

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

Personnel**PROHIBITION OF EMPLOYEE DISCRIMINATION, HARASSMENT AND RETALIATION**Policy Statement:

The Fresno County Superintendent of Schools ("FCSS") is committed to providing a safe, positive environment where all County Office employees are assured of full and equal employment access and opportunities, protection from discrimination, harassment and intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. For purposes of this policy, employees include job applicants, interns, volunteers, and persons who contracted with the County Office to provide services, as applicable. Moreover, the FCSS prohibits sexual harassment against County Office employees and retaliatory behavior or action against any person who complains, testifies, or otherwise participates in the complaint process established for the purpose of this policy.

QUICK LINKS[Supervisor Report of Incident/Complaint](#)[Employee Complaint Form](#)[Employee Appeal Form](#)

This policy will be included in the **New Employee Orientation**, and the **Annual Employee Notifications** packet which is provided to all FCSS employees via U.S. Mail or FCOE email (hard copy or electronically) on an annual basis.

The County Superintendent of Schools designates the following position as the Title IX and Equal Employment Opportunity Coordinator for Nondiscrimination in Employment:

Assistant Superintendent, Human Resources
Office of the Fresno County Superintendent of Schools
1111 Van Ness Avenue
Fresno, CA 93721-2000
(559) 265-3000
lgabriel@fcoe.org

PROHIBITION OF EMPLOYEE DISCRIMINATION AND HARASSMENT

The FCSS recognizes the right of every employee to be free from harassment, discrimination, and retaliation, including physical, psychological and/or sexual harassment. The FCSS further declares its intent to act promptly, visibly, and vigorously to eliminate such activity from the workplace and/or school environment. The County Superintendent's policy is to prohibit any form of discrimination, harassment, and retaliation, and to provide a mechanism for the reporting and resolution of complaints.

DISCRIMINATION

The FCSS prohibits unlawful discrimination and retaliation against and/or harassment of County Office employees, students, volunteers and job applicants on the basis of actual or perceived race, color, national origin, ancestry, religious creed, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, sex, gender, gender identity, gender expression or sexual orientation at any County Office site and/or activity.

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The prohibition against discrimination based on the religious creed of an employee or job applicant includes any discrimination based on the person's religious dress or grooming practices or any conflict between the person's religious belief observance or practice and an employment requirement. The prohibition against discrimination based on the sex of an employee or job applicant shall include any discrimination based on the person's pregnancy, childbirth, breastfeeding, or any related medical conditions.

Furthermore, the prohibition against discrimination includes the Genetic Information Nondiscrimination Act ("GINA") which prohibits employers from discriminating on the basis of "genetic information."

Prohibited discrimination or harassment includes, but is not limited to, unwelcome conduct, whether verbal, physical, or visual, based on any of the protected classes of discrimination listed above that it is so severe or pervasive that it adversely affects an individual's employment opportunities or has the purpose or effect of unreasonably interfering with his/her work performance or creates an intimidating, hostile, or offensive work environment.

A County Office employee who engages or participates in prohibited discrimination, harassment or retaliation, or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in such behavior, shall be in violation of this policy and shall be subject to disciplinary action, up to and including dismissal.

Examples of discrimination include, but are not be limited to, disparate treatment based upon an individual's actual or perceived race, color, national origin, ancestry, sex, gender identity, gender expression, sexual orientation, religious creed, age, physical or mental disability, medical condition, and/or marital status, as a basis for:

1. Failing or refusing to hire an applicant for employment;
2. Discharging or otherwise disciplining an employee;
3. Determining an employee's compensation, including fringe benefits, or other terms, conditions, or privileges of employment; or
4. Limiting, segregating, or classifying an employee or an applicant for employment in a way that would tend to deprive him/her of an employment opportunity or otherwise adversely affect his/her status as an employee.

HARASSMENT

Harassment includes, but is not limited to, derogatory comments, offensive jokes, unwelcome physical contact, or persistently annoying conduct that interferes with an employee's work performance or creates an unpleasant/offensive work environment. This includes, but is not limited to, such conduct relating to or directed toward persons on the actual or perceived basis of a particular race, national origin, religion, color, sex, gender, gender identity, gender expression, sexual orientation, physical or mental disability.

Examples of unlawful harassment of an individual include, but are not limited to,

1. Slurs, epithets, threats or verbal abuse;
2. Derogatory or degrading comments, descriptions, drawings, pictures, or gestures;
3. Unwelcome jokes, stories, teasing, or taunting;
4. Any other verbal, written, visual, or physical conduct against the individual which:

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- a. Adversely affects his/her employment;
- b. Has the purpose or effect of unreasonably interfering with his/her work performance or creating an intimidating, hostile or offensive work environment.

