

Annual

Notifications

2011-2012

MEMORANDUM

**To:** All Employees  
**From:** Julie Braun Martin  
 Assistant Superintendent, Personnel Services  
**Date:** September 1, 2011  
**Re:** Annual Notifications

The following annual notifications are attached for your information.

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**MT. DIABLO UNIFIED SCHOOL DISTRICT  
UNIFORM COMPLAINT PROCEDURES**

**ANNUAL NOTIFICATION**

The Superintendent or designee shall annually provide written notification of the Mt. Diablo Unified School District uniform complaint procedures (UCP) to students, employees, parent/guardians, the Mt. Diablo Unified School District advisory committee, school advisory committees, appropriate private school officials or representatives, and other interested parties (5 CCR 4622). The Superintendent or designee shall make available copies of the Mt. Diablo Unified School District's uniform complaint procedures free of charge. (5 CCR 4622)

The Mt. Diablo Unified School District is primarily responsible for compliance with state and federal laws and regulations.

The person(s), position(s), or unit(s) responsible for receiving complaints is:

Rose Lock, Assistant Superintendent  
1936 Carlotta Drive  
Concord, CA 94519  
Phone: (925) 682-8000 X4015  
Fax: (925) 689-1466  
Email: [lockr@mdusd.k12.ca.us](mailto:lockr@mdusd.k12.ca.us)

Mt. Diablo Unified School District shall investigate and seek to resolve complaints at the local level using the policies and procedures adopted by the local board as the Uniform Complaint Procedures. These procedures shall be used when addressing complaints alleging unlawful discrimination based on actual or perceived sex, sexual orientation, ethnic group identification, race, ancestry, national origin, religion, age, gender, color or physical or mental disability, or failure to comply with state and/or federal laws in adult education, consolidated categorical aid programs, career/technical, Indian education, migrant education, vocational education, child care and development, programs, child nutrition programs, and special education programs.

Any individual, public agency or organization may file a written complaint of alleged noncompliance by the Mt. Diablo Unified School District (5 CCR 4630). Complainants shall be protected from retaliation and the identity of a complainant alleging discrimination shall remain confidential as appropriate.

Mt. Diablo Unified School District's complaint review shall be completed within 60 calendar days from the date of receipt of the complaint unless the parties have agreed in writing to an extension of the timeline.

An unlawful discrimination complaint must be filed not later than six months from the date the alleged discrimination occurs, or six months from the date the complainant first obtains knowledge of the facts of the alleged discrimination.

The complainant has a right to appeal the Mt. Diablo Unified School District's decision to the California Department of Education (CDE) by filing a written appeal within 15 days of receiving the Mt. Diablo Unified School District's decision. The appeal to the CDE must include a copy of the complaint filed with Mt. Diablo Unified School District and a copy of the Mt. Diablo Unified School District's decision.

The complainant has a right to take some complaints directly to the California Department of Education (CDE) or to pursue remedies before civil courts or other public agencies.

### **APPEALS TO THE CALIFORNIA DEPARTMENT OF EDUCATION**

You may appeal Mt. Diablo Unified School District's decision to the California Department of Education (CDE) by filing a written appeal with the State Superintendent within fifteen days after receiving Mt. Diablo Unified School District's decision.

The appeal must:

1. Specify the basis for the appeal of the decision and whether the facts are incorrect and/or the law is misapplied.
2. Include a copy of the original complaint and a copy of Mt. Diablo Unified School District's decision.

### **CIVIL LAW REMEDIES**

Civil law remedies may be available under state or federal discrimination laws, if applicable. A complainant may pursue available civil law remedies outside of Mt. Diablo Unified School District's complaint procedures. Complainants may seek assistance from mediation centers or public/private interest attorneys. Civil law remedies that may be imposed by a court include, but are not limited to, injunctions and restraining orders.

**UNIFORM COMPLAINT PROCEDURES**

The Governing Board recognizes that the district is responsible for complying with applicable state and federal laws and regulations governing educational programs, and local agency shall investigate complaints alleging failure to comply with applicable state and federal laws and regulations and/or alleging discrimination, and seek to resolve those complaints in accordance with the procedures set out in Sections 4600-4687 of the Title 5 Regulations and in accordance with the policies and procedures of the governing board. (5CCR 4620)

The district shall follow complaint procedures when addressing complaints alleging unlawful discrimination based on actual or perceived age, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, mental or physical disability, or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics, in any program or activity that receives or benefits from state financial assistance. Uniform complaint procedures shall also be used when addressing complaints alleging failure to comply with state and/or federal laws in adult education, consolidated categorical aid programs, migrant education, vocational education, child care and development programs, child nutrition programs, special education programs, and federal school safety planning requirements.

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

*(cf. 0450 - Comprehensive Safety Plan)*

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

*(cf. 1312.2 - Complaints Concerning Instructional Materials)*

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

*(cf. 3553 - Free and Reduced Price Meals)*

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

*(cf. 5141.4 - Child Abuse Reporting Procedures)*

*(cf. 5148 - Child Care and Development)*

*(cf. 6159 - Individualized Education Program)*

*(cf. 6171 - Title I Programs)*

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

*(cf. 6175 - Migrant Education Program)*

*(cf. 6178 - Vocational Education)*

*(cf. 6200 - Adult Education)*

The Board encourages the early, informal resolution of complaints at the site level whenever possible.

The Board acknowledges and respects every individual's right to privacy. Discrimination complaints shall be investigated in a manner that protects the confidentiality of the parties and the facts. This includes keeping the identity of the complainant confidential except to the extent necessary to carry out the investigation or proceedings, as determined by the Superintendent or designee on a case-by-case basis.

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

*(cf. 5125 - Student Records)*

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

The Board prohibits retaliation in any form for participating in complaint procedures, including but not limited to the filing of a complaint or the reporting of instances of discrimination. Such

participation shall not in any way affect the status, grades or work assignments of the complainant.

BP 1312.3(b)

## UNIFORM COMPLAINT PROCEDURES (continued)

### *Legal Reference:*

#### EDUCATION CODE

200-262.3 *Prohibition of discrimination*  
8200-8498 *Child care and development programs*  
8500-8538 *Adult basic education*  
18100-18172 *School libraries*  
32289 *School safety plan, uniform complaint procedure*  
35186 *Alternative uniform complaint procedure*  
48985 *Notices in language other than English*  
49060-49079 *Student records*  
49490-49590 *Child nutrition programs*  
52160-52178 *Bilingual education programs*  
52300-52499.6 *Vocational education*  
52500-52616.24 *Adult schools*  
52800-52870 *School-based coordinated programs*  
54000-54041 *Economic impact aid programs*  
54100-54145 *Miller-Unruh Basic Reading Act*  
54400-54425 *Compensatory education programs*  
54440-54445 *Migrant education*  
54460-54529 *Compensatory education programs*  
56000-56885 *Special education programs*  
59000-59300 *Special schools and centers*  
62000-62005.5 *Evaluation and sunseting of programs*  
64000-64001 *Consolidated application process*

#### CODE OF REGULATIONS, TITLE 5

3080 *Application of section*  
4600-4671 *Uniform complaint procedures*  
4900-4965 *Nondiscrimination in elementary and secondary education programs*

#### PENAL CODE

422.6 *Interference with constitutional right or privilege*

#### UNITED STATES CODE, TITLE 20

6301-6577 *Title I Basic Programs*  
6601-6777 *Title II Preparing and Recruiting High Quality Teachers and Principals*  
6801-6871 *Title III, Language instruction for limited English proficient and immigrant students*  
7101-7184 *Safe and Drug-Free Schools and Communities Act, including*  
7114 *Local educational program, safety plans*  
7201-7283g *Title V Promoting Informed Parental Choice and Innovative Programs*  
7301- 7372 *Title VI Rural and Low-Income School Programs*

### *Management Resources:*

#### WEB SITES

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

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

Policy  
adopted: 6/8/06

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California

**UNIFORM COMPLAINT PROCEDURES**

**Compliance Officers**

The Governing Board designates the following compliance officer(s) to receive and investigate complaints and to ensure district compliance with law:

Rose Lock, Assistant Superintendent  
1936 Carlotta Drive  
Concord, CA 94519  
Phone: (925) 682-8000 X4015  
Fax: (925) 689-1466  
Email: [lockr@mdusd.k12.ca.us](mailto:lockr@mdusd.k12.ca.us)

The Superintendent or designee shall ensure that employees designated to investigate complaints are knowledgeable about the laws and programs for which they are responsible. Such employees may have access to legal counsel as determined by the Superintendent or designee.

