

**CONCEPTS AND ROLES**

The Board of Education recognizes that the success of district students and programs hinges on effective personnel. The Board desires to establish safe and supportive working conditions that will attract and retain staff members who are highly qualified and dedicated to the education and welfare of students. The district's personnel policies and related regulations shall be designed to ensure a supportive, positive climate and shall be consistent with collective bargaining agreements and in conformance with state and federal law and regulations.

As the legal representative of the district in negotiations with employee representatives, the Board shall set goals and guidelines for collective bargaining, select the bargaining team, maintain communications during the bargaining process, and adopt the negotiated contract. Terms and conditions of employment which have been negotiated and stated in employee contracts shall have the force of policy. The Board shall hear employee complaints and appeals when such hearings are in accordance with Board policy or negotiated agreements. The Board shall also adopt wage and salary schedules and shall commit budget funds for staff development so that staff members may continue developing their skills.

*(cf. 4131 - Staff Development)*

*(cf. 4141/4241 - Collective Bargaining Agreement)*

*(cf. 4143/4243 - Negotiations/Consultation)*

*(cf. 4144/4244/4344 - Complaints)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

*(cf. 9000 - Role of the Board)*

The Superintendent has primary responsibility for overseeing the district's personnel system. To support this effort, the Board shall approve a framework for sound hiring practices. The Superintendent shall nominate all personnel for employment, and the Board shall approve only those persons so recommended. Individuals who approach Board members regarding prospective employment shall be referred to the Superintendent or designee.

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4111/4211/4311 - Recruitment and Selection)*

The Superintendent or designee shall assign and supervise the work of all employees and shall evaluate their work in accordance with effective accountability systems approved by the Board. The Superintendent or designee also shall recommend disciplinary action which the Board may take against employees when warranted pursuant to Board policy, administrative regulations and/or state or federal law.

*(cf. 4115 - Evaluation/Supervision)*

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 4215 - Evaluation/Supervision)*

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

*(cf. 4315 - Evaluation/Supervision)*

## **CONCEPTS AND ROLES** (continued)

The Board recognizes that every employee has a stake in the district's successful operation. The Board encourages all district employees to express their ideas, concerns and proposals related to the improvement of working conditions and the total educational program. The Superintendent or designee shall establish procedures whereby he/she will receive and consider employee suggestions and submit them, when appropriate, for consideration by the Board.

### *Legal Reference:*

#### **EDUCATION CODE**

*35020 Duties of employees fixed by governing board*

*35035 Powers and duties of superintendent*

*35160 Powers of governing board*

#### **GOVERNMENT CODE**

*3540-3549.3 Public education employer-employee relations*

## DRUG AND ALCOHOL-FREE WORKPLACE

The Board of Education believes that the maintenance of a drug- and alcohol-free workplace is essential to staff and student safety and to help ensure a productive and safe work and learning environment.

*(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)*

An employee shall not unlawfully manufacture, distribute, dispense, possess, or use any controlled substance in the workplace. (Government Code 8355; 41 USC 8103)

Employees are prohibited from being under the influence of controlled substances or alcohol while on duty. For purposes of this policy, *on duty* means while an employee is on duty during both instructional and noninstructional time in the classroom or workplace, at extracurricular or cocurricular activities, or while transporting students or otherwise supervising them. *Under the influence* means that the employee's capabilities are adversely or negatively affected, impaired, or diminished to an extent that impacts the employee's ability to safely and effectively perform his/her job.

*(cf. 4032 - Reasonable Accommodation)*

The Superintendent or designee shall notify employees of the district's prohibition against drug use and the actions that will be taken for violation of such prohibition. (Government Code 8355; 41 USC 8103)

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

An employee shall abide by the terms of this policy and shall notify the district, within five days, of his/her conviction for violation in the workplace of any criminal drug statute. (Government Code 8355; 41 USC 8103)

The Superintendent or designee shall notify the appropriate federal granting or contracting agency within 10 days after receiving notification, from an employee or otherwise, of any conviction for a violation occurring in the workplace. (41 USC 8103)

In accordance with law and the district's collective bargaining agreements, the Superintendent or designee shall take appropriate disciplinary action, up to and including termination, against an employee for violating the terms of this policy and/or shall require the employee to satisfactorily participate in and complete a drug assistance or rehabilitation program approved by a federal, state, or local public health or law enforcement agency or other appropriate agency.

*(cf. 4112 - Appointment and Conditions of Employment)*

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 4212 - Appointment and Conditions of Employment)*

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

## **DRUG AND ALCOHOL-FREE WORKPLACE** (continued)

### **Drug-Free Awareness Program**

The Superintendent or designee shall establish a drug-free awareness program to inform employees about: (Government Code 8355; 41 USC 8103)

1. The dangers of drug abuse in the workplace
2. The district's policy of maintaining a drug-free workplace
3. Available drug counseling, rehabilitation, and employee assistance programs

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

4. The penalties that may be imposed on employees for drug abuse violations occurring in the workplace

#### *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

8101-8106 Drug-Free Workplace Act

##### CODE OF FEDERAL REGULATIONS, TITLE 21

1308.01-1308.49 Schedule of controlled substances

##### COURT DECISIONS

Cahoon v. Governing Board of Ventura USD, (2009) 171 Cal.App.4th 381

Ross v. RagingWire Telecommunications, Inc., (2008) 42 Cal.4th 920

*Management Resources: (see next page)*

**DRUG AND ALCOHOL-FREE WORKPLACE** (continued)

*Management Resources:*

**WEB SITES**

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

*California Department of Health Care Services: <http://www.dhcs.ca.gov>*

*U.S. Department of Labor: <http://www.dol.gov>*

**NONDISCRIMINATION IN EMPLOYMENT**

Note: The following Board policy and accompanying administrative regulation are **mandated** pursuant to Government Code 11138 and 2 CCR 11023. The California Fair Employment and Housing Act (FEHA) (Government Code 12900-12996) prohibits districts and district employees from harassing or discriminating against employees and job applicants on the basis of actual or perceived race, color, ancestry, national origin, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, military and veteran status, sex, sexual orientation, gender, gender identity, or gender expression. Pursuant to Government Code 12940, these protections apply to employees, job applicants, persons who serve in an unpaid internship or other limited-duration program to gain unpaid work experience, volunteers, and independent contractors.

The same or similar protections are available to employees and job applicants under various provisions of federal law, including Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-7), Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17), Title IX of the Education Amendments of 1972 (20 USC 1681-1688), the Americans with Disabilities Act (42 USC 12101-12213), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and the Genetic Information Nondiscrimination Act (42 USC 2000ff-2000ff-11).

For policy addressing sexual harassment of and by employees, see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment.

The Board of Education is determined to provide a safe, positive environment where all district employees are assured of full and equal employment access and opportunities, protection from harassment and intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. For purposes of this policy, *employees* include job applicants, interns, volunteers, and persons who contracted with the district to provide services, as applicable.

(*cf.* 1240 - Volunteer Assistance)

(*cf.* 3312 - Contracts)

(*cf.* 3600 - Consultants)

(*cf.* 4111/4211/4311 - Recruitment and Selection)

Note: 2 CCR 11027.1, as added by Register 2018, No. 20, provides a definition of "national origin" for the purpose of implementing state nondiscrimination laws.

No district employee shall be discriminated against or harassed by any coworker, supervisor, manager, or other person with whom the employee comes in contact in the course of employment, on the basis of the employee's actual or perceived race, color, ancestry, national origin, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, military and veteran status, sex, sexual orientation, gender, gender identity, gender expression, or association with a person or group with one or more of these actual or perceived characteristics.

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

Note: 2 CCR 11028, as amended by Register 2018, No. 20, prohibits inquiry into an employee's immigration status or discrimination on the basis of such status, unless the district provides clear and convincing evidence that it is required to do so in order to comply with federal immigration law. Districts should consult legal counsel as necessary.

## **NONDISCRIMINATION IN EMPLOYMENT** (continued)

The district shall not inquire into any employee's immigration status nor discriminate against an employee on the basis of immigration status, unless there is clear and convincing evidence that it is necessary to comply with federal immigration law. (2 CCR 11028)

Note: The following items illustrate unlawful discriminatory practices as specified in Government Code 12940. Labor Code 1197.5 prohibits the payment of different wage rates to employees for similar work based on sex, race, or ethnicity and prohibits the use of prior salary history by itself to justify any disparity in compensation under the bona fide factor exception.

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. Discrimination in hiring, compensation, terms, conditions, and other privileges of employment

*(cf. 4151/4251/4351 - Employee Compensation)*

*(cf. 4154/4254/4354 - Health and Welfare Benefits)*

2. Taking of an adverse employment action, such as termination or the denial of employment, promotion, job assignment, or training
3. Unwelcome conduct, whether verbal, physical, or visual, that is so severe or pervasive as to adversely affect an employee's employment opportunities, or that has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment

Note: Item #4 below addresses the specific practices prohibited under Government Code 12940 or 2 CCR 11006-11086 in relation to certain protected categories. For example, because "sex" as defined in Government Code 12926 includes pregnancy, childbirth, breastfeeding, or related medical conditions, any of these conditions may be the basis for an employee's sex discrimination claim. As the specific prohibitions are too numerous to list in policy, it is recommended that district legal counsel be consulted when questions arise as to any specific claim.

4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code 12940 or 2 CCR 11006-11086, such as:
  - a. Sex discrimination based on an employee's pregnancy, childbirth, breastfeeding, or any related medical condition or on an employee's gender, gender expression, or gender identity, including transgender status

*(cf. 4033 - Lactation Accommodation)*

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

**NONDISCRIMINATION IN EMPLOYMENT** (continued)

- b. Religious creed discrimination based on an employee's religious belief or observance, including religious dress or grooming practices, or based on the district's failure or refusal to use reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement

*(cf. 4119.22/4219.22/4319.22 - Dress and Grooming)*

- c. Requirement for a medical or psychological examination of a job applicant, or 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

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

- d. Failure to make reasonable accommodation for the known physical or mental disability of an employee, or to engage in a timely, good faith, interactive process with an employee who has requested such accommodations in order to determine the effective reasonable accommodations, if any, to be provided to the employee

*(cf. 4032 - Reasonable Accommodation)*

Note: Retaliation against complainants or other participants in the grievance procedures is prohibited by Government Code 12940 and 34 CFR 110.34. In addition to the general prohibition against retaliation, Government Code 12940 provides that an employee who requests accommodation for a physical or mental disability or religious belief is protected from retaliation as specified below. CSBA recommends that this protection be extended to all protected characteristics, as provided below.
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The Board also prohibits retaliation against any district employee who opposes any discriminatory employment practice by the district or its employees, agents, or representatives or who complains, testifies, assists, or in any way participates in the district's complaint process pursuant to this policy. No employee who requests an accommodation for any protected characteristic listed in this policy shall be subjected to any punishment or sanction, regardless of whether the request was granted. (Government Code 12940; 2 CCR 11028)

Note: Pursuant to Government Code 12964.5, as added by SB 1300 (Ch. 955, Statutes of 2018), the district is prohibited from requiring an employee, in exchange for a raise or bonus or as a condition of employment or continued employment, to sign a nondisparagement agreement or similar document that would deny the employee the right to disclose information about unlawful acts in the workplace or requiring an employee to release the right to file a claim or civil action against the district.
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## **NONDISCRIMINATION IN EMPLOYMENT** (continued)

No employee shall, in exchange for a raise or bonus or as a condition of employment or continued employment, be required to sign any document that releases the employee's right to file a claim against the district or to disclose information about harassment or other unlawful employment practices. (Government Code 12964.5)

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

Note: Pursuant to 2 CCR 11019, in certain instances, an employee's (especially a supervisor's) knowledge or notice of prohibited conduct of another employee or individual may subject the district to liability. Therefore, it is recommended that the district require its employees with knowledge of harassment or discrimination to report the incident to the appropriate district authorities. In addition, Government Code 12940, as amended by SB 1300, provides that a district may be responsible for harassment of employees by nonemployees where the district knows or should have known of the conduct and failed to take immediate and corrective action, taking into consideration the extent of the district's control and other legal responsibility that the district may have with respect to the conduct of those nonemployees. Also see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment.

See the accompanying administrative regulation for requirements related to the identification of the employee who will be responsible for compliance with the nondiscrimination laws.

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment, including harassment of an employee by a nonemployee, shall report the incident to the Superintendent or designated district coordinator as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately. The district shall protect any employee who reports such incidents from retaliation.

Note: Government Code 12940 and 2 CCR 11023 require districts to take all reasonable steps to prevent prohibited discrimination and harassment, including, but not limited to, dissemination of the district's policy on the prevention of harassment, discrimination, and retaliation. In addition, Government Code 12950 requires districts to post, in prominent and accessible locations on district premises, posters developed by the California Department of Fair Employment and Housing (DFEH), which are available on DFEH's web site. For further information on prevention strategies, see the accompanying administrative regulation.

The Superintendent or designee shall use all appropriate means to reinforce the district's nondiscrimination policy, including providing training and information to employees about how to recognize harassment, discrimination, or other related conduct, how to respond appropriately, and components of the district's policies and regulations regarding discrimination. The Superintendent or designee shall regularly review the district's employment practices and, as necessary, shall take action to ensure district compliance with the nondiscrimination laws.

## **NONDISCRIMINATION IN EMPLOYMENT (continued)**

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

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

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

### *Legal Reference:*

#### EDUCATION CODE

200-262.4 Prohibition of discrimination

#### CIVIL CODE

51.7 Freedom from violence or intimidation

#### GOVERNMENT CODE

11135 Unlawful discrimination

11138 Rules and regulations

12900-12996 Fair Employment and Housing Act, especially:

12940-12952 Unlawful employment practices

12960-12976 Unlawful employment practices; complaints

#### PENAL CODE

422.56 Definitions, hate crimes

#### CODE OF REGULATIONS, TITLE 2

11006-11086 Discrimination in employment, especially:

11013 Recordkeeping

11019 Terms, conditions and privileges of employment

11023 Harassment and discrimination prevention and correction

11024 Sexual harassment training and education

11027-11028 National origin and ancestry discrimination

#### CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs

#### UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

#### UNITED STATES CODE, TITLE 29

621-634 Age Discrimination in Employment Act

794 Section 504 of the Rehabilitation Act of 1973

#### UNITED STATES CODE, TITLE 42

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

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

2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008

2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964

6101-6107 Age discrimination in federally assisted programs

12101-12213 Americans with Disabilities Act

*Legal Reference continued: (see next page)*

## **NONDISCRIMINATION IN EMPLOYMENT (continued)**

### *Legal Reference: (continued)*

CODE OF FEDERAL REGULATIONS, TITLE 28

*35.101-35.190 Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 34

*100.6 Compliance information*

*104.7 Designation of responsible employee for Section 504*

*104.8 Notice*

*106.8 Designation of responsible employee and adoption of grievance procedures*

*106.9 Dissemination of policy*

*110.1-110.39 Nondiscrimination on the basis of age*

### COURT DECISIONS

*Thompson v. North American Stainless LP, (2011) 131 S.Ct. 863*

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

### *Management Resources:*

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PUBLICATIONS

California Law Prohibits Workplace Discrimination and Harassment

Transgender Rights in the Workplace

Workplace Harassment Guide for California Employers

Your Rights and Obligations as a Pregnant Employee

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

Notice of Non-Discrimination, August 2010

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

EEOC Compliance Manual

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

### WEB SITES

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

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

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

## NONDISCRIMINATION IN EMPLOYMENT

Note: Pursuant to Government Code 11138 and 2 CCR 11023, districts are **mandated** to adopt rules and regulations to ensure that district programs and activities are free from unlawful discriminatory practices. Pursuant to Government Code 12940, protections against discrimination apply to employees, job applicants, persons who serve in an unpaid internship or other limited-duration program to gain unpaid work experience, volunteers, and independent contractors.

All allegations of discrimination in employment, including those involving an employee, job applicant, intern, volunteer, or person contracted to provide services to the district shall be investigated and resolved in accordance with procedures specified in this administrative regulation.

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

*(cf. 1240 - Volunteer Assistance)*

*(cf. 3312 - Contracts)*

*(cf. 3600 - Consultants)*

*(cf. 4032 - Reasonable Accommodation)*

Note: Many nondiscrimination laws and regulations require identification of an employee who will be responsible for compliance with the nondiscrimination laws. For example, pursuant to 34 CFR 104.7, 106.8, and 110.25, the district is required to designate the person(s) responsible for the overall implementation of the requirements of federal laws which prohibit discrimination on the basis of disability, sex, and age, i.e., Section 504 of the Rehabilitation Act of 1973 (29 USC 794), Title IX of the Education Amendments of 1972 (20 USC 1681-1688), and the Age Discrimination in Employment Act (29 USC 621-634). The district should fill in the blanks below to designate the responsible employee and contact information.

The district designates the position identified below as its coordinator for nondiscrimination in employment (coordinator) to coordinate the district's efforts to comply with state and federal nondiscrimination laws and to answer inquiries regarding the district's nondiscrimination policies. The coordinator may be contacted at:

Assistant Superintendent Human Resources  
Napa Valley Unified School District  
2425 Jefferson Street  
Napa, California 94558  
(707) 253-3571

## Measures to Prevent Discrimination

Note: Pursuant to Government Code 12940 and 2 CCR 11023, the district is required to take all reasonable steps to prevent unlawful discrimination and harassment. 2 CCR 11023 specifies certain requirements to be included in the district's policy. The following section reflects the requirements of 2 CCR 11023 and other applicable laws or regulations, as indicated.

To prevent unlawful discrimination, harassment, and retaliation in district employment, the Superintendent or designee shall implement the following measures:

**NONDISCRIMINATION IN EMPLOYMENT** (continued)

Note: Pursuant to Government Code 12950, districts are required to post the California Department of Fair Employment and Housing's (DFEH) posters entitled California Law Prohibits Workplace Discrimination and Harassment and Transgender Rights in the Workplace, as provided in item #1. DFEH rules require that these materials be posted electronically and in every location where the district has employees (e.g., district office, hiring office, each school site). These posters and the rules for posting are available on the DFEH web site.

In addition, 2 CCR 11049 requires posting a notice of the rights and obligations of employees who are pregnant, have a related medical condition, or are recovering from childbirth. See AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave.

1. Display in a prominent and accessible location at every work site where the district has employees and post electronically on computers in a conspicuous location, the California Department of Fair Employment and Housing (DFEH) posters in regard to workplace discrimination and harassment and the rights of transgender employees (Government Code 12950)

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

2. Publicize the district's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, by: (5 CCR 4960; 34 CFR 100.6, 106.9)
  - a. Including them in each announcement, bulletin, or application form that is used in employee recruitment
  - b. Posting them in all district schools and offices, including staff lounges and other prominent locations
  - c. Posting them on the district's web site and providing easy access to them through district-supported social media, when available

*(cf. 1113 - District and School Web Sites)*

*(cf. 1114 - District-Sponsored Social Media)*

*(cf. 4111/4211/4311 - Recruitment and Selection)*

3. Disseminate the district's nondiscrimination policy to all employees by one or more of the following methods: (2 CCR 11023)
  - a. Printing and providing a copy of the policy to all employees, with an acknowledgment form for each employee to sign and return
  - b. Sending the policy via email with an acknowledgment return form
  - c. Posting the policy on the district intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies

**NONDISCRIMINATION IN EMPLOYMENT** (continued)

- d. Discussing the policy with employees upon hire and/or during a new hire orientation session
- e. Any other way that ensures employees receive and understand the policy

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

- 4. Provide to employees a handbook which contains information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to employees who believe they have been the victim of any discriminatory or harassing behavior

Note: Item #5 below provides for training regarding the district's discrimination policy and reporting procedures. For requirements specifically pertaining to sexual harassment training, see AR 4119.11/4219.11/4319.11 - Sexual Harassment. Pursuant to Government Code 12950.1, if the district has 50 or more employees, it must provide at least two hours of staff development regarding sexual harassment to all supervisory employees within six months of their assumption of a supervisory position and once every two years thereafter. As amended by SB 1343 (Ch. 956, Statutes of 2018), Government Code 12950.1 requires any district that has five or more employees to provide at least two hours of sexual harassment training to supervisory employees and at least one hour of sexual harassment training to all nonsupervisory employees by January 1, 2020 and once every two years thereafter.

- 5. Provide training to employees, volunteers, and interns regarding the district's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made

Note: Pursuant to Government Code 12950.2, as added by SB 1300 (Ch. 955, Statutes of 2018), districts are authorized, but not required, to provide bystander intervention training as provided below.

The district may also provide bystander intervention training to employees that includes information and practical guidance on how to recognize potentially problematic behaviors and motivates them to take action when they observe such behaviors. The training and education may include exercises to provide employees with the skills and confidence to intervene as appropriate and to provide them with resources they can call upon that support their intervention. (Government Code 12950.2)

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

- 6. Periodically review the district's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure district compliance with law

## NONDISCRIMINATION IN EMPLOYMENT (continued)

7. For any district facility where 10 percent of employees have a language other than English as their spoken language, translate the policy into every language spoken by at least 10 percent of the workforce

### Complaint Procedure

Note: 2 CCR 11023 **mandates** that a district's policy include a complaint process with specified requirements. Some of the requirements of 2 CCR 11023 are similar to those required under existing case law.

Courts have held that an employer may mitigate liability for hostile environment employment discrimination when (1) the employer took reasonable care to prevent and promptly correct the discriminatory or harassing conduct (i.e., provided a complaint procedure) and (2) the aggrieved employee unreasonably failed to take advantage of corrective opportunities offered by the employer (i.e., failure to file a complaint). In its June 1999 Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, the Equal Employment Opportunity Commission (EEOC) outlines the elements of an effective complaint procedure to include (1) a clear explanation of the process; (2) protection against retaliation; (3) designation of multiple individuals authorized to receive complaints; (4) a mechanism for prompt, thorough, and impartial investigation; (5) assurance of immediate and appropriate corrective action; and (6) information about time frames for filing charges with EEOC or DFEH.

While EEOC's guidance recommends a "prompt" investigation, neither the law nor EEOC delineates a specific time frame for resolution. EEOC's guidance acknowledges that whether an investigation is considered "prompt" may vary depending on the seriousness and complexity of the circumstances and that intermediate measures may be necessary to prevent further harassment during the investigation.

The following section, including the listed timelines, is consistent with EEOC's guidance and should be modified to reflect district practice.

Any complaint alleging unlawful discrimination or harassment shall be addressed in accordance with the following procedures:

1. **Notice and Receipt of Complaint:** A complainant may inform a direct supervisor, another supervisor, the coordinator, the Superintendent or, if available, a complaint hotline or an ombudsman. The employee's direct supervisor may be bypassed in filing a complaint where the supervisor is the subject of the complaint.

The complainant may file a written complaint in accordance with this procedure or may first attempt to resolve the situation informally with the employee's supervisor.

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the coordinator, whether or not the complainant files a written complaint.

The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and

## **NONDISCRIMINATION IN EMPLOYMENT** (continued)

location where the incident occurred, any witnesses who may have relevant information, other evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

2. **Investigation Process:** The coordinator shall initiate an impartial investigation of an allegation of discrimination or harassment within five business days of receiving notice of the alleged discriminatory or harassing behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The coordinator shall meet with the complainant to describe the district's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The coordinator shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. The coordinator shall also inform the parties that the investigation will be kept confidential to the extent possible, but that some information may be revealed as necessary to conduct an effective investigation.

*(cf. 3580 - District Records)*

*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*

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

If the coordinator determines that a detailed fact-finding investigation is necessary, the investigation shall begin immediately. As part of this investigation, the coordinator should interview the complainant, the person accused, and other persons who could be expected to have relevant information.

The coordinator shall track and document the progress of the investigation to ensure reasonable progress and shall inform the parties as necessary.

When necessary to carry out the investigation or to protect employee safety, the coordinator may discuss the complaint with the Superintendent or designee, district legal counsel, or the district's risk manager.

The coordinator shall also 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 are prevented. The coordinator shall ensure that such interim measures do not constitute retaliation.

3. **Written Report on Findings and Remedial/Corrective Action:** No more than 20 business days after receiving the complaint, the coordinator shall conclude the investigation and prepare a written report of the findings. This timeline may be extended for good cause. If an extension is needed, the coordinator shall notify the parties and explain the reasons for the extension.



**NONDISCRIMINATION IN EMPLOYMENT** (continued)

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the report shall also include any corrective action(s) that have been or will be taken to address the behavior, provide appropriate options for remedial actions and resolutions for the complainant, and ensure that retaliation or further discrimination or harassment is prevented. The report shall be presented to the Superintendent or designee.

A summary of the findings shall be presented to the complainant and the person accused.

4. **Appeal to the Board of Education:** The complainant or the person accused may appeal any findings to the Board within 10 business days of receiving the written report of the coordinator's findings. The Superintendent or designee shall provide the Board with all information presented during the investigation. Upon receiving an appeal, the Board shall schedule a hearing as soon as practicable. Any complaint against a district employee shall be addressed in closed session in accordance with law. The Board shall render its decision within 10 business days.

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 9321 - Closed Session Purposes and Agendas)*

**Other Remedies**

Note: Items #1-3 below state the time limits within which employees must file their complaints. EEOC's guidance states that it is important for employers' nondiscrimination policies to contain information about timeframes for filing charges of unlawful discrimination or harassment with EEOC or DFEH. Employees should be informed that the deadline for filing charges starts to run from the last date of the unlawful act, not from the conclusion of the district's complaint investigation. Pursuant to DFEH procedures, DFEH will automatically forward any complaint it has accepted for investigation to EEOC when the matter falls within EEOC's jurisdiction.

In addition to filing a discrimination or harassment complaint with the district, a person may file a complaint with either DFEH or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

Note: Pursuant to Government Code 12960, an employee has one year to file a complaint with DFEH, although that period may be extended under certain circumstances, such as when a person obtains knowledge of the unlawful practice after the expiration of the one-year period.

1. To file a valid complaint with DFEH, within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960

**NONDISCRIMINATION IN EMPLOYMENT** (continued)

Note: 42 USC 2000e-5 specifies that a person must file a discrimination complaint with EEOC within 180 days of the alleged discriminatory act. Pursuant to 42 USC 2000e-5, the 180-day timeline for compensation discrimination starts when the discriminatory paycheck is received and that each discriminatory paycheck restarts the timeline for the filing of a complaint.

2. To file a valid complaint directly with EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)
3. To file a valid complaint with EEOC after first filing a complaint with DFEH, within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by DFEH, whichever is earlier (42 USC 2000e-5)

**REASONABLE ACCOMMODATION**

Except when undue hardship would result to the district, the Superintendent or designee shall provide reasonable accommodation:

1. In the job application process, to any qualified job applicant with a disability
2. To enable any qualified employee with a disability to perform the essential functions of the position he/she holds or desires to hold or to enjoy equal benefits or other terms, conditions, and privileges of employment as other similarly situated employees without disabilities

No employee or job applicant who requests an accommodation for his/her physical or mental disability shall be subjected to discrimination or to any punishment or sanction, regardless of whether the request for accommodation was granted. (Government Code 12940)

The district designates the position specified in AR 4030 - Nondiscrimination in Employment as the coordinator of its efforts to comply with the Americans with Disabilities Act (ADA) and to investigate any and all related complaints.

*(cf. 4030 - Nondiscrimination in Employment)*

**Definitions**

*Disability*, with respect to an individual, is defined as any of the following: (Government Code 12926; 29 CFR 1630.2)

1. A physical or mental impairment that limits one or more of the major life activities
2. A record of such an impairment
3. Being regarded as having such an impairment

*Limits* shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (Government Code 12926)

*Essential functions* are the fundamental job duties of the position the individual with a disability holds or desires. The term does not include the marginal functions of the position. (Government Code 12926; 29 CFR 1630.2)

*Reasonable accommodation* means: (Government Code 12926; 29 CFR 1630.2)

1. For a qualified job applicant with a disability, modifications or adjustments to the job application process that enable him/her to be considered for the position he/she desires

**REASONABLE ACCOMMODATION** (continued)

2. For a qualified employee with a disability, modifications or adjustments to the work environment, or to the manner or circumstances under which the position the employee holds or desires is customarily performed, that enable him/her to perform the essential functions of that position or to enjoy equal benefits and privileges of employment as are enjoyed by the district's other similarly situated employees without disabilities

*Qualified individual with a disability* means a job applicant or employee with a disability who: (29 CFR 1630.15, 1630.2)

1. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position he/she holds or desires
2. Can perform the essential functions of the position with or without reasonable accommodation
3. Would not pose a significant risk of substantial harm, which cannot be eliminated or reduced by reasonable accommodation, to himself/herself or others in the job he/she holds or desires

*Undue hardship* is a determination based on an individualized assessment of current circumstances that shows that the provision of a specific accommodation would cause significant difficulty or expense to the district. (29 CFR 1630.2)

**Request for Reasonable Accommodation**

When requesting reasonable accommodation, an employee or his/her representative shall inform the employee's supervisor that he/she needs a change at work for a reason related to a medical condition. The supervisor shall inform the coordinator of the employee's request as soon as practicable.

When requesting reasonable accommodation for the hiring process, a job applicant shall inform the coordinator that he/she will need a reasonable accommodation during the process.

When the disability or the need for accommodation is not obvious, the coordinator may ask the employee to supply reasonable documentation about his/her disability. In requesting this documentation, the coordinator shall specify the types of information that are being sought about the employee's condition, the employee's functional limitations, and the need for reasonable accommodation. The employee may be asked to sign a limited release allowing the coordinator to submit a list of specific questions to his/her health care or vocational professional.

## **REASONABLE ACCOMMODATION** (continued)

If the documentation submitted by the employee does not indicate the existence of a qualifying disability or explain the need for reasonable accommodation, the coordinator shall request additional documentation that specifies the missing information. If the employee does not submit such additional documentation in a timely manner, the coordinator may require him/her to submit to an examination by a health care professional selected and paid for by the district.

The district may make a medical or psychological inquiry of a job applicant or require him/her to submit to a medical or psychological examination after he/she has been given a conditional offer of employment but before the commencement of his/her job duties, provided the inquiry or examination is job-related, consistent with business necessity, and required for all incoming employees in the same job classification. (Government Code 12940)

The coordinator shall not request any job applicant's or employee's genetic information except as authorized by law. (42 USC 2000ff-1, 2000ff-5)

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

In accordance with law, the coordinator shall take steps to ensure the confidentiality of information related to medical conditions or history. As applicable, he/she shall notify the supervisor or manager of the qualified individual of any reasonable accommodation granted the individual and may notify first aid and safety personnel when the disability of the qualified individual may require emergency treatment. (42 USC 12112)

*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*

### **Granting Reasonable Accommodation**

Upon receiving a request for reasonable accommodation from a qualified individual with a disability, the coordinator shall:

1. Determine the essential functions of the job involved
2. Engage in an informal, interactive process with the individual to review the request for accommodation, identify the precise limitations resulting from the disability, identify potential accommodations, and assess their effectiveness
3. Develop a plan for reasonable accommodation which will enable the individual to perform the essential functions of the job or gain equal access to a benefit or privilege of employment without imposing undue hardship on the district

A determination of undue hardship should be based on several factors, including: (29 CFR 1630.2)

**REASONABLE ACCOMMODATION** (continued)

- a. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding
- b. The overall financial resources of the facility making the accommodation, the number of persons employed at this facility, and the effect on expenses and resources of the facility
- c. The overall financial resources, number of employees, and the number, type, and location of facilities of the district
- d. The type of operation of the district, including the composition, structure, and functions of the workforce and the geographic separateness and administrative or fiscal relationship of the facility making the accommodation to other district facilities
- e. The impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business

The coordinator may confer with the site administrator, any medical advisor chosen by the district, and/or other district staff before making a final decision as to the accommodation.

**Appeal Process**

Any qualified individual with a disability who is not satisfied with the decision of the coordinator may appeal in writing to the Superintendent or designee. This appeal shall be made within 10 working days of receiving the decision and shall include:

1. A clear, concise statement of the reasons for the appeal
2. A statement of the specific remedy sought

The Superintendent or designee shall consult with the coordinator and review the appeal, together with any available supporting documents. The Superintendent or designee shall give the individual his/her decision within 15 working days of receiving the appeal.

Any further appeal for reasonable accommodation shall be considered a complaint concerning discrimination in employment and may be taken to the Board of Education in accordance with the district's procedure for such complaints.

## REASONABLE ACCOMMODATION (continued)

### *Legal Reference:*

#### CIVIL CODE

51 *Unruh Civil Rights Act*

#### GOVERNMENT CODE

12900-12996 *Fair Employment and Housing Act*

#### UNITED STATES CODE, TITLE 29

701-794e *Vocational Rehabilitation Act*

#### UNITED STATES CODE, TITLE 42

2000ff-1-2000ff-11 *Genetic Information Nondiscrimination Act of 2008*

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 *Definitions*

#### COURT DECISIONS

*A.M. v. Albertsons, LLC*, (2009) Cal.App.4th 455

*Colmenares v. Braemar Country Club, Inc.*, (2003) 29 Cal.4th 1019

*Chevron USA v. Echazabal*, (2002) 536 U.S. 73, 122 S.Ct. 2045

*US Airways, Inc. v. Barnett*, (2002) 535 U.S. 391, 122 S.Ct. 1516

### *Management Resources:*

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

#### WEB SITES

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>

## **LACTATION ACCOMMODATION**

The Board of Education recognizes the immediate and long-term health advantages of breastfeeding for infants and mothers and desires to provide a supportive environment for any district employee to express milk for her infant child upon her return to work following the birth of the child. The Board prohibits discrimination, harassment, and/or retaliation against any district employee who chooses to express breast milk for her infant child while at work.

*(cf. 4030 - Nondiscrimination in Employment)*

The district shall provide a reasonable amount of break time to accommodate an employee each time she has a need to express breast milk for her infant child. (Labor Code 1030)

To the extent possible, such break time shall run concurrently with the break time already provided to the employee. Any additional break time used by a non-exempt employee for this purpose shall be unpaid. (Labor Code 1030; 29 USC 207)

The employee shall be provided a private location, other than a restroom, which is in close proximity to her work area and meets the requirements of Labor Code 1031 and 29 USC 207, as applicable.

Employees are encouraged to notify their supervisor or other appropriate personnel in advance of their intent to make use of the accommodations offered for employees who are nursing mothers. As needed, the supervisor shall work with the employee to address arrangements and scheduling in order to ensure that the employees' essential job duties are covered during the break time.

Lactation accommodations may be denied only in limited circumstances in accordance with law. (Labor Code 1032; 29 USC 207)

Before an employee's supervisor makes a determination to deny lactation accommodations, he/she shall consult the Superintendent or designee. In any case in which lactation accommodations are denied, the Superintendent or designee shall document the options that were considered and the reasons for denying the accommodations.

*Legal Reference: (see next page)*



## LACTATION ACCOMMODATION (continued)

### Legal Reference:

#### EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

#### CIVIL CODE

43.3 Right of mothers to breastfeed in any public or private location

#### GOVERNMENT CODE

12940 Discriminatory employment practices

12945 Discrimination based on pregnancy, childbirth, or related medical conditions

#### LABOR CODE

1030-1033 Lactation accommodation

#### CODE OF REGULATIONS, TITLE 2

11035-11049 Sex discrimination; pregnancy and related medical conditions

#### UNITED STATES CODE, TITLE 29

207 Fair Labor Standards Act; lactation accommodation

#### FAIR EMPLOYMENT AND HOUSING COMMISSION DECISIONS

Department of Fair Employment and Housing v. Acosta Tacos (Chavez), FEHC Precedential Decision 09-03P, 2009

### Management Resources:

#### CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS PUBLICATIONS

Rest Periods/Lactation Accommodation, Frequently Asked Questions

#### CALIFORNIA DEPARTMENT OF PUBLIC HEALTH PUBLICATIONS

Minimum Requirements of the California Lactation Accommodation Law

#### CENTERS FOR DISEASE CONTROL AND PREVENTION PUBLICATIONS

Lactation Support Program Toolkit

#### FEDERAL REGISTER

Reasonable Break Time for Nursing Mothers, December 21, 2010, Vol. 75, No. 244, pages 80073-80079

#### OFFICE OF THE SURGEON GENERAL PUBLICATIONS

The Surgeon General's Call to Action to Support Breastfeeding, 2011

#### HEALTH RESOURCES AND SERVICES ADMINISTRATION PUBLICATIONS

The Business Case for Breastfeeding: Steps for Creating a Breastfeeding Friendly Worksite, Toolkit, 2008

#### U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION, PUBLICATIONS

Fact Sheet #3: Break Time for Nursing Mothers under the FLSA, rev. December 2010

#### WEB SITES

California Department of Industrial Relations, Division of Labor and Standards Enforcement:

<http://www.dir.ca.gov/dlse>

California Department of Public Health: <http://www.cdph.ca.gov>

California Women, Infants and Children: <http://www.wicworks.ca.gov>

Centers for Disease Control and Prevention: <http://www.cdc.gov>

Health Resources and Services Administration: <http://www.hrsa.gov>

Office of the Surgeon General: <http://www.surgeongeneral.gov>

U.S. Department of Labor, Wage and Hour Division, Break Time for Nursing Mothers:

<http://www.dol.gov/whd/nursingmothers>

**EMPLOYEE USE OF TECHNOLOGY**

The Board of Education recognizes that technological resources enhance employee performance by offering effective tools to assist in providing a quality instructional program; facilitating communications with parents/guardians, students, and the community; supporting district and school operations; and improving access to and exchange of information. The Board expects all employees to learn to use the available technological resources that will assist them in the performance of their job responsibilities. As needed, employees shall receive professional development in the appropriate use of these resources.

*(cf. 0440 - District Technology Plan)*  
*(cf. 1100 - Communication with the Public)*  
*(cf. 1113 - District and School Web Sites)*  
*(cf. 1114 - District-Sponsored Social Media)*  
*(cf. 4032 - Reasonable Accommodation)*  
*(cf. 4131 - Staff Development)*  
*(cf. 4231 - Staff Development)*  
*(cf. 4331 - Staff Development)*

Employees shall be responsible for the appropriate use of technology and shall use district technology primarily for purposes related to their employment. Employees shall be notified that computer files and electronic communications are not private. Technological resources shall not be used to transmit confidential information about students, employees, or district operations without authority.

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*  
*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*  
*(cf. 4119.21/4219.21/4319.21 - Professional Standards)*  
*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*  
*(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)*  
*(cf. 5125 - Student Records)*  
*(cf. 5125.1 - Release of Directory Information)*  
*(cf. 6162.6 - Use of Copyrighted Materials)*  
*(cf. 6163.4 - Student Use of Technology)*

*District technology* includes, but is not limited to, computers, the district's computer network including servers and wireless computer networking technology (wi-fi), the Internet, email, USB drives, wireless access points (routers), tablet computers, smartphones and smart devices, telephones, cellular telephones, personal digital assistants, pagers, MP3 players, wearable technology, any wireless communication device including emergency radios, and/or future technological innovations, whether accessed on or off site or through district-owned or personally owned equipment or devices.

The Superintendent or designee shall establish an Acceptable Use Agreement which outlines employee obligations and responsibilities related to the use of district technology. Upon employment and whenever significant changes are made to the district's Acceptable Use Agreement, employees shall be required to acknowledge in writing that they have read and agreed to the Acceptable Use Agreement.

## **EMPLOYEE USE OF TECHNOLOGY (continued)**

Employees shall not use district technology to access, post, submit, publish, or display harmful or inappropriate matter that is threatening, obscene, disruptive, sexually explicit, or unethical or that promotes any activity prohibited by law, Board policy, or administrative regulations.

*Harmful matter* includes matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest and is matter which depicts or describes, in a patently offensive way, sexual conduct and which lacks serious literary, artistic, political, or scientific value for minors. (Penal Code 313)

The Superintendent or designee shall ensure that all district computers with Internet access have a technology protection measure that protects against access to visual depictions that are obscene, child pornography, or harmful to minors and that the operation of such measures is enforced. The Superintendent or designee may disable the technology protection measure during use by an adult to enable access for bona fide research or other lawful purpose. (20 USC 7131; 47 USC 254)

The Superintendent or designee shall annually notify employees in writing that they have no reasonable expectation of privacy in the use of any equipment or other technological resources provided by or maintained by the district, including, but not limited to, computer files, email, text messages, instant messaging, and other electronic communications, even when provided their own password. To ensure proper use, the Superintendent or designee may monitor employee usage of district technology at any time without advance notice or consent and for any reason allowed by law.

In addition, employees shall be notified that records maintained on any personal device or messages sent or received on a personal device that is being used to conduct district business may be subject to disclosure, pursuant to a subpoena or other lawful request.

Employees shall report any security problem or misuse of district technology to the Superintendent or designee.

Inappropriate use of district technology may result in a cancellation of the employee's user privileges, disciplinary action, and/or legal action in accordance with law, Board policy, and administrative regulation.

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

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

### **Use of Cellular Phone or Mobile Communications Device**

An employee shall not use a cellular phone or other mobile communications device for personal business while on duty, except in emergency situations and/or during scheduled work breaks.

## **EMPLOYEE USE OF TECHNOLOGY (continued)**

Any employee that uses a cell phone or mobile communications device in violation of law, Board policy, or administrative regulation shall be subject to discipline and may be referred to law enforcement officials as appropriate.

*(cf. 3513.1 - Cellular Phone Reimbursement)*

*(cf. 3542 - School Bus Drivers)*

*(cf. 4156.3/4256.3/4356.3 - Employee Property Reimbursement)*

### *Legal Reference:*

#### GOVERNMENT CODE

3543.1 Rights of employee organizations

6250-6270 California Public Records Act

#### PENAL CODE

502 Computer crimes, remedies

632 Eavesdropping on or recording confidential communications

#### VEHICLE CODE

23123 Wireless telephones in vehicles

23123.5 Mobile communication devices; text messaging while driving

23125 Wireless telephones in school buses

#### UNITED STATES CODE, TITLE 20

7101-7122 Student Support and Academic Enrichment Grants

7131 Internet safety

#### UNITED STATES CODE, TITLE 47

254 Universal service discounts (E-rate)

#### CODE OF FEDERAL REGULATIONS, TITLE 47

54.520 Internet safety policy and technology protection measures, E-rate discounts

#### COURT DECISIONS

City of San Jose v. Superior Court (2017) 2 Cal.5th 608

City of Ontario v. Quon et al. (2010) 000 U.S. 08-1332

### *Management Resources:*

#### WEB SITES

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

American Library Association: <http://www.ala.org>

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

Federal Communications Commission: <http://www.fcc.gov>

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

## EMPLOYEE USE OF TECHNOLOGY

### Online/Internet Services: User Obligations and Responsibilities

Employees are authorized to use district equipment to access the Internet or other online services in accordance with Board policy, the district's Acceptable Use Agreement, and the user obligations and responsibilities specified below.

1. The employee in whose name an online services account is issued is responsible for its proper use at all times. Employees shall keep account information, home addresses, and telephone numbers private. They shall use the system only under the account name to which they have been assigned.
2. Employees shall use technology resources responsibly and primarily for work-related purposes.
3. Employees shall not access, post, submit, publish, or display harmful or inappropriate matter that is threatening, obscene, disruptive, or sexually explicit, or that could be construed as harassment or disparagement of others based on their race, ethnicity, national origin, sex, gender, sexual orientation, age, disability, religion, or political beliefs.

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4031 - Complaints Concerning Discrimination in Employment)*

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

4. Employees shall not use technology resources to promote unethical practices or any activity prohibited by law, Board policy, or administrative regulations.

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

5. Employees shall not use technology resources to engage in commercial or other for-profit activities without permission of the Superintendent or designee.
6. Copyrighted material shall be posted online only in accordance with applicable copyright laws.

*(cf. 6162.6 - Use of Copyrighted Materials)*

7. Employees shall not attempt to interfere with other users' ability to send or receive email, nor shall they attempt to read, delete, copy, modify, or forge other users' email.
8. Users shall report any security problem or misuse of technology resources to the Superintendent or designee.

**EMPLOYEE USE OF TECHNOLOGY (continued)**

9. Employees shall not develop any classroom or work-related web sites, blogs, forums, or similar online communications representing the district or using district equipment or technology resources without permission of the Superintendent or designee; typically the site or departmental administrator. Such sites shall be subject to rules and guidelines established for district online publishing activities including, but not limited to, copyright laws, privacy rights, and prohibitions against obscene, libelous, and slanderous content. Because of the unfiltered nature of blogs, any such site shall include a disclaimer that the district is not responsible for the content of the messages. The district retains the right to delete material on any such online communications.

*(cf. 1113 - District and School Web Sites)*

10. District staff are advised not to initiate or accept as friends or "follow" students or former students who are under the age of 18 on their personal social media websites. District staff will use professional discretion when "friending" alumni 18 and over. Employees who have "friended" or followed students or alumni under the age of 18 are advised to "de-friend" or unfollow them and should be reminded of the District policy on the use of personal social media sites.

The Superintendent or designee may allow staff to create and use technological resources and Social Networking sites for their class or school-based organization in order to enhance employee performance by offering effective and socially relevant tools to assist in providing a quality instructional program for students. By allowing district staff to "friend" students on classroom or school-based organization social networking sites may help facilitate communication with students, parents/guardians, and the community. Professional discretion must be used when "friending" students who are under the age of 18. All interactions must be for the purposes of educational enrichment.

District staff are encouraged to educate their students regarding the use of social networking sites, the student Internet Use Agreement and prohibited conduct related to social networking sites.

11. Guidelines for Use of Social Networking Websites
  - a. Understand the Employee Acceptable Use Agreement: If there is any question about whether to publish or post something online, refer to appropriate Board Policies. If these are not clear, district staff should seek the advice of a Principal or other administrator.
  - b. Be yourself: Anonymity is not an option. District staff must use their real name, be clear about their position, and must be smart about protecting

**EMPLOYEE USE OF TECHNOLOGY (continued)**

themselves and their privacy online. District staff must carefully consider the content they are publishing and should be cautious about disclosing personal details.

- c. District staff should ensure that privacy settings are enabled, and monitor security settings regularly.
- d. District staff must be thoughtful about how they present themselves in online social networks. The lines between public and private, personal and professional are often blurred in online social networks. District staff must ensure that any content associated with them is consistent with their work at NVUSD, that it's ethical and lawful, and follows the same standards expected in written business communications.
- e. Select communication media carefully; District staff must be discriminating about the different capabilities and appropriate uses for electronic communications, social networks, etc.
- f. District staff must use their official District email address or other official means of communication for all electronic communications.
- g. Respect copyright and Fair Use laws: District staff must respect copyright and Fair Use laws. Refer to BP 6162 for specific regulations about copyright and fair use.
- h. Protect confidential and proprietary information: District staff must be thoughtful about what they post in social networking sites. Do not post or share information regarded as the District or School's intellectual property, including but not limited to logos, photographs, operating, planning or strategic plans or documents without prior approval by the appropriate administrator. No personal information regarding another member of the school community may be posted by a fellow employee without prior permission, and communication of any material that violates the privacy rights of others is strictly prohibited. Parents/guardians must grant written permission to allow any current student's image or personal information to be shared on any social networking site.
- i. Material that is obscene, defamatory, profane, libelous, threatening, harassing, abusive, hateful or embarrassing to another person or organization is prohibited.

**EMPLOYEE USE OF TECHNOLOGY (continued)**

- j. Use Social Networking Sites if they add value to the educational experience

Social networking may add value if it:

- (1) Helps co-workers, students, or parents to do their jobs or solve problems
- (2) Helps improve knowledge or skills
- (3) Contributes directly or indirectly to the District mission
- (4) Promotes District values
- (5) Builds a sense of community between teachers and students, co-workers, or teachers and parents/guardians

- k. District staff should not use social media resources during work hours or allow those resources to interfere with the completion of their job or their responsibilities to students.

Regulation  
approved: March 19, 1998  
revised: July 12, 2012  
revised: March 19, 2015  
revised: November 5, 2015  
revised:

**NAPA VALLEY UNIFIED SCHOOL DISTRICT**  
Napa, California



## **EMPLOYEE USE OF TECHNOLOGY**

### **ACCEPTABLE USE AGREEMENT AND RELEASE OF DISTRICT FROM LIABILITY (EMPLOYEES)**

The Napa Valley Unified School District authorizes district employees to use technology owned or otherwise provided by the district as necessary to fulfill the requirements of their position. The use of district technology is a privilege permitted at the district's discretion and is subject to the conditions and restrictions set forth in applicable Board policies, administrative regulations, and this Acceptable Use Agreement. The district reserves the right to suspend access at any time, without notice, for any reason.

The district expects all employees to use technology responsibly in order to avoid potential problems and liability. The district may place reasonable restrictions on the sites, material, and/or information that employees may access through the system.

The district makes no guarantee that the functions or services provided by or through the district will be without defect. In addition, the district is not responsible for financial obligations arising from unauthorized use of the system.

Each employee who is authorized to use district technology shall sign this Acceptable Use Agreement as an indication that he/she has read and understands the agreement.

#### **Definitions**

*District technology* includes, but is not limited to, computers, the district's computer network including servers and wireless computer networking technology (wi-fi), the Internet, email, USB drives, wireless access points (routers), tablet computers, smartphones and smart devices, telephones, cellular telephones, personal digital assistants, pagers, MP3 players, wearable technology, any wireless communication device including emergency radios, and/or future technological innovations, whether accessed on or off site or through district-owned or personally owned equipment or devices.

#### **Employee Obligations and Responsibilities**

Employees are expected to use district technology safely, responsibly, and primarily for work-related purposes. Any incidental personal use of district technology shall not interfere with district business and operations, the work and productivity of any district employee, or the safety and security of district technology. The district is not responsible for any loss or damage incurred by an employee as a result of his/her personal use of district technology.

The employee in whose name district technology is issued is responsible for its proper use at all times. Employees shall not share their assigned online services account information, passwords, or other information used for identification and authorization purposes, and shall

## **EMPLOYEE USE OF TECHNOLOGY (continued)**

use the system only under the account to which they have been assigned. Employees shall not gain unauthorized access to the files or equipment of others, access electronic resources by using another person's name or electronic identification, or send anonymous electronic communications. Furthermore, employees shall not attempt to access any data, documents, emails, or programs in the district's system for which they do not have authorization.

Employees are prohibited from using district technology for improper purposes, including, but not limited to, use of district technology to:

1. Access, post, display, or otherwise use material that is discriminatory, defamatory, obscene, sexually explicit, harassing, intimidating, threatening, or disruptive
2. Disclose or in any way cause to be disclosed confidential or sensitive district, employee, or student information without prior authorization from a supervisor
3. Engage in personal commercial or other for-profit activities without permission of the Superintendent or designee
4. Engage in unlawful use of district technology for political lobbying
5. Infringe on copyright, license, trademark, patent, or other intellectual property rights
6. Intentionally disrupt or harm district technology or other district operations (such as destroying district equipment, placing a virus on district computers, adding or removing a computer program without permission, changing settings on shared computers)
7. Install unauthorized software
8. Engage in or promote unethical practices or violate any law or Board policy, administrative regulation, or district practice

## **Privacy**

Since the use of district technology is intended for use in conducting district business, no employee should have any expectation of privacy in any use of district technology.

The district reserves the right to monitor and record all use of district technology, including, but not limited to, access to the Internet or social media, communications sent or received from district technology, or other uses within the jurisdiction of the district. Such monitoring/recording may occur at any time without prior notice for any legal purposes including, but not limited to, record retention and distribution and/or investigation of improper, illegal, or prohibited activity. Employees should be aware that, in most instances, their use of district technology (such as web searches or emails) cannot be erased or deleted.

## **EMPLOYEE USE OF TECHNOLOGY (continued)**

All passwords created for or used on any district technology are the sole property of the district. The creation or use of a password by an employee on district technology does not create a reasonable expectation of privacy.

### **Personally Owned Devices**

If an employee uses a personally owned device to access district technology or conduct district business, he/she shall abide by all applicable Board policies, administrative regulations, and this Acceptable Use Agreement. Any such use of a personally owned device may subject the contents of the device and any communications sent or received on the device to disclosure pursuant to a lawful subpoena or public records request.

### **Records**

Any electronically stored information generated or received by an employee which constitutes a district or student record shall be classified, retained, and destroyed in accordance with BP/AR 3580 - District Records, BP/AR 5125 - Student Records, or other applicable policies and regulations addressing the retention of district or student records.

### **Reporting**

If an employee becomes aware of any security problem (such as any compromise of the confidentiality of any login or account information) or misuse of district technology, he/she shall immediately report such information to the Superintendent or designee.

### **Consequences for Violation**

Violations of the law, Board policy, or this Acceptable Use Agreement may result in revocation of an employee's access to district technology and/or discipline, up to and including termination. In addition, violations of the law, Board policy, or this agreement may be reported to law enforcement agencies as appropriate.

### **Employee Acknowledgment**

I have received, read, understand, and agree to abide by this Acceptable Use Agreement, BP/AR 4040 - Employee Use of Technology, and other applicable laws and district policies and regulations governing the use of district technology. I understand that there is no expectation of privacy when using district technology or when my personal electronic devices use district technology. I further understand that any violation may result in revocation of user privileges, disciplinary action, and/or appropriate legal action.

I hereby release the district and its personnel from any and all claims and damages arising from my use of district technology or from the failure of any technology protection measures employed by the district.

**EMPLOYEE USE OF TECHNOLOGY** (continued)

Name: \_\_\_\_\_ Position: \_\_\_\_\_  
(Please print)

School/Work Site: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**CERTIFICATED PERSONNEL**

The Board of Education recognizes that teachers and other certificated personnel work closely with students in carrying out the district's educational goals. The Superintendent or designee shall ensure that the duties, responsibilities, and district's expectations for certificated positions are clearly defined and made known to each member of the certificated staff.

Each certificated staff member shall be held accountable for duties assigned to him/her and shall undergo regular performance evaluations in accordance with law and negotiated agreements.

*(cf. 4115 - Evaluation/Supervision)*

*(cf. 4141/4241 - Collective Bargaining Agreement)*

The Board strongly encourages certificated staff to continually improve their skills and pursue excellence within their profession.

*(cf. 4131 - Staff Development)*

Policies, rules and regulations related to certificated personnel shall be available to all concerned and shall be administered in a fair and equitable manner.