COMPLIANCE

The FCSS and all employees shall avoid any act or actions, implied, or explicit, that may demonstrate harassment, discrimination, and retaliation. The County Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of harassment, discrimination, and retaliation, including, but not limited to:

1. Providing periodic training, as required by applicable laws and regulations, to all supervisors and staff regarding the FCSS' harassment and discrimination policy, how to recognize harassment, discrimination and retaliation, how to respond appropriately, and the components of the County Office's policies and procedures as follows:
 - a. The FCSS' designee shall ensure that management and supervisory employees receive at least two (2) hours of classroom or other effective interactive training and education regarding harassment, discrimination, retaliation, and abusive conduct as administratively assigned every two (2) years;
 - b. All newly hired or promoted management and supervisory employees shall receive training within six (6) months of their assumption of the management/supervisory position.
 - c. The FCSS' designee shall ensure that non-supervisory employees receive at least one (1) hour of classroom or other effective interactive training and education regarding harassment, discrimination, retaliation, and abusive conduct every two (2) years.
2. Publicizing and disseminating the County Superintendent's discrimination and harassment policy to staff;
3. Ensuring prompt, thorough, and fair investigation of complaints; and
4. Taking timely and appropriate corrective/remedial actions. This may require interim separation of the complainant and the alleged harasser and subsequent monitoring.

RETALIATION PROHIBITED

FCSS' policy is not to discourage persons from filing harassment, discrimination, or retaliation complaints. Moreover, retaliation against any employee or other persons for exercising their right to file a harassment, discrimination, or retaliation complaints or for participating in the investigation of such complaints, is strictly prohibited. To avoid retaliation and the appearance of retaliation, employees are:

1. To refrain from taking any action which dissuades any person from exercising the right to file a discrimination or harassment complaint;
2. To keep confidential the facts of any complaints or investigation made pursuant to this policy, including the identity of any witnesses or any facts, which disclose the identity of the claimant(s) or witness(es) as directed;

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3. FCSS' policy is that an employee may not be retaliated against for refusing to comply with an order that the employee reasonably believes violates the anti-discrimination laws.

REPORTING COMPLAINTS

Any County Superintendent employee who feels that he/she has been discriminated against or who has knowledge of any incident of harassment, discrimination, or retaliation by or against another employee, a job applicant, or a student, shall immediately report the incident to his/her supervisor or the Assistant Superintendent, Human Resources. A supervisor who receives a discrimination, harassment, or retaliation complaint shall promptly notify the Assistant Superintendent, Human Resources or Human Resources designee.

An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint or if the employee chooses an alternate method of reporting.

Student complaints that allege unlawful sexual harassment by FCSS employees within the definitions set forth under Title IX of the Educational Amendments of 1972 will be processed under Superintendent Administration Regulation 5145.71.

Employee complaints that allege unlawful sexual harassment by FCSS employees will be processed under Superintendent Policy SP HR-1315.

IMPORTANT NOTE

A County Superintendent employee may be deemed to have permitted unlawful discrimination, harassment or retaliation if he/she fails to report an observed incident of harassment, discrimination, or retaliation whether or not the victim complains.

Pursuant to this policy, management, and supervisory employees who recommend or authorize actions affecting other employees will not:

- a. Use their authority to harass, discriminate or retaliate against an employee;
- b. Take a personnel action, or fail to take a personnel action, as a reprisal against an employee for resisting or reporting any act of harassment, discrimination, or retaliation; or
- c. Condone any harassment, either verbal or physical, or discrimination or retaliation against an employee or employees toward another employee.

In addition to the complaint process available through FCOE, an employee may file a complaint with the following agencies:

Department of Fair Employment and Housing (DFEH)
1320 East Shaw Avenue, Suite 150
Fresno, California 93710-7915
Phone: (800) 884-1684
www.dfeh.ca.gov

Equal Employment Opportunity Commission (EEOC)
2300 Tulare Street, Suite 215

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Fresno, California 93721
Phone: (800) 669-4000
www.eeoc.gov/field/fresno/index.cfm

The employee may pursue a civil law remedy, and may also file an appeal to the Department of Education at:

California Department of Education (CDE)
1430 N Street
Sacramento, California 95814-5901
Phone: (916) 319-0800
www.ed.gov/about/offices/list/ocr

COMPLAINT PROCESS

The following procedures shall be used when a County Superintendent employee or job applicant has a complaint alleging that a specific action, policy, procedure, or practice discriminates, harasses, or retaliates against him/her on any basis specified in this policy:

1. Supervisor is to gather accurate, complete information to ensure an immediate and thorough investigation of the complaint. Supervisor is to document information volunteered by the complainant on the "Supervisor's Report of Incident/Complaint" form.
2. Supervisor is to submit the written report of concern to the Program Administrator and to the Assistant Superintendent, Human Resources.
3. The Program Administrator and the Assistant Superintendent, Human Resources will review the information gathered by the supervisor along with the supervisor's recommendation.
4. Appropriate and immediate action will be taken if the FCSS' harassment, discrimination, and retaliation policy has been violated.
5. The supervisor shall counsel the complainant and outline possible options for informal/formal resolution of the complaint.
6. No adverse action will be taken against an employee for filing a complaint.
7. The employee filing the complaint will be notified regarding outcome of the investigation.