(cf. 9124 - Attorney)

**Notifications**

The Superintendent or designee shall meet the notification requirements of 5 CCR 4622, including the annual dissemination of district complaint procedures and information about available appeals, civil law remedies and conditions under which a complaint may be taken directly to the California Department of Education. An annual written notice of the LEA's complaint procedures shall be sent to students, employees, parents or guardians of its students, school and district advisory committees, appropriate private school officials or representatives, and other interested parties. The Superintendent or designee shall ensure that complainants understand that they may pursue other remedies, including actions before civil courts of other public agencies.

(cf. 5145.6 – Parental Notifications)

**Procedures**

The following procedures shall be used to address all complaints which allege that the district has violated federal or state laws or regulations governing educational programs. Compliance officers shall maintain a record of each complaint and subsequent related actions, including all information required for compliance with 5 CCR 4632.

All parties involved in allegations shall be notified when a complaint is filed, when a complaint meeting or hearing is scheduled and when a decision or ruling is made.

**Step 1: Filing of Complaint**

Any individual, public agency or organization may file a written complaint of alleged noncompliance by the district.

**UNIFORM COMPLAINT PROCEDURES** (continued)

Complaints alleging unlawful discrimination may be filed by a person who alleges that he/she personally suffered unlawful discrimination or by a person who believes that an individual or any specific class of individuals has been subjected to unlawful discrimination. The complaint must be initiated no later than six months from the date when the alleged discrimination occurred or when the complainant first obtained knowledge of the facts of the alleged discrimination. (5CCR 4630)

The complainant shall be presented to the compliance officer who shall maintain a log of complaints received, providing each with a code number and a date stamp.

If a complainant is unable to put a complaint in writing due to conditions such as illiteracy or other disabilities, district staff shall help him/her to file the complaint. (5 CCR 4600)

**Step 2: Investigation of Complaint**

The compliance officer is encouraged to hold an investigative meeting within five days of receiving the complaint. This meeting shall provide an opportunity for the complainant and/or his/her representative to repeat the complaint orally.

The complainant and/or his/her representative and the district's representatives shall also have an opportunity to present information relevant to the complaint. Parties to the dispute may discuss the complaint and question each other or each other's witnesses. (5 CCR 4631)

*Refusal by the complainant to provide the investigator with documents or other evidence related to the allegations in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation, may result in the dismissal of the complaint because of a lack of evidence to support the allegations.*

*Refusal by the LEA to provide the investigator with access to records and/or other information related to the allegation in the complaint, or to otherwise fail to refuse or cooperate in the investigation or engage in any other obstruction of the investigation, may result in the imposition of a remedy in favor of the complainant.*

**Step 3: Response**

Within 30 days of receiving the complaint, the compliance officer shall prepare and send to the complainant a written report of the district's investigation and decision, as described in Step #4 below. (5 CCR 4631) If the complainant is dissatisfied with the compliance officer's decision, he/she may, within five days, file his/her complaint in writing with the Board.

The Board may consider the matter at its next regular Board meeting or at a special Board meeting convened in order to meet the 60-day time limit within which the complaint must be answered. The Board may decide not to hear the complaint, in which case the compliance officer's decision shall be final.

**UNIFORM COMPLAINT PROCEDURES** (continued)

If the Board hears the complaint, the compliance officer shall send the Board's decision to the complainant within 60 days of the district's initially receiving the complaint or within the time period that has been specified in a written agreement with the complainant. (5 CCR 4631)

**Step 4: Final Written Decision**

The report of the district's decision shall be in writing and sent to the complainant. (5 CCR 4631)

The report of the district's decision shall be written in English and in the language of the complainant whenever feasible or required by law. If it is not feasible to write the report in the complainant's primary language, the district shall arrange a meeting at which a community member will interpret it for the complainant.