*Legal Reference:*

EDUCATION CODE

90 Definition, certificated and certified

44006 Certificated person

GOVERNMENT CODE

3543.2 Scope of representation

## **All Personnel**

BP 4111(a)

4211

## **RECRUITMENT AND SELECTION**

4311

The Board of Education is committed to employing suitable, qualified individuals to effectively carry out the district's vision, mission, and goals.

*(cf. 0000 - Vision)*

*(cf. 0200 - Goals for the School District)*

*(cf. 4000 - Concepts and Roles)*

*(cf. 4100 - Certificated Personnel)*

*(cf. 4200 - Classified Personnel)*

*(cf. 4300 - Administrative and Supervisory Personnel)*

The Superintendent or designee shall develop equitable, fair, and transparent recruitment and selection processes and procedures that ensure individuals are selected based on demonstrated knowledge, skills, and competence and not on any bias, personal preference, or unlawful discrimination.

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

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4032 - Reasonable Accommodation)*

*(cf. 4111.2/4211.2/4311.2 - Legal Status Requirement)*

When a vacancy occurs, the Superintendent or designee shall review the job description for the position to ensure that it accurately describes the major functions and duties of the position. He/she shall also disseminate job announcements to ensure a wide range of candidates.

The district's selection procedures shall include screening processes, interviews, recommendations from previous employers, and observations when appropriate, as necessary to identify the best possible candidate for a position.

*(cf. 4112.61/4212.61/4312.61 - Employment References)*

The Superintendent or designee may establish an interview committee to rank candidates and recommend finalists. During job interviews, applicants may be asked to describe or demonstrate how they will be able to perform the duties of the job. All discussions and recommendations shall be confidential in accordance with law.

*(cf. 2230 - Representative and Deliberative Groups)*

No inquiry shall be made with regard to any information prohibited by state or federal nondiscrimination laws.

The Superintendent or designee shall not inquire, orally or in writing, in regard to an applicant's salary history information, including compensation and benefits. He/she shall also not rely on salary history information as a factor in determining whether to offer employment to an applicant or the salary to offer. However, the Superintendent or designee may consider salary information that is disclosable under state or federal law or that the applicant discloses

## **RECRUITMENT AND SELECTION** (continued)

voluntarily and without prompting. Upon request, the Superintendent or designee shall provide the applicant the pay scale for the position to which he/she is applying. (Labor Code 432.3)

For each position, the Superintendent or designee shall present to the Board one candidate who meets all qualifications established by law and the Board for the position. No person shall be employed by the Board without the recommendation or endorsement of the Superintendent or designee.

*(cf. 4112 - Appointment and Conditions of Employment)*

*(cf. 4112.2 - Certification)*

*(cf. 4112.22 - Staff Teaching English Learners)*

*(cf. 4112.23 - Special Education Staff)*

*(cf. 4112.8/4212.8/4312.8 - Employment of Relatives)*

*(cf. 4212 - Appointment and Conditions of Employment)*

*(cf. 4312.1 - Contracts)*

### **Incentives**

With Board approval and in accordance with district needs, the district may provide incentives to recruit teachers, administrators, or other employees, such as signing bonuses, assistance with beginning teacher induction and/or credential costs, mentoring, additional compensation, and/or subsidized housing.

*Legal Reference: (see next page)*

## **RECRUITMENT AND SELECTION (continued)**

### *Legal Reference:*

#### EDUCATION CODE

200-262.4 *Prohibition of discrimination*

35035 *Responsibilities of superintendent*

44066 *Limitations on certification requirement*

44259 *Teaching credential; exception; designated subjects; minimum requirements*

44750 *Teacher recruitment resource center*

44830-44831 *Employment of certificated persons*

44858 *Age or marital status in certificated positions*

44859 *Prohibition against certain rules and regulations re: residency*

45103-45139 *Employment (classified employees)*

49406 *Examination for tuberculosis*

#### GOVERNMENT CODE

815.2 *Liability of public entities and public employees*

6250-6276.48 *Public Records Act*

12900-12996 *Fair Employment and Housing Act, including:*

12940-12957 *Discrimination prohibited; unlawful practices*

#### HEALTH AND SAFETY CODE

53570-53574 *Teacher Housing Act of 2016*

#### LABOR CODE

432.3 *Salary information*

#### UNITED STATES CODE, TITLE 5

552 *Freedom of Information Act*

#### UNITED STATES CODE, TITLE 8

1324a *Unlawful employment of aliens*

1324b *Unfair immigration related employment practices*

#### UNITED STATES CODE, TITLE 20

1681-1688 *Title IX prohibition against discrimination*

#### 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*

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

106.51-106.61 *Nondiscrimination on the basis of sex in employment in education program or activities*

#### COURT DECISIONS

C.A. v William S. Hart Union High School District et al., (2012) 138 Cal.Rptr.3d 1

*Management Resources: (see next page)*



## **RECRUITMENT AND SELECTION (continued)**

### *Management Resources:*

#### **CALIFORNIA COUNTY SUPERINTENDENTS EDUCATIONAL SERVICES ASSOCIATION PUBLICATIONS**

*Teacher Recruitment in California: An Analysis of Effective Strategies*, Research Brief, Veritas  
Research and Evaluation Group, October 2017

#### **WEB SITES**

*California County Superintendents Educational Services Association: <http://ccsesa.org/recruit>*

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

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

*Commission on Teacher Credentialing: <http://www.ctc.ca.gov>*

*Education Job Opportunities Information Network: <http://www.edjoin.org>*

*Teach USA: <https://culturalvistas.org/programs/us/teach-usa>*

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

## **All Personnel**

BP 4111.2

4211.2

## **LEGAL STATUS REQUIREMENT**

4311.2

The Board of Education shall ensure that the district employs only those individuals who are lawfully authorized to work in the United States.

The Superintendent or designee shall verify the employment eligibility of all persons hired by completing the U.S. Citizenship and Immigration Services Form I-9, Employment Eligibility Verification, for each individual hired and ensure that the district does not knowingly hire or continue to employ any person not authorized to work in the United States. (8 USC 1324a)

In accordance with law, the Superintendent or designee shall ensure that district employment practices do not unlawfully discriminate on the basis of citizenship status or national origin, including, but not limited to, discrimination against any refugees, grantees of asylum, or persons qualified for permanent or temporary residency.

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

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4111/4211/4311 - Recruitment and Selection)

### *Legal Reference:*

UNITED STATES CODE, TITLE 8

1324a Unlawful employment of aliens

1324b Unfair immigrant-related employment practices

CODE OF FEDERAL REGULATIONS, TITLE 8

274a.1-274a.14 Control of Employment of Aliens

### *Management Resources:*

U.S. CITIZENSHIP AND IMMIGRATION SERVICES PUBLICATIONS

Handbook for Employers: Instructions for Completing Form I-9, April 2009

WEB SITES

U.S. Citizenship and Immigration Services: <http://www.uscis.gov>

## **All Personnel**

AR 4111.2

4211.2

## **LEGAL STATUS REQUIREMENT**

4311.2

Within three business days of hire, the Superintendent or designee shall physically examine the documentation presented by the employee establishing his/her identity and employment authorization as set forth in U.S. Citizenship and Immigration Services Form I-9. The employee may present either an original document which establishes both employment authorization and identity or two separate original documents which establish authorization and identity. Only unexpired documents are acceptable. (8 CFR 274a.2)

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4032 - Reasonable Accommodation)*

The Superintendent or designee shall: (8 CFR 274a.2)

1. Ensure that the documents presented appear to be genuine and relate to the individual
2. Complete the "Employer Review and Verification" section and sign the attestation with a handwritten signature or electronic signature on Form I-9

Persons employed for three business days or less must provide such documentation on their first day. (8 CFR 274a.2)

If unable to provide satisfactory documentation because the document was lost, stolen, or damaged, the employee shall furnish a receipt indicating that a replacement document has been requested. This receipt must be presented within three business days of the hire, and the replacement document must be provided within 90 days of the hire. (8 CFR 274a.2)

If an individual's employment authorization expires, the Superintendent or designee must reverify Form I-9, by noting the document's identification number and expiration date on the form, no later than the date the work authorization expires. The employee shall present a document that shows either continuing employment authorization or a new grant of work authorization. (8 CFR 274a.2)

The district shall retain an individual's Form I-9 for three years after the date of the hire or for one year after the date his/her employment is terminated, whichever is later. (8 CFR 274a.2)

*(cf. 3580 - District Records)*

The Superintendent or designee shall copy documents presented by an individual for verification and shall retain them with the individual's Form I-9. The documents shall be kept confidential and used only as needed to help justify the district's past decision to accept the documents as valid.

*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*

Regulation  
approved:

**NAPA VALLEY UNIFIED SCHOOL DISTRICT**  
Napa, California

**APPOINTMENT AND CONDITIONS OF EMPLOYMENT**

Upon recommendation from the Superintendent or designee, the Board of Education shall approve the appointment of all certificated personnel. The position and the salary classification shall be reported to the Board at a regular meeting.

*(cf. 4111/4211/4311 - Recruitment and Selection)*

*(cf. 4121 - Temporary/Substitute Personnel)*

Individuals appointed to the certificated staff shall:

1. Possess the appropriate certification qualifications and register the certification document in accordance with law and Board policy (Education Code 44250-44279, 44330)

*(cf. 4112.2 - Certification)*

*(cf. 4112.21 - Interns)*

2. Demonstrate proficiency in basic skills as required by law and Board policy (Education Code 44252.5, 44830)

*(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)*

*(cf. 6171 - Title I Programs)*

3. Submit to fingerprinting as required by law (Education Code 44830.1)
4. Not have been convicted of a violent or serious felony as defined in Penal Code 667.5 or 1192.7, unless the individual has received a certificate of rehabilitation and pardon (Education Code 44830.1)

*(cf. 4112.5/4212.5/4312.5 - Criminal Record Check))*

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

5. Not have been convicted of any sex offense as defined in Education Code 44010 (Education Code 44836)
6. Not have been required to register as a sex offender pursuant to Penal Code 290 because of a conviction for a crime where the victim was a minor under the age of 16 (Penal Code 290.95)

*(cf. 3515.5 - Sex Offender Notification)*

7. Not have been determined to be a sexual psychopath pursuant to Welfare and Institutions Code 6300-6332 (Education Code 44837)
8. Not have been convicted of any controlled substance offense as defined in Education Code 44011 (Education Code 44836)

**APPOINTMENT AND CONDITIONS OF EMPLOYMENT** (continued)

9. Submit to a physical examination, tuberculosis testing and/or provide a medical certificate as required by law and Board policy (Education Code 44839, 49406)

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

10. Submit to drug and alcohol testing as required by Board policy

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

11. Furnish a statement of military service and, if any was rendered, a copy of the discharge or release from service or, if no such document is available, other suitable evidence of the termination of service (Education Code 44838)

12. File the oath or affirmation of allegiance required by Government Code 3100-3109

*(cf. 4112.3/4212.3/4312.3 - Oath or Affirmation)*

13. Fulfill any other requirements as specified by law, collective bargaining agreement, Board policy or administrative regulation

*(cf. 4112.8/4212.8/4312.8 - Employment of Relatives)*

*Legal Reference: (see next page)*

**APPOINTMENT AND CONDITIONS OF EMPLOYMENT (continued)**

*Legal Reference:*

EDUCATION CODE

35161 Powers and duties

44008 Effect of termination of probation

44009 Conviction of specified crimes; definitions

44010 Sex offense

44011 Controlled substance offense

44066 Limitation on certification requirements

44250-44277 Credential types

44330 Effect of registration of certification document

44830.1 Felons; certificated positions; criminal record summary; fingerprints

44836 Employment of person convicted of sex offenses or controlled substance offenses

44837 Employment of sexual sociopath

44838 Statement of military service

44839 Medical certificate

44839.5 Medical certificate for retirant

49406 Examination for tuberculosis

GOVERNMENT CODE

3100-3109 Oaths or affirmations of allegiance for disaster service workers and public employees

12940-12950 Unlawful employment practices

PENAL CODE

290 Registration of sex offenders

290.95 Disclosure by persons required to register as sex offenders

667.5 Prior prison terms, enhancement of prison terms

1192.7 Plea bargaining limitation

WELFARE AND INSTITUTIONS CODE

6300-6332 Sexual psychopaths

CODE OF REGULATIONS, TITLE 5

6100-6125 Teacher qualifications, No Child Left Behind Act

UNITED STATES CODE, TITLE 20

6319 Highly qualified teachers

7801 Definitions, highly qualified teacher

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 Highly qualified teachers

**CONTRACTS**

When initially employed, certificated employees shall receive a written statement of their employment status and salary. In the case of temporary employees, this statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. (Education Code 44916)

*(cf. 4121 - Temporary/Substitute Personnel)*

**Reemployment Notices**

By May 30 of each year, the clerk or secretary of the Board may give, or mail by certified mail with return receipt requested, written notices to probationary and permanent certificated employees requesting that they notify the district of their intent to remain in district service for the next school year. This notice shall include a copy of Education Code 44842. If an employee, without good cause, fails to notify the district before July 1 that he/she will remain in district service, the employee may be deemed to have declined reemployment and the employee's services may be terminated on June 30 of that year. (Education Code 44842)

*(cf. 4113 - Assignment)*

*(cf. 4117.2/4217.2/4317.2 - Resignation)*

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 9122 - Secretary)*

By April 30 of each year, the clerk or secretary of the Board may give, or mail by certified mail with return receipt requested, written notices to certificated employees of a year-round school who are serving in a track that starts within 14 days of July 1 requesting that they notify the district of their intent to remain in district service for the next school year. This notice shall include a copy of Education Code 44842. If an employee, without good cause, fails to notify the district before June 1 that he/she will remain in district service, the employee may be deemed to have declined reemployment and the employee's services may be terminated on June 30 of that year. An employee who gives notice of resignation after May 31 but before June 30 shall be released from his/her contract within 30 days of the employee's notice, or as soon as a replacement employee is obtained, whichever occurs first. (Education Code 44842)

**Employee Notification**

By May 15 of each year, each classroom teacher shall notify the Superintendent or designee of his/her intent to return to a teaching position for the next school year. (Education Code 44832)

An employee on leave of absence shall notify the district of his/her intent to remain in service the following year in accordance with law, Board policy and administrative regulation.

*(cf. 4161/4261/4361 - Leaves)*

*Legal Reference: (see next page)*

**CONTRACTS** (continued)

*Legal Reference:*

EDUCATION CODE

*44832 Teachers; notice of intent to return*

*44842 Failure to provide notice or to report to work*

*44843 Notice of employment (to county superintendent)*

*44916 Time of classification; statement of employment status*

*44929.20 Continuing contract-districts w/less than 250 ADA*

*44955 Reduction in number of employees*



**CERTIFICATION**

The Board of Education recognizes that the district's ability to provide a high-quality educational program is dependent upon the employment of certificated staff who are adequately prepared and have demonstrated proficiency in basic skills and in the subject matter to be taught. The Superintendent or designee shall ensure that persons employed to fill positions requiring certification qualifications possess the appropriate credential, permit, or other certification document from the Commission on Teacher Credentialing (CTC) and fulfill any additional state, federal, or district requirements for the position.

*(cf. 4111/4211/4311 - Recruitment and Selection)*  
*(cf. 4112.21 - Interns)*  
*(cf. 4112.22 - Staff Teaching English Language Learners)*  
*(cf. 4112.23 - Special Education Staff)*  
*(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)*  
*(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)*  
*(cf. 4113 - Assignment)*  
*(cf. 4121 - Temporary/Substitute Personnel)*  
*(cf. 5148 - Child Care and Development)*  
*(cf. 6178 - Career Technical Education)*  
*(cf. 6200 - Adult Education)*

The Superintendent or designee may provide assistance and support to teachers holding preliminary credentials to help them meet the qualifications required for the clear credential.

*(cf. 4131 - Staff Development)*  
*(cf. 4131.1 - Teacher Support and Guidance)*

**Priorities for Hiring Based on Unavailability of Credentialed Teacher**

The Superintendent or designee shall make reasonable efforts to recruit a fully prepared teacher for each assignment. Whenever a teacher with a clear or preliminary credential is not available, the Superintendent or designee shall make reasonable efforts to recruit an individual for the assignment in the following order: (Education Code 44225.7)

1. A candidate who is qualified to participate in and enrolls in an approved intern program in the region of the district
2. A candidate who is scheduled to complete preliminary credential requirements within six months and who holds a provisional internship permit (PIP) or short-term staff permit issued by the CTC.

The Board shall approve, as an action item at a public Board meeting, a notice of its intent to employ a PIP applicant for a specific position. (5 CCR 80021.1)

3. As a last resort, an individual who holds an emergency permit issued by the CTC or for whom a credential waiver has been granted by the CTC

## **CERTIFICATION (continued)**

Prior to requesting that the CTC issue an emergency permit pursuant to item #3 above or a limited assignment permit which allows a fully credentialed teacher to teach outside of his/her area of certification while working toward an added or supplementary authorization, the Board shall annually approve a Declaration of Need for Fully Qualified Educators. The Declaration of Need shall be approved by the Board as an action item at a regularly scheduled public Board meeting, with the entire Declaration of Need being included in the Board agenda. (Education Code 44225, 44225.7; 5 CCR 80023.2, 80026, 80027, 80027.1)

The Declaration of Need shall certify that there is an insufficient number of certificated persons who meet the district's specified employment criteria for the position(s) and that the district has made reasonable efforts to recruit individuals who meet the qualifications specified in items #1-2 above. The Declaration of Need shall also indicate the number and type of emergency permits that the district estimates it will need during the valid period of the Declaration of Need, based on the previous year's actual needs and projections of enrollment. Whenever the actual number of permits needed exceeds the estimate by 10 percent, the Board shall revise and resubmit the Declaration of Need. (5 CCR 80026)

Whenever it is necessary to employ noncredentialed teachers to fill a position requiring certification qualifications, the Superintendent or designee shall provide support and guidance in accordance with law to ensure the quality of the instructional program.

### **National Board for Professional Teaching Standards Certification**

The Board encourages district teachers to voluntarily complete the requirements for the advanced certification awarded by the National Board for Professional Teaching Standards.

The Superintendent or designee shall inform all teachers about the program and how to acquire the necessary application and information materials. In accordance with the collective bargaining agreement and the district budget, the Superintendent or designee may provide release time, fee support, a stipend upon completion, or other support to teachers participating in the program.

