

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 FCSS 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.

For purposes of this policy, employees include job applicants, interns, volunteers, and persons who contracted with the FCSS to provide services, as applicable. Moreover, the FCSS prohibits sexual harassment of FCSS 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. This policy shall not be used to resolve any complaint by a student.

QUICK LINKS

[Supervisor Report of Incident/Complaint
Incident/Complaint Form
Incident/Complaint 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 FCSS designates the following position as the Title IX and Equal Employment Opportunity Coordinator for Nondiscrimination in Employment:

Deputy Superintendent, Instructional Services
Office of the Fresno County Superintendent of Schools
1111 Van Ness Avenue
Fresno, CA 93721-2000
(559) 265-3000
dlira@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 FCSS' policy is to prohibit any form of discrimination, harassment, and retaliation, whether through face-to-face interactions, phone calls, email, text messages and/or social media. This policy further provides a mechanism for the reporting and resolution of complaints.

DISCRIMINATION

The FCSS prohibits unlawful discrimination and retaliation against and/or harassment by any coworker, supervisor, manager, or other person with whom a FCSS employee interacts with in the course of employment, on the basis of the employee's actual or perceived race; color; ancestry; national origin; age; religious creed; pregnancy, childbirth, termination of pregnancy, or

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

lactation, including related medical conditions and recovery; parental, family, or marital status; physical or mental disability; medical condition; genetic information; veteran or military status; sex; sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; or association with a person or group with one or more of these actual or perceived characteristics.

The FCSS also prohibits discrimination against employees or job applicants on the basis of reproductive health decision-making, defined as a person's decision to use or access a particular drug, device, product or medical service for reproductive health. (Government Code 12926, 12940).

Prohibited discrimination or harassment includes, but is not limited to, unwelcome conduct, whether verbal, physical, or visual, based on any of the protected classes 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.

An FCSS 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.

Discrimination in employment based on the characteristics listed above is prohibited in all areas of employment and in all employment-related practices, including the following:

1. Hiring, compensation, terms, conditions, and other privileges of employment.
2. Taking adverse employment actions such as termination or denial of employment, promotion, job assignment, or training.
3. Unwelcome conduct, whether verbal, physical, or visual, that is offensive and so severe or pervasive as to adversely affect an employee's employment opportunities or that has the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive work environment.
4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code 12940 or 2 CCR 11006-11086, such as:
 - a. Sex discrimination as specified in Superintendent Policy 4319.11 – Sexual Harassment.
 - b. Religious creed discrimination based on an employee's religious belief or observance, including religious dress or grooming practices, or based on the FCSS' failure or refusal to use reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement.
 - c. Requiring medical or psychological examination of a job applicant or making an inquiry into whether a job applicant has a mental or physical disability or a medical condition or as to the severity of any such disability or condition, without the showing of a job-related need or business necessity.
 - d. Failure to make reasonable accommodation for the known physical or mental disability of an applicant or employee or to engage in a timely, good faith, interactive process with an employee who has requested such accommodations

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

in order to determine the effective reasonable accommodations, if any, to be provided to the employee.

- e. Requiring an applicant or employee to disclose information relating to the employee's reproductive health decision-making.

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. Prohibited behavior 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, sexual orientation, gender, gender identity, gender expression, physical or mental disability, or any other protected classification specified above.

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:
 - 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 FCSS 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' anti-harassment and discrimination policy, how to recognize harassment, discrimination and retaliation, how to respond appropriately, and the components of the FCSS' 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 FCSS' anti-discrimination and harassment policy to staff;
3. Ensuring prompt, thorough, and fair investigation of complaints; and

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

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, harassment or retaliation 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;
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, harassment or retaliation laws.

REPORTING COMPLAINTS

Any FCSS 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 and the Deputy Superintendent, Instructional Services.

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 Policy 5145.71.

Employee complaints that allege unlawful sexual harassment by FCSS employees will be processed under Superintendent Policy SP HR – 4319.11 or 4319.12 as determined by the Title IX Coordinator.

IMPORTANT NOTE

A FCSS 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:

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

- 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 the FCSS, an employee may file a complaint with the following agencies:

California Civil Rights Department

1277 E. Alluvial Avenue, Suite 101 Fresno, California 93720

Phone: (800) 884-1684

www.cacivilrights.ca.gov

Equal Employment Opportunity Commission (EEOC)

2500 Tulare Street, Suite 2601

Fresno, California 93721

Phone: (559) 753-8480

www.eeoc.gov/field-office/fresno/location

COMPLAINT PROCESS

The following procedures shall be used when a FCSS 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 protected 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 an employer generated 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' anti-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 the employee and outline possible options for informal complaint resolution. 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.

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS**FORMAL COMPLAINT**

If informal resolution of the complaint is not quickly achieved, or if the complainant files a formal, 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.

INVESTIGATION, REPORTING & DECISION

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 or designee 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 formal disciplinary action, up to and including dismissal. Unlawful harassment, discrimination, and/or retaliation shall be deemed to be violations of or refusal to obey federal and state law, the policies and regulations of the FCSS, and all other legal causes for disciplinary action against public school employees. The offender(s) and other involved employees, if any, 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-Instructional Division, 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 FCSS. The appeal shall state specifically the reasons why the complainant is dissatisfied with the outcome 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 Deputy 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.

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS**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 any 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 involved parties. Discussions among FCSS employees regarding harassment, discrimination, and retaliation complaints shall be prohibited unless necessary to process and/or investigate the facts surrounding the complaint. FCSS 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 to the extent required by law. 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 federal and state law and FCSS' policies and regulations.

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; 11/3/2023; 08/01/2024; 09/16/2024

REFERENCES

Superintendent Policy SP HR-4319.11

Superintendent Policy SP HR – 4319.12

Refer to 5145.3 – Nondiscrimination/Harassment (SP & BP) and 5145.3 Nondiscrimination/Harassment (AR) when incident/complaint involves a student.

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