This report shall include:

1. The findings and disposition of the complaint, including corrective actions, if any (5 CCR 4631)
2. The rationale for the above disposition (5CCR 4631)
3. Notice of the complainant's right to appeal the decision within 15 days to the California Department of Education, and procedures to be followed for initiating such an appeal (5 CCR 4631, 4652)
4. For discrimination complaints, notice that the complainant must wait until 60 days have elapsed from the filing of an appeal with the California Department of Education before pursuing civil law remedies (5 CCR 4631; Education Code 262.3)
5. A detailed statement of all specific issues that were brought up during the investigation and the extent to which these issues were resolved

If an employee is disciplined as a result of the complaint, this report shall simply state that effective action was taken and that the employee was informed of district expectations. The report shall not give any further information as to the nature of the disciplinary action.

**Appeals to the California Department of Education**

If dissatisfied with the district's decision, the complainant may appeal in writing to the California Department of Education within 15 days of receiving the district's decision. For good cause, the Superintendent of Public Instruction may grant an extension for filing appeals. (5 CCR 4652)

When appealing to the California Department of Education, the complainant must specify the reason(s) for appealing the district's decision and include a copy of the locally filed complaint and the district's decision.

**UNIFORM COMPLAINT PROCEDURES** (continued)

*Refusal by the complainant to provide the investigator with documents or other evidence related to the allegations in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation, may result in the dismissal of the complaint because of a lack of evidence to support the allegations.*

*If the Department determines the appeal raises issues not contained in the local complaint, the Department will refer those new issues back to the local educational agency for resolution as a new complaint under section 4630 or 4631.*

The California Department of Education may directly intervene in the complaint without waiting for action by the district when one of the conditions listed in 5 CCR 4650 exists.

In addition, The California Department of Education may also intervene in those cases where the district has not taken action within 60 calendar days for the date the complaint was filed with the district.

*Department Resolution Procedures.*

*(a) When the Department determines that direct State intervention is warranted pursuant to any provision of section 4650, the following procedures shall be used to resolve the issues of the complaint:*

*(1) The Department shall consider alternative methods to resolve the allegations in the complaint.*

*(2) If both parties request mediation, the Department shall offer to mediate the dispute which may lead to a state mediation agreement.*

*(3) The Department shall conduct an investigation, including an on-site investigation if necessary, into the allegation in the complaint unless a settlement agreement has been reached between the parties that disposes of all the issues in the complaint.*

**Civil Law Remedies**

A complainant may pursue available civil law remedies outside of the district's complaint procedures. Complainants may seek assistance from mediation centers or public/private interest attorneys. Civil law remedies that may be imposed by a court include, but are not limited to, injunctions and restraining orders. For discrimination complaints, however, a complainant must wait until 60 days have elapsed from the filing of an appeal with the California Department of Education before pursuing civil law remedies. The moratorium does not apply to injunctive relief and is applicable only if the district has appropriately, and in a timely manner, apprised the complainant of his/her right to file a complaint in accordance with 5 CCR 4622.

**UNIFORM COMPLAINT PROCEDURES**

Direct to appropriate Uniform Complaint Officer:

Assistant Superintendent Elementary Education OR  
Associate Superintendent Educational Services/Secondary Education  
1936 Carlotta Drive  
Concord, CA 94519

Date Received: _____
Date Contacted Complainant: _____
Date Notified of Resolution: _____

**MT. DIABLO UNIFIED SCHOOL DISTRICT  
UNIFORM COMPLAINT FORM**

NAME: \_\_\_\_\_ PHONE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SCHOOL/PROGRAM: \_\_\_\_\_ DATE: \_\_\_\_\_

In the space provided below, please indicate the nature of the problem. Please be as specific as possible.

Have you discussed the problem with a staff member or administrator? If so, what was the outcome of your discussion?

Indicate below your recommendations for resolving the problem.