*(cf. 4161.3 - Professional Leaves)*

*Legal Reference: (see next page)*

## **CERTIFICATION (continued)**

### *Legal Reference:*

#### EDUCATION CODE

8360-8370 *Qualifications of child care personnel*

32340-32341 *Unlawful issuance of a credential*

35186 *Complaints regarding teacher vacancy or misassignment*

44066 *Limitations on certification requirements*

44200-44399.1 *Teacher credentialing, especially:*

44250-44277 *Credential types; minimum requirements*

44300-44302 *Emergency permit*

44325-44328 *District interns*

44330-44355 *Certificates and credentials*

44420-44440 *Revocation and suspension of credentials*

44450-44468 *University intern program*

44830-44929 *Employment of certificated persons; requirement of proficiency in basic skills*

56060-56063 *Substitute teachers in special education*

#### CODE OF REGULATIONS, TITLE 5

6100-6126 *Teacher qualifications, No Child Left Behind Act*

80001-80674.6 *Commission on Teacher Credentialing*

#### UNITED STATES CODE, TITLE 20

6319 *Highly qualified teachers*

7801 *Definitions, highly qualified teacher*

#### CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 *Highly qualified teachers*

200.61 *Parent notification regarding teacher qualifications*

#### COURT DECISIONS

*Association of Mexican-American Educators et al. v. State of California and the Commission on Teacher Credentialing, (1993) 836 F.Supp. 1534*

### *Management Resources:*

#### COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

CL-667 *Basic Skills Requirement*

CL-856 *Provisional Internship Permit*

CL 858 *Short-Term Staff Permit*

13-01 *Hiring Hierarchy in Education Code 44225.7, Coded Correspondence, January 30, 2013*

*Subject Matter Authorization Guideline Book, 2012*

*Supplementary Authorization Guideline Book, 2012*

*California Standards for the Teaching Profession, 2009*

*The Administrator's Assignment Manual, rev. September 2007*

*Management Resources continued: (see next page)*

**CERTIFICATION** (continued)

*Management Resources: (continued)*

**WEB SITES**

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

*Commission on Teacher Credentialing: <http://www.ctc.ca.gov>*

*Commission on Teacher Credentialing, Credential Information Guide (for employers' use only):*

*<http://www.ctc.ca.gov/credentials/cig>*

*National Board for Professional Teaching Standards: <http://www.nbpts.org>*

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

Policy  
adopted: December 19, 1996  
revised: November 5, 2015  
revised:

**NAPA VALLEY UNIFIED SCHOOL DISTRICT**  
Napa, California

**CERTIFICATION**

**Verification of Credentials**

The Superintendent or designee shall verify that each employee in a position requiring certification qualifications possesses a valid certification document issued by the Commission on Teacher Credentialing (CTC). Such verification shall occur not later than 60 days after the commencement of employment or the renewal of a credential. (Education Code 44857)

*(cf. 4112.21 - Interns)*  
*(cf. 4112.22 - Staff Teaching English Learners)*  
*(cf. 4112.23 - Special Education Staff)*  
*(cf. 4121 - Temporary/Substitute Personnel)*  
*(cf. 5148 - Child Care and Development)*  
*(cf. 6178 - Career Technical Education)*  
*(cf. 6200 - Adult Education)*

The Superintendent or designee shall verify that any person who is employed by the district while his/her application for certification is being processed by the CTC possesses a temporary certificate based on a demonstration of basic skills and completion of a criminal background check. (Education Code 44332, 44332.5, 44332.6)

The Superintendent or designee shall maintain records of the appropriate certification of all employees serving in certificated positions.

*(cf. 3580 - District Records)*  
*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*

**Basic Skills Proficiency**

The district shall not initially hire a person in a position requiring certification, on a permanent, temporary, or substitute basis, unless that person has demonstrated basic skills proficiency in reading, writing, and mathematics or is specifically exempted from the requirement by law. (Education Code 44252, 44252.6, 44830)

The district may hire a certificated employee who has not taken a test of basic skills proficiency if he/she has not yet been afforded the opportunity to take the test, provided that he/she takes the test at the earliest opportunity. The employee may remain employed by the district pending the receipt of his/her test results. (Education Code 44830)

An out-of-state prepared teacher shall meet the basic skills requirement within one year of being issued a California preliminary credential by the CTC unless he/she has completed a basic skills proficiency test in another state or is otherwise exempted by law. The district shall develop a basic skills proficiency test, which shall be at least equivalent to the district test required for high school graduation, for purposes of assessing out-of-state prepared teachers pending completion of the basic skills requirement. (Education Code 44252, 44274.2; 5 CCR 80071.4, 80413.3)

## **CERTIFICATION (continued)**

*(cf. 6146.1 - High School Graduation Requirements)*

*(cf. 6146.2 - Certificate of Proficiency)*

*(cf. 6162.5 - High School Exit Examination)*

Any person holding or applying for a "designated subjects special subjects" credential which does not require possession of a bachelor's degree shall pass a district proficiency test in lieu of meeting the state basic skills proficiency requirement. (Education Code 44252, 44830)

The district may charge a fee to cover the costs of developing, administering, and grading the district proficiency test. (Education Code 44252, 44830)

### **Short-Term Staff Permit**

The district may request that the CTC issue a short-term staff permit (STSP) to a qualified applicant whenever there is a need to immediately fill a classroom based on unforeseen circumstances, including, but not limited to: (5 CCR 80021)

1. Enrollment adjustments requiring the addition of another teacher
2. Inability of the teacher of record to finish the school year due to approved leave or illness
3. The applicant's need for additional time to complete preservice requirements for enrollment into an approved intern program
4. Inability of the applicant to enroll in an approved intern program due to timelines or lack of space in the program
5. Unavailability of a third-year extension of an intern program or the applicant's withdrawal from an intern program

The Superintendent or designee shall ensure that the applicant possesses a bachelor's or higher degree from a regionally accredited college or university, has met the basic skills proficiency requirement unless exempted by state law or regulations, and has satisfied the coursework/experience requirements specified in 5 CCR 80021 for the multiple subject, single subject, or education specialist STSP as appropriate. (5 CCR 80021)

When requesting issuance of an STSP, the Superintendent or designee shall submit to the CTC: (5 CCR 80021)

1. Verification that the district has conducted a local recruitment for the permit being requested

**CERTIFICATION** (continued)

2. Verification that the district has provided the permit holder with orientation to the curriculum and to instruction and classroom management techniques and has assigned a mentor teacher for the term of the permit

*(cf. 4131 - Staff Development)*

*(cf. 4131.1 - Teacher Support and Guidance)*

3. Written justification for the permit signed by the Superintendent or designee

The holder of an STSP may be assigned to provide the same service as a holder of a multiple subject, single subject, or education specialist credential in accordance with the authorizations specified on the permit. (5 CCR 80021)

**Provisional Internship Permit**

Before requesting that the CTC issue a provisional internship permit (PIP), the district shall conduct a diligent search for a suitable credentialed teacher or intern, including, but not limited to, distributing job announcements, contacting college and university placement centers, and advertising in print or electronic media. (5 CCR 80021.1)

*(cf. 4111/4211/4311 - Recruitment and Selection)*

Whenever a suitable credentialed teacher cannot be found after a diligent search, the Superintendent or designee may request that the CTC issue a PIP to an applicant who possesses a bachelor's or higher degree from a regionally accredited college or university, has met the basic skills proficiency requirement unless exempted by state law or regulations, and has satisfied the coursework/experience requirements specified in 5 CCR 80021.1 for the multiple subject, single subject, or education specialist PIP as appropriate. (5 CCR 80021.1)

When submitting the request for a PIP, the district shall provide verification of all of the following: (5 CCR 80021.1, 80026.5)

1. A diligent search has been conducted for a suitable credentialed teacher or suitable qualified intern as evidenced by documentation of the search.
2. Orientation, guidance, and assistance shall be provided to the permit holder as specified in 5 CCR 80026.5.

The orientation shall include, but not be limited to, an overview of the curriculum the permit holder is expected to teach and effective instruction and classroom management techniques at the permit holder's assigned level. The permit holder also shall receive guidance and assistance from an experienced educator who is a certificated district employee or a certificated retiree from a California district or county office of education and who has completed at least three years of full-time classroom teaching experience.

**CERTIFICATION (continued)**

3. The district shall assist the permit holder in developing a personalized plan through a district-selected assessment that would lead to subject-matter competence related to the permit.
4. The district shall assist the permit holder to seek and enroll in subject-matter training, such as workshops or seminars and site-based courses, along with training in test-taking strategies, and shall assist the permit holder in meeting the credential subject-matter competence requirement related to the permit.
5. A notice of intent to employ the applicant in the identified position has been made public.

The district shall submit a copy of the agenda item presented at a public Board of Education meeting which shall state the name of the applicant, the assignment in which the applicant will be employed including the name of the school, subject(s), and grade(s) that he/she will be teaching, and that the applicant will be employed on the basis of a PIP. The district also shall submit a signed statement from the Superintendent or designee that the agenda item was acted upon favorably.

6. The candidate has been apprised of steps to earn a credential and enroll in an intern program.

The holder of a PIP may be assigned to provide the same service as a holder of a multiple subject, single subject, or education specialist credential in accordance with the authorizations specified on the permit. (5 CCR 80021.1)

**Teaching Permit for Statutory Leave**

Whenever there is an anticipated need for the district to temporarily fill the teaching assignment of a teacher of record who will be on sick leave, differential sick leave, industrial accident or illness leave, pregnancy disability leave, or family care and medical leave under the federal Family and Medical Leave Act or California Family Rights Act, the Superintendent or designee may request that the CTC issue a Teaching Permit for Statutory Leave (TPSL) to a qualified individual who will be serving as the interim teacher of record. Prior to submitting an application to the CTC, the district shall provide the applicant with 45 hours of preparation in the content areas listed in 5 CCR 80022. (5 CCR 80022)

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

*(cf. 4161.11/4261.11/4361.11 - Industrial Accident/Illness Leave)*

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

A request for the TPSL shall only be submitted if the district has made reasonable efforts to hire a substitute with a full teaching credential that matches the setting and/or subject for the statutory leave position and no such candidate is available. (5 CCR 80022)



**CERTIFICATION** (continued)

The district shall verify to the CTC that it will provide the interim teacher: (5 CCR 80022)

1. An orientation to the assignment before or during the first month of service in the statutory leave assignment
2. An average of two hours of mentoring, support, and/or coaching per week through a system of support coordinated and/or provided by a mentor who possesses a valid life or clear credential that would also authorize service in the statutory leave assignment
3. Lesson plans for the first four weeks of the assignment as well as continued assistance in the development of curriculum, lesson planning, and individualized education programs

The holder of the TPSL may serve as the interim teacher of record for up to the full length of the leave(s) during the school year. (5 CCR 80022)

The Superintendent or designee shall maintain documentation on the assignment in accordance with 5 CCR 80022. He/she shall annually report data on the use of the TPSL to the County Superintendent of Schools for assignment monitoring pursuant to Education Code 44258.9. (5 CCR 80022)

*(cf. 4113 - Assignment)*

The Superintendent or designee may annually request renewal of the TPSL, provided that no substitute with a full teaching credential is available for the assignment. The application for each reissuance shall include verification that the interim teacher has completed an additional 45 hours of preparation and the district is continuing to provide mentoring in accordance with items #2-3 above. (5 CCR 80022)

**Long-Term Emergency Permits**

As necessary, the Superintendent or designee may request that the CTC issue an emergency resource specialist permit, emergency teacher librarian services permit, emergency crosscultural language and academic development permit, or emergency bilingual authorization permit. (5 CCR 80024.3.1, 80024.6, 80024.7, 80024.8)

The Superintendent or designee shall provide any first-time recipient of an emergency teaching permit with an orientation which, to the extent reasonably feasible, shall occur before he/she begins a teaching assignment. The Superintendent or designee may vary the nature, content, and duration of the orientation to match the amount of training and experience previously completed by the emergency permit teacher. The orientation shall include, but not be limited to, the curriculum the teacher is expected to teach and effective techniques of classroom

**CERTIFICATION** (continued)

instruction and classroom management at the assigned grade-level span. The emergency permit holder also shall receive guidance and assistance from an experienced educator who is a certificated district employee or a certificated retiree from a California district or county office of education and who has completed at least three years of full-time classroom teaching experience. (5 CCR 80026.5)

*(cf. 4117.14/4317.14 - Postretirement Employment)*

**Substitute Teaching Permits**

The district may employ a person whose credential or permit authorizes substitute teaching services, provided that:

1. A person holding an emergency 30-day substitute teaching permit, STSP, PIP, TPSL, or any valid teaching or services credential that requires at least a bachelor's degree and completion of the California Basic Educational Skills Test, shall not serve as a substitute for more than 30 days for any one teacher during the school year. He/she shall not serve as a substitute in a special education classroom for more than 20 days for any one teacher during the school year. (5 CCR 80025, 80025.3, 80025.4)
2. A person with an emergency career substitute teaching permit shall not serve as a substitute for more than 60 days for any one teacher during the school year. (5 CCR 80025.1)
3. A person with an emergency substitute teaching permit for prospective teachers shall not serve as a substitute for more than 30 days for any one teacher during the school year and not more than 90 days total during the school year. (5 CCR 80025.2)
4. A person with an emergency designated subjects 30-day substitute teaching permit for career technical education shall teach only in a program of technical, trade, or vocational education and shall not serve as a substitute for more than 30 days for any one teacher during the school year. (5 CCR 80025.5)

Before employing a person with an emergency substitute permit pursuant to item #1 or #4 above, the Superintendent or designee shall prepare and keep on file a signed Statement of Need for the school year. The Statement of Need shall describe the situation or circumstances that necessitate the use of a 30-day substitute permit holder and state either that a credentialed person is not available or that the available credentialed person does not meet the district's specified employment criteria. (5 CCR 80025, 80025.5)

Regulation  
approved:

**NAPA VALLEY UNIFIED SCHOOL DISTRICT**  
Napa, California

**INTERNS**

The district may employ interns as necessary to fulfill the need for sufficient instructional staff and to provide future teachers an opportunity to link teaching theory with practice in order to meet state credentialing requirements. In addition, the district may employ teachers who already possess a preliminary or clear credential and are pursuing a credential in a different specialization as interns for positions that require such other credential.

*(cf. 4112.2 - Certification)*

*(cf. 4112.22 - Staff Teaching English Language Learners)*

*(cf. 4112.23 - Special Education Staff)*

The district may enter into partnership agreements with one or more approved teacher preparation programs sponsored by colleges or universities and/or may provide a district intern program with approval of the Commission on Teacher Credentialing (CTC). Any intern program in which the district participates shall be aligned with the preconditions and program standards adopted by the CTC.

The Superintendent or designee shall make reasonable efforts to recruit an intern from an approved program within the region whenever a teacher with a preliminary or clear credential is not available for a position requiring certification. (Education Code 44225.7)

*(cf. 4111/4211/4311 - Recruitment and Selection)*

The Superintendent or designee shall ensure that any intern employed by the district possesses an appropriate intern credential and is adequately prepared for the responsibilities of the position.

An intern may be assigned to provide the same service as a holder of a regular multiple subject, single subject, or education specialist credential in accordance with the authorizations and grade/age level specified on the intern credential. (Education Code 44454, 44325, 44326, 44830.3)

*(cf. 4113 - Assignment)*

An intern may be assigned to teach core academic subjects, as defined in law, if he/she meets the definition of a "highly qualified" teacher adopted by the State Board of Education. (20 USC 6319, 7801; 5 CCR 6100-6112)

*(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)*

Terms of employment for interns shall be consistent with law and the district's collective bargaining agreement, as applicable.

*(cf. 4116 - Probationary/Permanent Status)*

*(cf. 4141/4241 - Collective Bargaining Agreement)*

**INTERNS** (continued)

Interns shall receive intensive, structured supervision and ongoing support by qualified personnel in order to enhance their instructional skills and knowledge. The Superintendent or designee shall ensure that district staff serving as supervisors, mentor teachers, or other support providers receive appropriate training to fulfill their responsibilities and that they maintain frequent communication with the interns they are assigned to assist.

*(cf. 4131 - Staff Development)*

*(cf. 4131.1 - Teacher Support and Guidance)*

Interns shall be provided with ongoing feedback regarding their performance and shall be formally evaluated in accordance with Board policy and the district's collective bargaining agreement.

*(cf. 4115 - Evaluation/Supervision)*

Upon receiving notification from the Superintendent or designee that an intern has successfully completed the program, the Board of Education may recommend to the CTC that the intern be awarded a preliminary credential. (Education Code 44328, 44468, 44830.3)

The Board shall regularly evaluate the effectiveness of the intern program(s) to determine whether changes are needed in the support and/or assignment of interns. The Board's evaluation shall be based on a report by the Superintendent or designee, including, but not limited to, data on student performance in classes taught by interns, feedback from interns and supervisors, and the number of interns who successfully complete the program and obtain general education or education specialist credentials.

