health certificate before being assigned to work in any district cafeteria or kitchen. If a disease is suspected, a blood test or periodic health examinations may be required.

### Regulation LOS BANOS UNIFIED SCHOOL DISTRICT

approved: January 9, 1997 Los Banos, California

revised: August 11, 2011