INFORMAL COMPLAINT

Upon receipt of a verbal complaint and review by appropriate administration, the supervisor shall counsel employee and outline possible options for informal resolution of the complaint. The supervisor will review facts, impact of conduct, efforts to correct, and the complainant's recommended resolution. Should informal resolution be achieved, the supervisor shall follow up with complainant to ensure that the behavior(s) initially generating the complaint have been corrected and that there is not a likelihood of recurrence. The supervisor shall report on the monitoring to the Assistant Superintendent, Human Resources.

FORMAL COMPLAINT

If informal resolution of the complaint is not quickly achieved, or if the complainant files a written complaint, the Assistant Superintendent, Human Resources or designee shall conduct a thorough and complete investigation. An appropriate investigation may include interviewing the complainant, the alleged harasser, witnesses, and other suspected victims.

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The comprehensive investigation of a formal complaint will be conducted to gather information that supports a fair and just decision. The Assistant Superintendent, Human Resources or designee shall determine whether interim measures, such as scheduling changes, transfers, or leaves need to be taken before the investigation is completed to ensure that further incidents do not occur. The Assistant Superintendent, Human Resources or designee shall ensure that such interim measures do not constitute retaliation. Upon completion of the investigation, the Assistant Superintendent, Human Resources or designee shall render his/her findings and render a determination as to whether the alleged conduct constitutes harassment, discrimination, and/or retaliation. The Assistant Superintendent, Human Resources shall look at the record as a whole and the totality of the circumstances, including the nature of the alleged harassment, discrimination, or retaliation, the context in which the alleged incidents occurred, and the perspective of the victim.

REMEDIAL ACTION

If the investigation reveals there is reasonable cause to believe that unlawful harassment, discrimination, or retaliation has occurred, FCSS shall take appropriate action to ensure that the offensive conduct ceases and will not recur. Actions taken in response to substantiated allegations of harassment, discrimination, or retaliation may include: reprimand, reassignment, transfer, and/or disciplinary action up to and including dismissal. Unlawful harassment, discrimination, and/or retaliation shall be deemed to be insubordination, a violation of or refusal to obey state law and the policies and regulations of the County Superintendent, and all other legally expressed causes for disciplinary action against public school employees. The harasser(s) and other employees, if appropriate, will be informed that appropriate action shall be taken if further acts of harassment, discrimination, or retaliation occur.

APPEAL PROCESS

Following the complainant's receipt of the disposition of the complaint by the Assistant Superintendent, Human Resources or designee, the complainant may, if not satisfied with the disposition, appeal the matter to the Deputy Superintendent-Educational Services, within ten (10) calendar days that disposition is dated. The complainant's appeal shall be in writing, signed by the complainant, and completed on a form prescribed by the County Superintendent. The appeal shall state specifically the reasons why the complainant is dissatisfied with the report and recommended disposition by the Assistant Superintendent, Human Resources.

The Deputy Superintendent shall review the basis for the complainant's appeal and make a decision based on the record presented. The Superintendent reserves his/her rights to determine if it is necessary to collect additional information and/or to accept or modify the final disposition and action implemented as a result of the complaint.

CONFIDENTIALITY

All complaints and allegations of harassment, discrimination, and/or retaliation shall be kept confidential to the extent necessary, to carry out the investigation or to take other subsequent necessary action.

All FCSS employees involved in processing harassment, discrimination, and/or retaliation complaints shall endeavor in good faith to protect the privacy of all parties involved in a complaint. Discussions among FCSS employees regarding harassment, discrimination, and retaliation

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complaints shall be prohibited unless necessary to process and/or investigate the facts surrounding the complaint. County Superintendent employees shall not have access to files concerning harassment, discrimination, and/or retaliation complaints unless the employees are assigned to process and/or investigate the complaint. FCSS' files pertaining to harassment, discrimination, and/or retaliation complaints shall not be made available to the general public. All matters pertaining to the filing, investigation, and resolution of harassment, discrimination, and retaliation complaints shall be confidential insofar as appropriate. Files pertaining to harassment, discrimination, and/or retaliation complaints shall not become public records unless disclosure is compelled by applicable legal processes.

ENFORCEMENT

A violation of FCSS' policy prohibiting harassment, discrimination, and/or retaliation shall constitute just cause for discipline, up to and including dismissal, and shall be deemed to be a violation of or refusal to obey state law and the policies and regulations of the County Superintendent.

Adopted: 04/07/1997

Amended: 12/05/2005; 04/14/2010; 04/04/2011; 4/11/2012; 10/22/2013; 01/20/2016; 02/23/2016; 08/14/2020; 10/01/2020

REFERENCES

Superintendent Policy SP HR-1315