*(cf. 0500 - Accountability)*

*Legal Reference: (see next page)*

## **INTERNS (continued)**

### *Legal Reference:*

#### EDUCATION CODE

300-340 English language education for immigrant children  
44225 Credentials, responsibilities of Commission on Teacher Credentialing  
44225.7 Priority for hiring fully prepared teacher  
44253.3-44253.4 Certificate to provide services to English learners  
44253.10 Qualifications to provide specially designed academic instruction in English  
44259 Minimum requirements for teaching credential  
44314 Diversified or liberal arts program  
44321 CTC approval of intern programs  
44325-44328 District interns  
44339-44341 Teacher fitness  
44450-44468 Teacher Education Internship Act of 1967 (university interns)  
44830.3 Employing district interns  
44885.5 District interns classified as probationary employees

#### CODE OF REGULATIONS, TITLE 5

6100-6126 No Child Left Behind teacher requirements  
80021.1 Provisional internship permit  
80033 Intern teaching credential  
80055 Intern credential, extension for extenuating circumstances

#### UNITED STATES CODE, TITLE 20

6319 Highly qualified teachers  
7801 Definitions, highly qualified teacher  
7801 Note Applicability of federal regulation defining interns as highly qualified teachers

#### COURT DECISIONS

*Renee v. Duncan*, 686 F.3d 1002 (2012)

### *Management Resources:*

#### COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

CL-840 Early Completion Option  
SB 2042 Multiple Subject and Single Subject Preliminary Credential Program Standards, rev. February 2014  
*Intern Preservice, Support and Supervision Requirements: Preparation to Teach English Learners*, Program Sponsor Alert 13-06, June 3, 2013  
*Education Specialist Teaching and Other Related Services Credential Program Standards*, rev. May 2013  
*California Standards for the Teaching Profession*, October 2009  
*Hiring Hierarchy in Education Code 44225.7, Coded Correspondence 13-01*, January 30, 2013  
*Administrator's Assignment Manual*, 2008  
*Preparation of Intern Credential Holders Prior to Service as Teacher of Record as an Intern*, Coded Correspondence 08-03, March 3, 2008

*Management Resources continued: (see next page)*

**INTERNS** (continued)

*Management Resources: (continued)*

U.S. DEPARTMENT OF EDUCATION GUIDANCE

*Improving Teacher Quality State Grants, rev. October 5, 2006*

WEB SITES

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

Commission on Teacher Credentialing, Interns: <http://www.ctc.ca.gov/educator-prep/intern>

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

**INTERNS**

**Memorandum of Understanding**

Before interns employed by the district assume daily teaching responsibilities, a signed memorandum of understanding shall be in place between the district and the partner college/university detailing the support and supervision that will be provided to interns. (5 CCR 80033)

*(cf. 4112.2 - Certification)*

The memorandum of understanding shall include, but not be limited to:

1. Specific responsibilities of the program supervisor
2. Qualifications, identification, terms of employment, roles and responsibilities, and training of individual(s) to provide on-site support to interns
3. Allocation of additional personnel, time, and resources for interns who have not yet earned an English learner authorization
4. Expectations regarding the type and frequency of support
5. The process of communication between the program supervisor and on-site support personnel
6. Documentation, monitoring, and evaluation of site support

The district may enter into an agreement to employ college/university staff to supervise interns and may pay for the supervision of interns out of district funds. Salary payments may be met by proportionately reducing the salaries of paid interns, provided that no more than eight interns are supervised by one staff member, the district salary normally paid to interns is not reduced by more than one-eighth, and the intern is not paid less than the minimum salary required by the state for a regularly certificated teacher. (Education Code 44461-44462)

**Support and Supervision of Interns**

The Superintendent or designee shall collaborate with the college/university teacher preparation program to design structured guidance of interns, regular site-based support and supervision, and a sequence of supervised fieldwork that includes planned observations, consultations, reflections, and individual and small-group teaching opportunities.

*(cf. 4131 - Staff Development)*

*(cf. 4131.1 - Teacher Support and Guidance)*

**INTERNS** (continued)

Support and supervision provided to interns shall include the following: (Education Code 44830.3; 5 CCR 80033)

1. Professional Development Plan: The Superintendent or designee shall, in cooperation with the college/university, counsel each intern and, with the concurrence of the intern, shall develop a plan for the intern to complete the requirements to earn a credential in the content or specialty area(s) of the intern credential.

The plan shall include the components described in Education Code 44830.3, including, but not limited to, provisions for at least 120 clock hours (or the semester or quarter unit equivalent) of mandatory preservice training tailored to the grade level or class to be taught, additional instruction during the first semester or first year of service when required, and an annual evaluation of the intern.

2. Assignment of Mentor Teacher: Before an intern assumes daily teaching responsibilities, the Superintendent or designee shall assign him/her a mentor teacher who possesses a valid corresponding life or clear teaching credential and a minimum of three years of successful teaching experience.

The intern shall receive support from a mentor teacher who is assigned to the same school. If two or more mentor teachers are assigned to an intern, at least one of them shall be experienced in the curricular area(s) of the intern's assignment.

3. Support During School Year: Support and supervision shall include coaching, modeling, and demonstrating within the classroom. In addition, the intern shall receive assistance with course planning and with problem-solving regarding students, curriculum, and effective teaching methodologies.

Such support and supervision shall be provided for a minimum of 144 hours per school year or, for late hires, four hours multiplied by the number of instructional weeks remaining in the school year. At least two hours of support and supervision shall be provided every five instructional days.

4. Additional Support Addressing the Needs of English Learners: For any intern who enters the intern program without a valid English learner authorization, bilingual authorization, or crosscultural, language, and academic development certificate, the Superintendent or designee shall identify an individual who will be immediately available to assist the intern with planning lessons that are appropriately designed and differentiated for English learners, for assessing language needs and progress, and for support of language-accessible instruction through in-classroom modeling and coaching as needed. This individual may be the same mentor identified in item #2 above, provided he/she possesses an English learner authorization and will be immediately available to assist the intern.



**INTERNS** (continued)

In addition, the district and college/university shall provide such interns with additional support and supervision, including in-classroom coaching, specific to the needs of English learners. Such support and supervision shall be provided for 45 hours per school year or, for late hires, five hours multiplied by the number of months remaining in the school year.

An intern who passes the California Teaching English Learners examinations may be exempted from these requirements.

*(cf. 4112.22 - Staff Teaching English Learners)*

**Early Completion Option**

The Superintendent or designee shall inform qualified interns preparing for a multiple or single subject credential of the early completion option which allows them to challenge certain requirements of the intern program in areas where they have demonstrated competence.

In order to complete the intern program early and be recommended for a preliminary credential, candidates shall meet all requirements of the intern credential and the additional assessments and coursework specified in Education Code 44468.

## **STAFF TEACHING ENGLISH LANGUAGE LEARNERS**

### **Definitions**

*English learner* means a student who does not speak English or whose native language is not English and who is not currently able to perform ordinary classroom work in English. (Education Code 306)

*Instruction for English language development* (ELD) means instruction designed specifically for English learners to develop their listening, speaking, reading, and writing skills in English. (Education Code 44253.2)

*Specially designed academic instruction in English* (SDAIE) means instruction in a subject area, delivered in English that is specially designed to meet the needs of English learners. (Education Code 44253.2)

*Primary language instruction* includes both primary language development designed to develop English learners' listening, speaking, reading, and writing skills in their primary language and content instruction delivered in the primary language in any subject area. (Education Code 44253.2)

(cf. 6174 - *Education for English Language Learners*)

### **Teacher Qualifications**

The Superintendent or designee shall ensure that any teacher with one or more English learners in his/her class possesses an English learner authorization issued by the Commission on Teacher Credentialing (CTC) authorizing ELD and/or SDAIE, as appropriate. A teacher possessing a bilingual authorization may be assigned to provide ELD, SDAIE, and/or primary language instruction.

(cf. 1312.4 - *Williams Uniform Complaint Procedures*)

(cf. 4112.2 - *Certification*)

(cf. 4112.21 - *Interns*)

(cf. 4112.24 - *Teacher Qualifications Under the No Child Left Behind Act*)

(cf. 4113 - *Assignment*)

(cf. 4222 - *Teacher Aides/Paraprofessionals*)

A teacher with a designated subjects teaching credential or a service credential with a special class authorization may enroll in a CTC-approved staff development program and, upon successful completion, may apply to the CTC for a Certificate of Completion of Staff Development authorizing instruction in SDAIE. (Education Code 44253.11)

(cf. 4131 - *Staff Development*)

The Board of Education may, for the purpose of providing primary language instruction, hire bilingual teachers who are employed in public or private schools of a foreign country, state,

**STAFF TEACHING ENGLISH LANGUAGE LEARNERS (continued)**

territory, or possession, provided such teachers speak English fluently and hold the necessary sojourn credential issued by the CTC. After the initial two-year sojourn credential expires, the teacher may annually apply to the CTC for an extension for a total period of not more than five years. Any application for renewal shall include verification by the Superintendent or designee that termination of the employment would adversely affect an existing bilingual program and that attempts to secure the employment of a qualified certificated California teacher have been unsuccessful. (Education Code 44856)

*Legal Reference:*EDUCATION CODE*306 Definition, English learner**44253.1-44253.11 Certification for bilingual-crosscultural competence**44258.9 County superintendent review of teacher assignments**44259.5 Standards for teachers of all students, including English language learners**44380-44386 Alternative certification**44856 Employment of teachers from foreign countries**52160-52178 Bilingual-Bicultural Act of 1976**62001-62005. 5 Evaluation and sunseting of programs*CODE OF REGULATIONS, TITLE 5*6100-6125 Teacher qualifications, No Child Left Behind Act**80015 Requirements for the CLAD certification or English learner authorization**80015.1-80015.4 Requirements for CLAD, English learner authorization or bilingual authorization**80021 Short-Term Staff Permit**80021.1 Provisional Internship Program**80024.7-80024.8 Emergency CLAD and bilingual permits*UNITED STATES CODE, TITLE 20*6319 Highly qualified teachers**6601-6651 Training and recruiting high-quality teachers**6801-7014 Language instruction for English learners and immigrant students**7801 Definitions, highly qualified teacher*CODE OF FEDERAL REGULATIONS, TITLE 34*200.55-200.57 Highly qualified teachers*COURT DECISIONS*Teresa P. et al v. Berkeley Unified School District et al (1989) 724 F.Supp. 698**Management Resources:*COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS*CL-622 Serving English Learners, December 2010**CL-626B Bilingual Authorizations, November 2010**CL-626C Crosscultural, Language and Academic Development (CLAD) Certificate, November 2010**CL-568 The Sojourn Certificated Employee Credential, August 2009**Management Resources continued: (see next page)*

**STAFF TEACHING ENGLISH LANGUAGE LEARNERS (continued)**

*Management Resources: (continued)*

**WEB SITES**

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

*California Association for Bilingual Education: <http://www.bilingualeducation.org>*

*California Department of Education, English Learners: <http://www.cde.ca.gov/sp/el>*

*California Teachers of English to Speakers of Other Languages: <http://www.catesol.org>*

*Commission on Teacher Credentialing: <http://www.ctc.ca.gov>*

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

**SPECIAL EDUCATION STAFF**

**Qualifications/Assignment of Special Education Teachers**

Any teacher assigned to serve students with disabilities shall possess an appropriate credential or other authorization issued by the Commission on Teacher Credentialing (CTC) that specifically authorizes him/her to teach students with the primary disability within the program placement recommended in the students' individualized education program (IEP). (5 CCR 80046.1-80048.9.4)

*(cf. 4112.2 - Certification)*

*(cf. 4113 - Assignment)*

*(cf. 6159 - Individualized Education Program)*

*(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)*

*(cf. 6164.6 - Identification and Education Under Section 504)*

The district may employ a person with an appropriate district intern credential to provide classroom instruction to students with disabilities, provided he/she has met the subject matter requirement specified in Education Code 44325 and receives guidance, supervision, and professional development through an established district intern program. (Education Code 44325, 44326, 44830.3)

*(cf. 4112.21 - Interns)*

The Superintendent or designee may request that the CTC issue a special education limited assignment teaching permit which authorizes a qualified special education teacher, with his/her written consent, to serve outside the specialty area of his/her credential. If the teacher has not yet obtained permanent status, the Superintendent or designee shall assign one or more experienced educators in the special education subject area(s) of the permit, who have at least three years of full-time teaching experience in each of the subject area(s) of the permit, to provide guidance and assistance to the permit holder. (5 CCR 80026, 80027.1)

As needed, the district may apply to the CTC for an emergency permit for resource specialist services pursuant to 5 CCR 80023.2 and 80024.3.1.

When requesting either a limited assignment teaching permit or an emergency resource specialist permit, the Superintendent or designee shall submit a Declaration of Need for Fully Qualified Educators that satisfies the requirements of 5 CCR 80026 and has been approved by the Board at a regularly scheduled Board meeting. (5 CCR 80026)

If there is a need to immediately fill a classroom vacancy or a suitable credentialed teacher cannot be found after a diligent search, the Superintendent or designee may, as appropriate, apply to the CTC for a short-term staff permit pursuant to 5 CCR 80021, a provisional internship permit pursuant to 5 CCR 80021.1, or, as a last resort, a credential waiver.

## **SPECIAL EDUCATION STAFF** (continued)

Individuals providing related services to students with disabilities, including developmental, corrective, and other supportive and related services, shall meet the applicable qualifications specified in 5 CCR 3051-3051.24. (5 CCR 3051; 34 CFR 300.34, 300.156)

*(cf. 3312 - Contracts)*

*(cf. 3600 - Consultants)*

The Superintendent or designee shall provide ongoing professional development as needed to assist special education staff in updating and improving their knowledge and skills.

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

Whenever a candidate for a clear education specialist credential is employed by the district, the Superintendent or designee shall, within 60 days of employment, collaborate with the candidate and, as applicable, with the college or university to develop an individualized induction plan including supported induction and job-related course of advanced preparation. (5 CCR 80048.8.1)

*(cf. 4131.1 - Teacher Support and Guidance)*

## **Resource Specialists**

The duties of resource specialists shall include, but are not limited to: (Education Code 56362; 5 CCR 80070.5)

1. Providing instruction and services for students with disabilities whose needs have been identified in an IEP
2. Conducting educational assessments
3. Providing information and assistance for students with disabilities and their parents/guardians
4. Providing consultation, resource information, and material regarding students with disabilities to staff members in the regular education program and the students' parents/guardians
5. Coordinating special education services with the regular school program for each student with disabilities enrolled in the resource specialist program
6. Monitoring student progress on a regular basis, participating in the review and revision of IEPs as appropriate, and referring students who do not demonstrate appropriate progress to the IEP team

**SPECIAL EDUCATION STAFF** (continued)

7. Providing services for secondary students that emphasize academic achievement, career and vocational development, and preparation for adult life

Any student who receives resource specialist services shall be assigned to regular classroom teacher(s) for a majority of the school day, unless his/her IEP team approves enrollment in the resource specialist program for a majority of the school day. (Education Code 56362; 5 CCR 80070.5)

Resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes. (Education Code 56362)

The district's resource specialist program shall be under the direction of a resource specialist who possesses the qualifications specified in Education Code 56362.

**Caseloads**

The Superintendent or designee shall ensure that caseloads for special education teachers are within the maximum caseloads established by law, the collective bargaining agreement, and/or the comprehensive plan of the Special Education Local Plan Area (SELPA) in which the district participates.

*(cf. 0430 - Comprehensive Local Plan for Special Education)*

*(cf. 1312.3 - Uniform Complaint Procedures)*

*(cf. 4141/4241 - Collective Bargaining Agreement)*

No resource specialist shall have a caseload which exceeds 28 students. As necessary and with the agreement of the resource specialist, the Board of Education may request a waiver from the State Board of Education to increase the caseload to no more than 32 students, provided that an individual resource specialist does not have a caseload exceeding 28 students for more than two school years and has the assistance of an instructional aide at least five hours daily during the period of the waiver. (Education Code 56362, 56362.1; 5 CCR 3100)

*(cf. 1431 - Waivers)*

The average caseload for language, speech, and hearing specialists shall not exceed 55 cases, unless the SELPA plan specifies a higher average caseload and states the reasons for the higher average caseload. The maximum caseload for speech and language specialists exclusively serving children with disabilities age 3-5 years shall not exceed 40. (Education Code 56363.3, 56441.7)

**SPECIAL EDUCATION STAFF (continued)**

*Legal Reference:*

EDUCATION CODE

8264.8 *Staffing ratios*

44250-44279 *Credentials, especially:*

44256 *Credential types, specialist instruction*

44258.9 *Assignment monitoring*

44265-44265.9 *Special education credential*

44325-44328 *District interns*

44830.3 *District interns, supervision and professional development*

56000-56865 *Special education, especially:*

56195.8 *Adoption of policies*

56361 *Program options*

56362-56362.5 *Resource specialist program*

56363.3 *Maximum caseload; language, speech, and hearing specialists*

56440-56441.7 *Programs for individuals between the ages of three and five years; caseloads*

CODE OF REGULATIONS, TITLE 5

3051.1-3051.24 *Staff qualifications to provide related services to students with disabilities*

3100 *Waivers of maximum caseload for resource specialists*

6100-6126 *Teacher qualifications, No Child Left Behind Act*

80021 *Short-term staff permit*

80021.1 *Provisional internship permit*

80023.2 *Emergency permits*

80025.4 *Substitute teaching, special education*

80026 *Declaration of need for fully qualified educators*

80027.1 *Special education limited assignment teaching permit*

80046.1 *Adapted physical education specialist*

80046.5 *Credential holders authorized to serve students with disabilities*

80047-80047.9 *Credentials to provide instructional services to students with disabilities*

80048-80048.9.4 *Credential requirements and authorizations*

80070.1-80070.6 *Resource specialists*

UNITED STATES CODE, TITLE 20

1400-1482 *Individuals with Disabilities Education Act, especially:*

1401 *Definition of highly qualified special education teacher*

6319 *Highly qualified teachers*

7801 *Definitions, highly qualified teacher*

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 *Highly qualified teachers*

300.8 *Definition of autism*

300.18 *Highly qualified special education teachers*

300.34 *Related services*

300.156 *Special education personnel requirements*

*Management Resources: (see next page)*



**SPECIAL EDUCATION STAFF** (continued)

*Management Resources:*

COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

Special Education Teaching and Services Credentials, Added Authorizations in Special Education, and Limited Assignment Permits for California Prepared Teachers: Frequently Asked Questions, May 26, 2014

Education Specialist Teaching and Other Related Services Credential Program Standards, 2012

WEB SITES

California Association of Resource Specialists and Special Education Teachers:

<http://www.carsplus.org>

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

California Speech-Language-Hearing Association: <http://www.csha.org>

Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

National Association of Special Education Teachers: <http://www.naset.org>

## **All Personnel**

AR 4112.3(a)

4212.3

## **OATH OR AFFIRMATION**

4312.3

All district employees are declared by law to be disaster service workers and thus shall take the oath or affirmation required for disaster service workers before beginning employment with the district. 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 or by law. (Government Code 3100-3102)

*(cf. 3516 - Emergencies and Disaster Preparedness Plan)*

*(cf. 9224 - Oath or Affirmation)*

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 an employee from taking the oath if he/she raises a valid religious objection.

The Superintendent, deputy or assistant superintendent, principal or other person authorized in Education Code 60 shall administer the oath or affirmation when a district employee is hired.

