

# Sebastopol Independent Charter School

## Board Policy

### Nondiscrimination/Harassment

BP 5145.3

#### Students

The following mandated policy reflects various provisions of state and federal law which prohibit discrimination against students in educational programs and activities based on certain actual or perceived characteristics of an individual, including Education Code 220, which prohibits discrimination based on disability, race, nationality, immigration status, ethnicity, gender, gender identity, gender expression, sexual orientation, religion, or any other characteristic contained in the definition of hate crimes in Penal Code 422.55; Government Code 11135, which prohibits discrimination based on all the foregoing characteristics and on sex, color, ancestry, age, medical condition, marital status, and an individual's genetic information; Title VI (42 USC 2000d-2000e-17), which prohibits discrimination based on race, color, or national origin; Title IX (20 USC 1681-1688), which prohibits discrimination based on sex, gender, gender identity, pregnancy, and parental status; the Age Discrimination Act of 1975 (42 USC 6101-6107), which prohibits discrimination based on age; and Title II (20 USC 12101-12213) and Section 504 (29 USC 794), which prohibit discrimination based on disability. Education Code 260 gives the Governing Board primary responsibility for ensuring that charter school programs and activities are free from discrimination based on age or any of the characteristics listed in Education Code 220.

Moreover, this Board policy and the accompanying administrative regulation reflect the statutory right of a transgender student to participate in sex-segregated educational programs and use facilities consistent with one's gender identity as specified in Education Code 221.5, and best practices based on existing state and federal law. Charter schools with questions about the rights of transgender and gender-nonconforming students should consult legal counsel as appropriate.

This policy shall apply to all acts constituting unlawful discrimination or harassment related to school activity or to school attendance occurring within a charter school, and to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school.

The Governing Board desires to provide a safe school environment that allows all students equal access to and opportunities in the charter school's academic, extracurricular, and other educational support programs, services, and activities. The Board prohibits, at any charter school activity, unlawful discrimination, including discriminatory harassment, intimidation, and bullying, targeted at any student by anyone, based on the student's actual or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or association with a person or group with one or more of these actual or perceived

characteristics.

Unlawful discrimination, including discriminatory harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also occurs when prohibited conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.

Unlawful discrimination also includes disparate treatment of students based on one of the categories above with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services.

The Board also prohibits any form of retaliation against any individual who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a complaint, or investigates or participates in the investigation of a complaint or report alleging unlawful discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

The Superintendent or designee shall facilitate students' access to the educational program by publicizing the charter school's nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. In addition, the Superintendent or designee shall post the charter school's policies prohibiting discrimination, harassment, intimidation, and bullying and other required information on the charter school's web site in a manner that is easily accessible to parents/guardians and students, in accordance with law and the accompanying administrative regulation.

The Superintendent or designee shall provide training and/or information on the scope and use of the policy and complaint procedures and take other measures designed to increase the school community's understanding of the requirements of law related to discrimination. The Superintendent or designee shall regularly review the implementation of the charter school's nondiscrimination policies and practices and, as necessary, shall take action to remove any identified barrier to student access to or participation in the charter school's educational program. The Superintendent or designee shall report the findings and recommendations to the Board after each review.

Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, all complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students.

Policies related to discrimination must be consistent with the First Amendment right to free speech. Education Code 48950 prohibits a charter school from subjecting a high school student to disciplinary sanctions solely on the basis of speech or other communication that would be constitutionally protected if engaged in outside of campus. However, Education Code 48950

also specifies that the law does not prohibit discipline for harassment, threats, or intimidation unless constitutionally protected. Whether such speech might be entitled to constitutional protection would be determined on a case-by-case basis, with consideration for the specific words used and the circumstances involved. The charter school should consult legal counsel as necessary.

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline, which may include suspension or expulsion when the behavior is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall be subject to disciplinary action, up to and including dismissal.

### Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, to enable the charter school to monitor, address, and prevent repetitive prohibited behavior in charter school.

### Legal Reference:

#### EDUCATION CODE

200-262.4 Prohibition of discrimination  
48900.3 Suspension or expulsion for act of hate violence  
48900.4 Suspension or expulsion for threats or harassment  
48904 Liability of parent/guardian for willful student misconduct  
48907 Student exercise of free expression  
48950 Freedom of speech  
48985 Translation of notices  
49020-49023 Athletic programs  
49060-49079 Student records  
51500 Prohibited instruction or activity  
51501 Prohibited means of instruction  
60044 Prohibited instructional materials

#### CIVIL CODE

1714.1 Liability of parents/guardians for willful misconduct of minor

#### GOVERNMENT CODE

11135 Nondiscrimination in programs or activities funded by state

#### PENAL CODE

422.55 Definition of hate crime  
422.6 Crimes, harassment

#### CODE OF REGULATIONS, TITLE 5

432 Student record  
4600-4670 Uniform complaint procedures  
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  
794 Section 504 of Rehabilitation Act of 1973  
UNITED STATES CODE, TITLE 42  
2000d-2000e-17 Title VI and Title VII Civil Rights Act of 1964, as amended  
2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964  
6101-6107 Age Discrimination Act of 1975  
12101-12213 Title II equal opportunity for individuals with disabilities  
CODE OF FEDERAL REGULATIONS, TITLE 28  
35.107 Nondiscrimination on basis of disability; complaints  
CODE OF FEDERAL REGULATIONS, TITLE 34  
99.31 Disclosure of personally identifiable information  
100.3 Prohibition of discrimination on basis of race, color or national origin  
104.7 Designation of responsible employee for Section 504  
104.8 Notice  
106.8 Designation of responsible employee for Title IX  
106.9 Notification of nondiscrimination on basis of sex  
110.25 Prohibition of discrimination based on age  
COURT DECISIONS  
Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567  
Flores v. Morgan Hill Unified School District, (2003) 324 F.3d 1130

Management Resources:

CSBA PUBLICATIONS

Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students  
Against Sex Discrimination, March 2017

CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS

Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to  
Assist California's K-12 Schools in Responding to Immigration Issues, April 2018

FIRST AMENDMENT CENTER PUBLICATIONS

Public Schools and Sexual Orientation: A First Amendment Framework for Finding Common  
Ground, 2006

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

Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016

Dear Colleague Letter: Title IX Coordinators, April 2015

Resolution Agreement Between the Arcadia Unified School District, U.S. Department of  
Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division,  
(2013) OCR 09-12-1020, DOJ 169-12C-70

Dear Colleague Letter: Harassment and Bullying, October 2010

Notice of Non-Discrimination, Fact Sheet, August 2010

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PUBLICATIONS

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against  
National Origin Discrimination Affecting Limited English Proficient Persons, August 2003

WEB SITES

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

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

California Office of the Attorney General: <http://oag.ca.gov>

California Safe Schools Coalition: <http://www.casafeschools.org>

First Amendment Center: <http://www.firstamendmentcenter.org>

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

Adopted: November 2, 2020

Revised: