

Personnel

CIVIL AND LEGAL RIGHTS

BP 4119.1 (a)

The Board of Trustees believes that the personal life of an employee is not an appropriate concern of the district, except as it may directly relate to the employee's performance of his/her duties.

An employee's ~~religious or political~~ **personal beliefs and activities, including religious, cultural, social, or other beliefs or activities,** or lack thereof, shall not be grounds for ~~any discrimination or~~ disciplinary action **against the employee,** by the district, provided that ~~these~~ **the beliefs or** activities do not violate law, Board policy, or administrative regulation.

(cf. 4030 - Nondiscrimination in Employment)

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

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

The district shall make no inquiry concerning the personal values, attitudes, and beliefs of district employees or their sexual orientation or political or religious affiliations, beliefs, or opinions except when authorized by law. In addition, no district employee shall be required to provide critical appraisals of other individuals with whom the employee has a familial relationship. However, the district reserves the right to access any publicly available information about any employee.

No employee shall be disciplined or retaliated against solely for acting to protect a student engaged in conduct authorized under Education Code 48907 or 48950.

When necessary to protect the health, welfare, or safety of students and staff, school officials may search district property under an employee's control.

~~A teacher shall have the right to refuse to submit to any evaluation or survey conducted by the district concerning personal values, attitudes, and beliefs; sexual orientation; political affiliations or opinions; critical appraisals of other individuals with whom the teacher has a family relationship; or religious affiliations or beliefs. (Education Code 49091.24)~~

~~Employees do not have a reasonable expectation of privacy with regards to district property under an employee's control including, but not limited to, desks, classrooms, offices, file cabinets, computers, or phones. As necessary to protect the health, welfare, or safety of students and staff, school officials may search such items in order to uncover evidence that the employee is violating the law, Board policy, administrative regulation, or other rules of the district or school.~~

(cf. 3515 - Campus Security)

(cf. 4040 - Employee Use of Technology)

Whistleblower Protection

CIVIL AND LEGAL RIGHTS, continued

BP 4119.1 (b)

An employee shall have the right to disclose to a Board member, a school administrator, a member of the County Board of Education, County Superintendent of Schools, or the Superintendent of Public Instruction any improper governmental activity by the district or a district employee that violates state or federal law, is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. When the employee has reasonable cause to believe that the information discloses a violation of state or federal statute or a violation or noncompliance with a state or federal rule or regulation, he/she has the right to disclose such information to a government or law enforcement agency or to refuse to participate in any such activity. (Education Code 44112, 44113; Labor Code 1102.5)

The Superintendent or designee shall prominently display in lettering larger than size 14 point type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline maintained by the office of the California Attorney General. (Labor Code 1102.8)

No employee shall use or attempt to use his/her official authority or influence to intimidate, threaten, coerce, or command another employee for the purpose of interfering with that employee's right to disclose improper governmental activity. (Education Code 44113)

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

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

An employee who has disclosed improper governmental activity and believes that he/she has subsequently been subjected to acts or attempted acts of reprisal shall file a written complaint in accordance with the district's complaint procedures. After filing a complaint with the district, ~~he/she~~ **the employee** may also file a copy of the complaint with local law enforcement **and/or seek civil law remedies against the supervisor or administrator who retaliated or attempted to retaliate against him/her, in** accordance with Education Code 44114.

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 4144/4244/4344 - Complaints)

Protection Against Liability

No employee shall be liable for harm caused by his/her act or omission when acting within the scope of employment or district responsibilities; **when the employee's** ~~For the protection against liability to apply, the act or omission must be~~ **is** in conformity with federal, ~~or state,~~ **law, district policy, or administrative regulation; or when the employee's act or omission is** ~~local laws and must be~~ in furtherance of an effort to control, discipline, expel, or suspend a student, or to maintain order or control in the classroom or school. (20 USC 6736)

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

(cf. 9260 - Legal Protection)

CIVIL AND LEGAL RIGHTS, continued

BP 4119.1 (c)

The protection against liability shall not apply when: ~~(20 USC 6736)~~

1. The employee acted with willful or criminal misconduct, gross negligence, recklessness, or a conscious, flagrant indifference to the ~~harmed person's rights to~~ or safety **or an individual harmed.**
2. The employee caused harm by operating a motor vehicle or other vehicle requiring license or insurance.
3. The employee was not properly licensed, if required, by state law for such activities.
4. The employee was found by a court to have violated a federal or state civil rights law.
5. The employee was under the influence of alcohol or any drug at the time of the misconduct.
6. The misconduct constituted a crime of violence pursuant to 18 USC 16 or an act of terrorism for which the employee has been convicted in a court.
7. The misconduct involved a sexual offense for which the employee has been convicted in a court.
- 8. The misconduct occurred during background investigations, or other actions, involved in the employee's hiring.**

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination ~~on the basis of sex~~

7050-7058 Political activities of school officers and employees

44040 Discrimination based on employee's appearance before certain boards or committees

44110-44114 Reporting by school employees of improper governmental activity

48907 Student freedom of expression; employee's protection of student rights

48950 Speech and other communication

49091.24 Teacher rights to refuse evaluation/survey of personal life

CIVIL CODE

51 Unruh Civil Rights Act

GOVERNMENT CODE

815.3 Intentional torts

820-823 Tort Claims Act

825.6 Indemnification of public entity

3540.1 Public employment definitions

3543.5 Interference with employee's rights prohibited

12650-12656 False claims actions

12940-12951 Discrimination prohibited; unlawful practices

CIVIL AND LEGAL RIGHTS, continued

BP 4119.1 (d)

Legal Reference, continued:

LABOR CODE

1102.5-1106 Whistleblower protections

UNITED STATES CODE, TITLE 18

16 Crime of violence defined

UNITED STATES CODE, TITLE 20

6731-6738 Teacher liability protection

UNITED STATES CODE, TITLE 42

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

2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended

2000h-2000h-6 Title IX, 1972 Education Act Amendments

12101-12213 Americans with Disabilities Act

COURT DECISIONS

Hartnett v. Crosier, (2012) 205 Cal.App.4th 685

Johnson v. Poway Unified School District, (2011) 658 F.3d 954

Ohton v. CSU San Diego, (2007) 56 Cal.Rptr.3d 111

Garcetti v. Ceballos, (2006) 543 U.S. 1186

O'Conner v. Ortega, (1987) 480 U.S. 709

New Jersey v. T.L.O., (1985) 468 U.S. 325

Management Resources:

WEB SITES

California Attorney General: <http://caag.state.ca.us>

Policy

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SAN JACINTO UNIFIED SCHOOL DISTRICT

San Jacinto, California