In the case of intermittent, temporary, emergency or successive employments, the Superintendent or designee may determine that the oath shall be effective for all successive periods of employment which begin within one calendar year from the date that the oath was subscribed. (Government Code 3102)

*(cf. 4121 - Temporary/Substitute Personnel)*

The Superintendent or designee shall file the executed oath or affirmation within 30 days of the date on which it is taken and subscribed. An employee's oath or affirmation may be destroyed five years after the termination of employment. (Government Code 3105)

## **Reimbursement of Expenses for Disaster Service Workers**

Whenever an employee seeks compensation or reimbursement of expenses as a disaster service worker, the Superintendent or designee shall ascertain and certify that the employee has taken the oath or affirmation. (Government Code 3107)

*Legal Reference: (see next page)*

AR 4112.3(b)  
4212.3  
4313.3

## **OATH OR AFFIRMATION (continued)**

### *Legal Reference:*

#### EDUCATION CODE

60 Persons authorized to administer and certify oaths

44334 Oath or affirmation required for credential

44354 Administration of oath required for credential

#### GOVERNMENT CODE

3100-3109 Oath or affirmation of allegiance

#### LABOR CODE

3211.9-3211.93a Disaster service, definitions for workers' compensation

#### CALIFORNIA CONSTITUTION

Article 20, Section 3 Oath of office

#### COURT DECISIONS

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

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

Regulation  
approved:

**NAPA VALLEY UNIFIED SCHOOL DISTRICT**  
Napa, California

**All Personnel**

E 4112.3

4212.3

**OATH OR AFFIRMATION**

4312.3

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

I understand that as a public employee I am a disaster service worker pursuant to Government Code 3100 and 3102 and that I am required to take this oath before entering the duties of my employment. In the event of natural, manmade or war-caused emergencies which result in conditions of disaster or extreme peril to life, property and resources, I am subject to disaster services activities assigned to me by my supervisor.

\_\_\_\_\_  
(Signature)

Certified by:

\_\_\_\_\_  
(Person who administers the oath)

## **All Personnel**

AR 4112.4(a)

4212.4

## **HEALTH EXAMINATIONS**

4312.4

### **Tuberculosis Tests**

No applicant shall be initially employed by the district, or employed under contract, in a classified or certificated position unless he/she has submitted to a tuberculosis risk assessment within the past 60 days and, if tuberculosis risk factors are identified, has submitted to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the examination are positive, the applicant shall obtain an x-ray of the lungs. At his/her discretion, an applicant may choose to submit to the examination instead of the risk assessment. (Education Code 49406)

*(cf. 1240 - Volunteer Assistance)*

*(cf. 4112 - Appointment and Conditions of Employment)*

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

*(cf. 4212 - Appointment and Conditions of Employment)*

Prior to employment by the district, an applicant shall submit a certificate from an authorized health provider stating that the applicant was assessed and/or examined and found to be free of infectious tuberculosis. (Education Code 49406)

An applicant who was previously employed in another school district or private or parochial school shall be deemed to have fulfilled the tuberculosis testing requirement if he/she produces a certificate showing that he/she was found to be free of infectious tuberculosis within 60 days of initial hire or if his/her previous employer verifies that it has a certificate on file showing that the applicant is free from infectious tuberculosis. (Education Code 49406)

Thereafter, each district employee who was found free of infectious tuberculosis shall undergo a tuberculosis risk assessment, and an examination whenever risk factors are identified, at least once every four years or more often when required by the Board of Education upon recommendation of the county health officer. However, once an employee has a documented positive test for tuberculosis infection followed by an x-ray, he/she shall no longer be required to submit to the tuberculosis risk assessment but shall be referred to the county health officer within 30 days of the examination to determine the need for follow-up care. (Education Code 49406)

The cost of the pre-employment tuberculosis risk assessment and/or examination shall be paid by the applicant, unless the Board has determined that the district will reimburse an applicant who is subsequently hired by the district. The district shall reimburse the employee for the cost, if any, of subsequent tuberculosis risk assessments and examinations. The district may provide for the risk assessment and examination or may establish a reasonable fee for the examination that is reimbursable to the employee. (Education Code 49406)

AR 4112.4(b)  
4212.4  
4312.4

## **HEALTH EXAMINATIONS (continued)**

Whenever the district contracts for the transportation of students, the contract shall require that all drivers who will be transporting students complete the tuberculosis risk assessment and, if indicated, the examination for infectious tuberculosis within 60 days of initial hire. (Education Code 49406)

(cf. 3312 - Contracts)  
(cf. 3540 - Transportation)  
(cf. 3542 - School Bus Drivers)

### *Legal Reference:*

#### EDUCATION CODE

44839 Medical certificate; periodic medical examination  
44839.5 Requirements for employment of retirant  
44932 Grounds for dismissal of permanent employee  
44942 Suspension or transfer of certificated employee on ground of mental illness  
45122 Physical examinations  
49406 Examination for tuberculosis

#### BUSINESS AND PROFESSIONS CODE

2700-2838 Nurses  
3500-3546 Physician assistants

#### HEALTH AND SAFETY CODE

121525 Private and parochial school employees, examination for tuberculosis  
CODE OF REGULATIONS, TITLE 5  
5502 Filing of notice of physical examination for employment of retired persons  
5503 Physical examination for employment of retired persons  
5504 Medical certification procedures

#### COURT DECISIONS

Doe v. Lincoln Unified School District, (2010) 188 Cal.App.4th 758  
Leonel v. American Airlines, Inc., (2005) 400 F.3d. 702  
Raven v. Oakland Unified School District, (1989) 213 Cal.App.3d 1347

### *Management Resources:*

#### WEB SITES

California Department of Public Health: <http://www.cdph.ca.gov>  
Centers for Disease Control and Prevention: <http://www.cdc.gov>  
Public Health Institute: <http://www.phi.org>  
U.S. Food and Drug Administration: <http://www.fda.gov>

Regulation  
approved:

**NAPA VALLEY UNIFIED SCHOOL DISTRICT**  
Napa, California

## **EMPLOYEE DRUG TESTING**

The Board of Education maintains a drug- and alcohol-free workplace. In accordance with law, all employees shall render service without using, possessing, being impaired by, or being under the influence of alcohol or drugs.

*(cf. 0450 - Comprehensive Safety Plan)*

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

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4032 - Reasonable Accommodation)*

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

*(cf. 5131.61 - Drug Testing)*

### **Pre-Employment Drug/Alcohol Testing for Safety-Sensitive Positions**

Because students and staff have the right to a safe and secure campus where they are free from physical and psychological harm, the Board authorizes the testing of prospective employees in safety-sensitive positions for drug and alcohol use. The following positions are safety-sensitive and are subject to the district's program:

Once a conditional offer of employment has been made, prospective employees in these identified positions shall undergo a pre-employment drug and alcohol screening for any substance which could impair their ability to safely and effectively perform their job functions. This screening shall be part of the employee's pre-employment physical examination.

Final selection of a job applicant for a position shall not be made until the applicant has successfully completed the screening.

All testing and medical examinations shall be conducted in accordance with state and federal law, Board policy, and administrative regulation.

*(cf. 4112. /4212.4/4312.4 - Health Examinations)*

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

*Legal Reference: (see next page)*

## EMPLOYEE DRUG TESTING (continued)

### *Legal Reference:*

#### EDUCATION CODE

44011 *Controlled substance offense*

44455 *Conviction for 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 for controlled substance offense*

45304 *Compulsory leave of absence for classified persons*

44839 *Medical certificate; periodic medical examination*

45122 *Physical examinations*

#### GOVERNMENT CODE

8350-8357 *Drug-free workplace*

12940 *Unlawful employment practices*

#### CODE OF REGULATIONS, TITLE 5

5504 *Medical certification procedures*

#### CALIFORNIA CONSTITUTION

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

#### UNITED STATES CODE, TITLE 20

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

#### UNITED STATES CODE, TITLE 41

701-707 *Drug-Free Workplace Act*

#### COURT DECISIONS

*Lanier v. City of Woodburn*, (2008, 9th Circuit) 518 F.3d 1147

*Knox County Education Association v. Knox County Board of Education*, (1998, 6th Circuit) 158 F.3d 361

*Loder v. City of Glendale*, (1997) 14 Cal. 4th 846

*Vernonia School District 47J v. Acton*, (1995) 115 S.Ct. 2386

*International Brotherhood of Teamsters v. Department of Transportation*, (1991) 932 F.2d 1292

*Skinner v. Railway Labor Executives' Assn.*, (1989) 489 U.S. 602

*National Treasury Employees Union v. Von Raab*, (1989) 489 U.S. 456

Policy  
adopted: December 19, 1996  
revised: January 13, 1999  
revised: October 1, 2015  
revised:

**NAPA VALLEY UNIFIED SCHOOL DISTRICT**  
Napa, California



## **EMPLOYEE DRUG TESTING**

### **Pre-Employment Drug/Alcohol Screening for Safety-Sensitive Positions**

Applicants shall sign a form consenting to the drug and alcohol testing. The consent form shall authorize release of the test results to the district. To ensure an individual's privacy, the district shall not use test results for any purpose other than those stated in Board policy and administrative regulation, shall maintain the confidentiality of screening records, and shall not disclose such records unless the applicant consents or the Superintendent or designee is presented with a court order requiring the disclosure.

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*  
*(cf. 4112.4/4212.4/4312.4 - Health Examinations)*

All initial screening tests shall be conducted at the district's expense. If an applicant's initial test is positive, a second test, at the district's expense, shall be administered as soon as possible to confirm the results. Upon obtaining a second positive result, the applicant may seek an independent drug and alcohol screening from a recognized medical laboratory at his/her own expense. Any applicant who fails to provide the district with a negative drug and alcohol screening report within five working days of a confirmed positive result shall be determined to have failed the screening and shall not be employed.

Failure to submit to the process or to complete the process shall preclude the applicant from being hired into the position. Disqualified applicants shall not be prohibited from applying for another job within the district.

Regulation  
approved: December 19, 1996  
revised: January 13, 1999  
revised: October 1, 2015  
revised:

**NAPA VALLEY UNIFIED SCHOOL DISTRICT**  
Napa, California

## **All Personnel**

BP 4112.42(a)

4212.42

## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS**

4312.42

The Board of Education 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)

## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

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. 4161/4261/4361 - Leaves)*

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

*(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. 4118 - Dismissal/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:

**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

- 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: (see next page)*

BP 4112.42(d)  
4212.42  
4312.42

## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)**

### *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>

## **All Personnel**

AR 4112.42(a)

4212.42

## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS**

4312.42

### **Definitions**

For purposes of drug testing required by the U.S. Department of Transportation (DOT), drugs included in the tests are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates. (49 CFR 40.3, 40.85, 382.107)

*Alcohol concentration or level* means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath. For purposes of the DOT alcohol testing program, an alcohol level between 0.02 and 0.04 requires removal of the bus driver for a 24-hour period following the test. An alcohol level of 0.04 or higher requires immediate removal of the driver from performing safety-sensitive functions until the driver has successfully completed the return-to-duty process. (49 CFR 382.107, 382.201, 382.505)

*Safety-sensitive function* means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions include, but are not limited to, all time driving or otherwise in the bus; waiting at a district facility to be dispatched; inspecting, servicing, or conditioning the bus or bus equipment; loading or unloading the bus; supervising or assisting in the loading or unloading of the bus; and repairing, obtaining assistance, or remaining in attendance upon a disabled bus. (49 CFR 382.107)

(cf. 3540 - Transportation)

(cf. 3542 - School Bus Drivers)

(cf. 3543 - Transportation Safety and Emergencies)

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

### **Designated Employer Representative**

The Superintendent or designee shall identify a designated employer representative and shall provide his/her name and telephone number to the testing contractor to contact about any problems or issues that may arise during the testing process. (49 CFR 40.35, 40.215)

The designated employer representative shall be responsible for receiving test results and other communications, taking immediate action(s) to remove drivers from safety-sensitive functions, and making other required decisions in the testing and evaluation processes. (49 CFR 40.3)

### **Pre-employment Testing**

When hiring a new driver, the Superintendent or designee shall, with the driver's written consent, request the driver's past drug and alcohol testing record, as specified in 49 CFR 40.25, from any employer who has employed the driver at any time during the previous two years. In addition, the Superintendent or designee shall ask the driver if he/she tested positive, or refused to test, on any pre-employment drug or alcohol test that was administered during the past two years in the course of applying for another safety-sensitive transportation position that he/she

## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

did not obtain. The driver shall not be permitted to perform safety-sensitive functions if he/she refuses to provide consent to obtain the information from previous employers, the information from previous employers is not received within 30 days of the date on which the driver first performed safety-sensitive functions for the district, or the driver or a previous employer reports a violation of a drug or alcohol regulation without subsequent completion of the return-to-duty process. (49 CFR 40.25, 382.413)

Upon making a contingent offer of employment to a driver and prior to the first time the driver performs safety-sensitive functions for the district, the Superintendent or designee shall require the driver to undergo testing for drugs and to receive a verified negative test result. This testing requirement may be waived if all of the following conditions exist: (49 CFR 382.301)

1. The driver has participated in a qualified drug testing program within the previous 30 days.
2. While participating in the program, the driver either was tested within the past six months or participated in a random drug testing program for the previous 12 months.
3. The Superintendent or designee has contacted the testing program(s) in which the driver has participated and has obtained information about the program and the driver's participation as specified in 49 CFR 382.301.
4. No prior employer of the driver of whom the district has knowledge has records of the driver's violation of federal drug testing regulations within the previous six months.

In addition, the Superintendent or designee shall require the driver to undergo pre-employment alcohol testing in accordance with the procedures in 49 CFR 40.1-40.605 and to receive a test result indicating an alcohol concentration level of less than 0.04. (49 CFR 382.301)

### **Post-Accident Testing**

As soon as practicable following an accident involving a school bus or student activity bus, the Superintendent or designee shall ensure that the driver involved is tested for alcohol and/or drugs under either of the following conditions: (49 CFR 382.303)

1. The accident involved loss of human life.
2. The driver receives a citation for alcohol use within eight hours of the accident, or for drug use within 32 hours of the accident, and the accident involved bodily injury to a person who required immediate medical treatment away from the scene of the accident and/or disabling damage to one or more vehicles requiring towing.

## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)**

The Superintendent or designee shall attempt to administer a required alcohol test up to eight hours following the accident and/or a drug test up to 32 hours following the accident. The results of an alcohol or drug test conducted by federal, state, or local officials having independent authority for the test shall be considered to meet this requirement. If the alcohol test is not administered within two hours following the accident, or the test for drugs is not administered within 32 hours following the accident, the Superintendent or designee shall make a record stating the reasons the test was not promptly administered. (49 CFR 382.303)

### **Random Testing**

The Superintendent or designee shall ensure that random, unannounced drug and alcohol tests of bus drivers are conducted on testing dates reasonably spread throughout the year. Such tests shall be conducted during, immediately before, or immediately after the performance of safety-sensitive functions. (49 CFR 382.305)

The Superintendent or designee shall ensure that the percentage of district drivers randomly tested for drugs and alcohol meets or exceeds the minimum annual percentage rates specified in 49 CFR 382.305 or subsequently published in the Federal Register.

Each driver selected for random testing shall have an equal chance of being tested each time selections are made. (49 CFR 382.305)

Each driver who is selected for testing shall proceed to the test site immediately or, if performing a safety-sensitive function other than driving a bus, then as soon as possible after ceasing that function. (49 CFR 382.305)

### **Reasonable Suspicion Testing**

A driver shall be required to submit to a drug or alcohol test whenever the Superintendent or designee has reasonable suspicion that the driver has violated the prohibitions against the use of drugs or alcohol. Such reasonable suspicion shall be based on specific, contemporaneous, articulable observations, conducted during, immediately before, or immediately after the performance of safety-sensitive functions, concerning the driver's appearance, behavior, speech, and/or body odors. Reasonable suspicion of drug use may also include indications of the chronic and withdrawal effects of drugs. (49 CFR 382.307)

The person who makes the required observations for reasonable suspicion testing for drugs or alcohol shall be trained in accordance with 49 CFR 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not be the same person who conducts the alcohol test. (49 CFR 382.307)



## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

Within 24 hours of the observed behavior or before the results of the drug or alcohol test are released, whichever is earlier, the Superintendent or designee shall prepare and sign a written record of the observations leading to a reasonable suspicion test. (49 CFR 382.307)

An alcohol test required as a result of reasonable suspicion shall be administered within eight hours following the determination of reasonable suspicion. If the test is not administered within two hours, the Superintendent or designee shall prepare and maintain on file a record stating the reasons the test was not promptly administered. (49 CFR 382.307)

In the absence of a reasonable suspicion alcohol test, the district shall take no action against a driver based solely on the driver's behavior and appearance, except that the driver shall not be allowed to report for or remain on safety-sensitive functions until an alcohol test is administered and the results show a concentration less than 0.02 or 24 hours have elapsed following the determination of reasonable suspicion. (49 CFR 382.307)

### **Return-to-Duty Testing**

The Superintendent or designee may permit a driver who has violated federal drug or alcohol regulations to return to safety-sensitive functions after the driver has successfully complied with the education and treatment services prescribed by a substance abuse professional and has taken a return-to-duty drug or alcohol test. The driver shall not resume performance of safety-sensitive functions unless the drug test shows a negative result and/or the alcohol test shows a concentration of less than 0.02. (49 CFR 40.305, 382.309)

### **Follow-Up Testing**

Upon receiving a written follow-up testing plan from a substance abuse professional, the Superintendent or designee shall determine the actual dates for follow-up testing consistent with those recommendations and shall ensure that such tests are unannounced and follow no discernable pattern as to their timing. No additional tests beyond those included in the plan shall be imposed by the district. (49 CFR 40.307-40.309, 382.111)

### **Notifications**

The Superintendent or designee shall provide each driver with materials explaining the federal regulations and the district's policy and procedure related to drug and alcohol testing and shall notify representatives of employee organizations of the availability of this information. This information shall include a detailed discussion of at least the following: (49 CFR 382.303, 382.113, 382.601)

**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

1. The identity of the person designated by the district to answer driver questions about the materials
2. The categories of drivers who are subject to drug and alcohol testing
3. Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the workday the driver is required to be in compliance
4. Specific information concerning prohibited driver conduct
5. The circumstances under which a driver will be tested for drugs and/or alcohol, including post-accident testing
6. The procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver
7. The requirement that a driver submit to drug and alcohol tests
8. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences
9. The consequences for drivers found to have violated the prohibitions against drug or alcohol use, including the circumstances under which drivers will be removed immediately from safety-sensitive functions and the requirements for education, treatment, and return-to-duty testing
10. The consequences for drivers found to have a blood alcohol concentration between 0.02 and 0.04
11. Information concerning the effects of drug and alcohol use on an individual's health, work, and personal life; signs and symptoms of a drug or alcohol problem (the driver's or a co-worker's); and available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to any employee assistance program, and/or referral to management

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

Each driver shall sign a statement certifying that he/she has received a copy of the above materials. The Superintendent or designee shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver. (49 CFR 382.601)

AR 4112.42(f)  
4212.42  
4312.42

**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

In addition, prior to administering each alcohol or drug test, the driver shall be notified that the test is required pursuant to Title 49, Part 382, of the Code of Federal Regulations. (49 CFR 382.113)

The driver shall be notified of the results of drug and alcohol tests in accordance with 49 CFR 382.411.

**Records**

The Superintendent or designee shall maintain records of the district's drug and alcohol testing program in accordance with 49 CFR 40.333 and 382.401. Such records shall be maintained in a secure location with controlled access and shall be disclosed only in accordance with 49 CFR 382.405.

*(cf. 3580 - District Records)*

Regulation  
approved:

**NAPA VALLEY UNIFIED SCHOOL DISTRICT**  
Napa, California

## **All Personnel**

AR 4112.5(a)

4212.5

## **CRIMINAL RECORD CHECK**

4312.5

The Superintendent or designee shall not hire or retain in employment, in a certificated or classified position, a person who has been convicted of a violent or serious felony as defined in Penal Code 667.5(c) or 1192.7(c), a controlled substance offense as defined in Education Code 44011, or a sex offense as defined in Education Code 44010. However, the Superintendent or designee shall not deny or terminate employment if: (Education Code 44830.1, 44836, 45122.1, 45123)

1. The conviction for a violent or serious felony, controlled substance offense, or sex offense is reversed and the person is acquitted of the offense in a new trial or the charges against the person are dismissed, unless the sex offense for which the conviction is dismissed pursuant to Penal Code 1203.4 involves a victim who was a minor.
2. A person convicted of a violent or serious felony has obtained a certificate of rehabilitation or a pardon.
3. A person who has been convicted of a serious felony, that is not also a violent felony, proves to the sentencing court that he/she has been rehabilitated for purposes of school employment for at least one year.
4. A person who has been convicted of a controlled substance offense is applying for or is employed in a certificated position and has a credential issued by the Commission on Teacher Credentialing.
5. A person who has been convicted of a controlled substance offense is applying for or is employed in a classified position and has been determined by the Board of Education, from the evidence presented, to have been rehabilitated for at least five years.

*(cf. 4112 - Appointment and Conditions of Employment)*

*(cf. 4112.2 - Certification)*

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 4127/4227/4327 - Temporary Athletic Team Coaches)*

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

A certificated employee may be hired by the district without obtaining a criminal record summary if that employee is employed as a certificated employee in another California school district and became a permanent employee of another California school district as of October 1, 1997. (Education Code 44830.1, 44836)

The Superintendent or designee shall not issue a temporary certificate of clearance to a person whose application for a credential, certificate, or permit is being processed by the Commission on Teacher Credentialing if that person has been convicted of a violent or serious felony, unless the person is otherwise exempt pursuant to Education Code 44332.6 or 44830.1. (Education Code 44332.5, 44332.6)

## **CRIMINAL RECORD CHECK** (continued)

### **Pre-Employment Record Check**

The Superintendent or designee shall require each person to be employed by the district to submit his/her fingerprints electronically through the Live Scan system so that a criminal record check may be conducted by the Department of Justice (DOJ). The Superintendent or designee shall provide the applicant with a Live Scan request form and a list of nearby Live Scan locations.

When a person is applying for a classified position, the Superintendent or designee shall request that the DOJ also obtain a criminal record check through the Federal Bureau of Investigation whenever the applicant meets one of the following conditions: (Education Code 45125)

1. The applicant has not resided in California for at least one year immediately preceding the application for employment.
2. The applicant has resided in California for more than one year, but less than seven years, and the DOJ 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.

The Superintendent or designee shall immediately notify the DOJ when an applicant who has submitted his/her fingerprints to the DOJ is not subsequently employed by the district. (Penal Code 11105.2)

### **Subsequent Arrest Notification**

The Superintendent or designee shall enter into a contract with the DOJ to receive notification of subsequent arrests resulting in conviction of any person whose fingerprints have been submitted to the DOJ. (Education Code 44830.1, 45125; Penal Code 11105.2)

Upon telephone or email notification by the DOJ that a current temporary employee, substitute employee, or probationary employee serving before March 15 of his/her second probationary year has been convicted of a violent or serious felony, the Superintendent or designee shall immediately place that employee on leave without pay. (Education Code 44830.1, 45122.1)

*(cf. 4116 - Probationary/Permanent Status)*

*(cf. 4121 - Temporary/Substitute Personnel)*

## **CRIMINAL RECORD CHECK** (continued)

When the district receives written electronic notification by the DOJ of the fact of conviction, the temporary employee, substitute employee, or probationary employee serving before March 15 of his/her second probationary year shall be terminated automatically unless the employee challenges the DOJ record and the DOJ withdraws its notification in writing. Upon receipt of the written withdrawal of notification by the DOJ, the Superintendent or designee shall immediately reinstate that employee with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement if the employee is still employed by the district. (Education Code 44830.1, 45122.1)

The Superintendent or designee shall immediately notify the DOJ whenever a person whose fingerprints are maintained by the DOJ is terminated. (Penal Code 11105.2)

### **Notification of Applicant/Employee**

The Superintendent or designee shall expeditiously furnish a copy of any DOJ notification to the applicant or employee to whom it relates if the information is a basis for an adverse employment decision. The copy shall be delivered in person or to the last contact information provided by the applicant or employee. (Penal Code 11105, 11105.2)

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

### **Maintenance of Records**

The Superintendent shall designate at least one custodian of records who shall be responsible for the security, storage, dissemination, and destruction of all Criminal Offender Record Information (CORI) furnished to the district and shall serve as the primary contact for the DOJ for any related issues. (Penal Code 11102.2)

An employee designated as custodian of records shall receive a criminal background check clearance from the DOJ prior to serving in that capacity. (Penal Code 11102.2)

The custodian of records shall sign and return to the DOJ the Employee Statement Form acknowledging his/her understanding of the laws prohibiting misuse of CORI. In addition, the custodian of records shall ensure that any individual with access to CORI has on file a signed Employee Statement Form.

To ensure its confidentiality, CORI shall be accessible only to the custodian of records and shall be kept in a locked file separate from other files. CORI shall be used only for the purpose for which it is requested and its contents shall not be disclosed or reproduced. (Education Code 44830.1, 45125)

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*  
*(cf. 9011 - Disclosure of Confidential/Privileged Information)*

**CRIMINAL RECORD CHECK** (continued)

Once a hiring determination is made, the applicant's CORI shall be destroyed to the extent that the identity of the individual can no longer be reasonably ascertained. (Education Code 44830.1, 45125; 11 CCR 708)

The Superintendent or designee shall immediately notify the DOJ whenever a designated custodian of records ceases to serve in that capacity. (Penal Code 11102.2)

**Interagency Agreement**

Subject to an interagency agreement with other school districts, the district shall submit and receive CORI on behalf of all participating districts. (Education Code 44830.2, 45125.01)

Upon receipt from the DOJ of a report of conviction of a serious or violent felony, the district shall communicate that fact to participating districts and shall remove the affected employee from the common list of persons eligible for employment. (Education Code 44830.2, 45125.01)

In addition, upon receipt from the DOJ of a criminal history record or report of subsequent arrest for any person on a common list of persons eligible for employment, the district shall give notice to the superintendent of any participating district, or the person designated in writing by that superintendent, that the report is available for inspection on a confidential basis by the superintendent or the authorized designee. The report shall be made available at the district office for 30 days following the receipt of the notice. (Education Code 44830.2, 45125.01)

The district shall not release a copy of that information to any participating district or any other person. In addition, the district shall retain or dispose of the information in the manner specified in law and in this administrative regulation after all participating districts have had an opportunity to inspect it in accordance with law. (Education Code 44830.2, 45125.01)

The district shall maintain a record of all persons to whom the information has been shown and shall make this record available to the DOJ. (Education Code 44830.2, 45125.01)

*Legal Reference: (see next page)*

## **CRIMINAL RECORD CHECK (continued)**

### *Legal Reference:*

#### EDUCATION CODE

44010 Sex offense  
44011 Controlled substance offense  
44332-44332.6 Temporary certificate of clearance  
44346.1 Applicants for credential, conviction of a violent or serious felony  
44830.1 Certificated employees, conviction of a violent or serious felony  
44830.2 Certificated employees; interagency agreement for sharing criminal record information  
44836 Conviction of a sex or controlled substance offense  
44932 Grounds for dismissal of permanent certificated employees  
45122.1 Classified employees, conviction of a violent or serious felony  
45125 Use of personal identification cards to ascertain conviction of crime  
45125.01 Classified employees; interagency agreement for sharing criminal record information  
45125.5 Automated records check  
45126 Duty of Department of Justice to furnish information  
49024 Activity supervisor clearance certificates

#### PENAL CODE

667.5 Violent felonies  
1192.7 Serious felonies  
1203.4 Dismissal of conviction  
11075-11081 Criminal record dissemination  
11102.2 Maintenance of criminal offender records; custodian of records  
11105 Access to criminal history information  
11105.2 Subsequent arrest notification  
11105.3 Record of conviction involving sex crimes, drug crimes or crimes of violence; availability to employer for applicants for positions with supervisory or disciplinary power over minors  
11140-11144 Furnishing of state criminal history information  
13300-13305 Local summary criminal history information

#### CODE OF REGULATIONS, TITLE 11

701-708 Criminal offender record information  
720-724 Incomplete criminal history information  
994-994.15 Certification of individuals who take fingerprint impressions

#### COURT DECISIONS

Central Valley Chapter of the 7th Step Foundation Inc. v. Evelle J. Younger, (1989) 214 Cal. App. 3d 145

### *Management Resources:*

#### WEB SITES

Office of the Attorney General, Department of Justice, Background Checks:  
<http://www.oag.ca.gov/fingerprints>



All Personnel

E 4112.5(a)

4212.5

CRIMINAL RECORD CHECK

4312.5

**SAMPLE EMPLOYEE STATEMENT FORM  
USE OF CRIMINAL JUSTICE INFORMATION**

As an employee/volunteer of Napa Valley Unified School District, you may have access to confidential criminal record information which is controlled by state and federal statutes. Misuse of such information may adversely affect the individual's civil rights and violate constitutional rights of privacy. Penal Code 502 prescribes the penalties relating to computer crimes. Penal Code 11105 and 13300 identify who has access to criminal history information and under what circumstances it may be disseminated. Penal Code 11140-11144 and 13301-13305 prescribe penalties for misuse of criminal history information. Government Code 6200 prescribes felony penalties for misuse of public records. Penal Code 11142 and 13300 state:

**"Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person not authorized by law to receive the record or information is guilty of a misdemeanor."**

Civil Code 1798.53, Invasion of Privacy, states:

**"Any person who intentionally discloses information, not otherwise public, which they know or should reasonably know was obtained from personal or confidential information maintained by a state agency or from records within a system of records maintained by a federal government agency, shall be subject to a civil action, for invasion of privacy, by the individual."**

**CIVIL, CRIMINAL, AND ADMINISTRATIVE PENALTIES**

\*Penal Code 11141: DOJ furnishing to unauthorized person (misdemeanor)

\*Penal Code 11142: Authorized person furnishing to other (misdemeanor)

\*Penal Code 11143: Unauthorized person in possession (misdemeanor)

\*California Constitution, Article I, Section 1 (Right to Privacy)

\* Civil Code 1798.53, Invasion of Privacy

\*Title 18 USC 641, 1030, 1951, and 1952

Any employee who is responsible for such misuse may be subject to immediate dismissal. Violations of this law may result in criminal and/or civil action.

E 4112.5(b)  
4212.5  
4312.5

**CRIMINAL RECORD CHECK** (continued)

**I HAVE READ THE ABOVE AND UNDERSTAND THE POLICY REGARDING  
MISUSE OF CRIMINAL RECORD INFORMATION.**

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_

Name of District \_\_\_\_\_

PLEASE NOTE: Do not return this form to the DOJ. Your Custodian of Records should maintain these forms.

**PERSONNEL FILES**

The Superintendent or designee shall maintain personnel files for all current employees at the district's central office or at the location where the employee works.

The Superintendent or designee shall determine the types of information to be included in personnel files, including, but not limited to, records required by law, and shall process all material to be placed in such files.

Personnel files for district police or security officers shall be maintained and accessed in accordance with Government Code 3305-3306.5 and AR 3515.3 - District Police/Security Department.

*(cf. 3515.3 - District Police/Security Department)*

Personnel records for current and former employees shall be retained in accordance with 5 CCR 16023.

*(cf. 3580 - District Records)*

**Placement of Material in Personnel Files**

Any supervisor or administrator who places written material or drafts written material for placement in an employee's file shall sign the material and indicate the date of the placement.

When an employee is asked to sign any material that is to be placed in his/her file, he/she shall be informed that the signature only signifies that he/she has read the material and does not necessarily indicate that he/she agrees with its contents.

Any request by an employee to include materials in his/her personnel file must be approved by the Superintendent or designee.

An employee may initiate a written reaction or response to his/her performance evaluation. The response shall be permanently attached to the evaluation and placed in the employee's personnel file.

*(cf. 4115 - Evaluation/Supervision)*

*(cf. 4215 - Evaluation/Supervision)*

*(cf. 4315 - Evaluation/Supervision)*

**Derogatory Information**

Information of a derogatory nature shall not be entered into an employee's personnel file unless and until the employee is given notice and an opportunity to review and comment on that information. Such a review shall take place during normal business hours. The employee

## **PERSONNEL FILES** (continued)

shall be released from duty for this purpose without a salary reduction. The employee may enter his/her own comments and have them attached to the derogatory statement. (Education Code 44031)

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 4112.9 - Employee Notifications)*

*(cf. 4117.4 - Dismissal)*

*(cf. 4118 - Suspension/Disciplinary Action)*

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

*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

### **Persons with Authorized Access**

The Superintendent or designee shall maintain the confidentiality of any personnel records which, if inappropriately disclosed, would constitute an unwarranted invasion of the employee's privacy.

Access to an employee's personnel file shall be granted only to the employee, persons authorized by the employee, district personnel, and others with a valid "right to know" or "need to know" who are authorized access by the Superintendent or designee.

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

Individual Board of Education members shall not be allowed to access personnel files, but the Board may request pertinent information from an employee's file in cases of personnel action.

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

*(cf. 9321 - Closed Session Purposes and Agendas)*

*(cf. 9321.1 - Closed Session Actions and Reports)*

Any authorized reviewer shall maintain strict confidence of the contents of a personnel file. Personnel files shall be reviewed and replaced within the shortest time possible. In no case shall a personnel file be left unattended or left unsecured overnight.

### **File Review by Employee**

Any employee wishing to inspect his/her personnel record shall contact the Superintendent or designee.

With the exceptions noted below, all personnel records related to the employee's performance or to any grievance concerning the employee shall be made available for inspection by the employee. Noncredentialed employees shall have access to any numerical scores obtained as a result of written examinations. (Education Code 44031; Labor Code 1198.5)

**PERSONNEL FILES** (continued)

The Superintendent or designee shall not be required to make available to the employee: (Education Code 44031; Labor Code 1198.5)

1. Records related to the investigation of a possible criminal offense
2. Letters of reference
3. Ratings, reports, or records that were obtained prior to the employee's employment, prepared by identifiable examination committee members, or obtained in connection with a promotional examination

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

*(cf. 4112.62/4212.62/4312.62 - Maintenance of Criminal Offender Records)*

Personnel records related to the employee's job performance or to any grievance concerning him/her shall be made available to the employee at reasonable intervals and at reasonable times. The Superintendent or designee shall not be required to make such records available at a time when the employee is required to render services to the district, unless the employee is required to view the file where it is stored. (Education Code 44031; Labor Code 1198.5)

The Superintendent or designee shall do one of the following: (Labor Code 1198.5)

1. Keep a copy of each employee's personnel records at the place where the employee reports to work
2. Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following the employee's request
3. Permit the employee to inspect the personnel records at the location where the district stores the personnel records, with no loss of compensation to the employee.

The employee may be accompanied by a representative of his/her choice while reviewing his/her personnel records.

Inspection shall take place in the presence of the Superintendent or designee. The Superintendent or designee shall keep a record of the date and time the file was reviewed and the name and title of the person(s) present during the review.

In no instance shall any material be removed from the records. Requests for copies of material in a personnel record must be made in writing.

**PERSONNEL FILES** (continued)

*Legal Reference:*

EDUCATION CODE

35253 Regulations to destroy records

44031 Personnel file contents and inspection

44663 Performance appraisals and related materials

GOVERNMENT CODE

3305-3306.5 District police officers; personnel files

6250-6270 California Public Records Act, especially:

6254 Exemption for personnel records if invasion of personal privacy

6254.3 Disclosure of home address and phone number

LABOR CODE

1198.5 Inspection of personnel files

PENAL CODE

11165.14 Report of investigation of child abuse complaint

CODE OF REGULATIONS, TITLE 5

16020-16022 Records, general provisions

16023-16027 Retention of records

COURT DECISIONS

*Marken v. Santa Monica-Malibu Unified School District*, (2012) 202 Cal.App.4th 1250

*Bakersfield City School District v. Superior Ct.* (2004) 118 Cal.App.4th 1041

ATTORNEY GENERAL OPINIONS

*Cal. Atty. Gen., Indexed Letter, no. IL 75-73* (June 6, 1975)

Policy  
adopted: December 19, 1996  
revised: March 19, 2015  
revised:

**NAPA VALLEY UNIFIED SCHOOL DISTRICT**  
Napa, California