# Mt. Diablo USD

## Administrative Regulation

Community Relations

AR 1312.4(a)

### WILLIAMS UNIFORM COMPLAINT PROCEDURES

#### Types of Complaints

The district shall use the following procedures to investigate and resolve complaints when the complainant alleges that any of the following has occurred: (Education Code 35186; 5 CCR 4681, 4682, 4683)

1. Textbooks and instructional materials
  - a. A student, including an English learner, does not have standards-aligned textbooks or instructional materials or state- or district-adopted textbooks or other required instructional materials to use in class.
  - b. A student does not have access to textbooks or instructional materials to use at home or after school.
  - c. Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

*(cf. 6161.1 - Selection and Evaluation of Instructional Materials)*

2. Teacher vacancy or misassignment
  - a. A semester begins and a teacher vacancy exists.

Teacher vacancy means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position to which a single designated certificated employee has not been assigned at the beginning of the semester for an entire semester. (Education Code 35186; 5 CCR 4600)

Beginning of the year or semester means the first day classes necessary to serve all the students enrolled are established with a single designated certificated employee assigned for the duration of the class, but not later than 20 working days after the first day students attend classes for that semester. (5 CCR 4600)

- b. A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20 percent English learner students in the class.

*(cf. 4112.22 – Staff Teaching Students of Limited English Proficiency)*

- c. A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

Misassignment means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold. (Education Code 35186; 5 CCR 4600)

*(cf. 4112.2 - Certification)*

*(cf. 4113 - Assignment)*

### 3. Facilities

- a. A condition poses an emergency or urgent threat to the health or safety of students or staff.

Emergency or urgent threat means structures or systems that are in a condition that poses a threat to the health and safety of students or staff while at school, including, but not limited to, gas leaks; nonfunctioning heating, ventilation, fire sprinklers, or air-conditioning systems; electrical power failure; major sewer stoppage; major pest or vermin infestation; broken windows or exterior doors or gates that will not lock and that pose a security risk; abatement of hazardous materials previously undiscovered that pose an immediate threat to students or staff; or structural damage creating a hazardous or uninhabitable condition. (Education Code 17592.72)

- b. A school restroom has not been cleaned, maintained, or kept open in accordance with Education Code 35292.5.

Clean or maintained school restroom means a school restroom has been cleaned or maintained regularly, is fully operational, or has been stocked at all times with toilet paper, soap, and paper towels or functional hand dryers. (Education Code 35292.5)

Open restroom means, except as necessary for student safety or to make repairs, the school has kept all restrooms open during school hours when students are not in classes and has kept a sufficient number of restrooms open during school hours when students are in classes. (Education Code 35292.5)

### 4. High school exit examination intensive instruction and services

A student, including an English learner, who has not passed the exit exam by the end of grade 12 was not provided the opportunity to receive intensive instruction and services pursuant to Education Code 37254(d)(4) and (5) after completion of grade 12 for two consecutive academic years or until the student has passed both parts of the exam, whichever comes first. (Education Code 35186)

*(cf. 6162.52 - High School Exit Examination)*

*(cf. 6179 - Supplemental Instruction)*

## **Filing of Complaint**

A complaint alleging any condition(s) specified in items #1-3 above shall be filed with the principal or designee at the school in which the complaint arises. The principal or designee shall forward a complaint about problems beyond his/her authority to the Superintendent or designee in a timely manner, but not to exceed 10 working days. (Education Code 35186; 5 CCR 4680)

A complaint alleging any deficiency specified in item #4 above shall be filed with a district official designated by the Superintendent. Such complaints may be filed at the district office or at a school site and shall be immediately forwarded to the Superintendent or designee. (Education Code 35186)

## **Investigation and Response**

The principal or designee shall make all reasonable efforts to investigate any problem within his/her authority. He/she shall remedy a valid complaint within a reasonable time period not to exceed 30 working days from the date the complaint was received. (Education Code 35186; 5 CCR 4685)

Complaints may be filed anonymously. If the complainant has indicated on the complaint form that he/she would like a response to the complaint, the principal or designee shall report the resolution of the complaint to him/her within 45 working days of the initial filing of the complaint. If a response is requested, the response shall be made to the mailing address of the complainant as indicated on the complaint form. At the same time, the principal or designee shall report the same information to the Superintendent or designee. (Education Code 35186; 5 CCR 4680, 4685)

When Education Code 48985 is applicable and the complainant has requested a response, the response shall be written in English and in the primary language in which the complaint was filed. (Education Code 35186)

If a complainant is not satisfied with the resolution of a complaint, he/she has the right to describe the complaint to the Governing Board at a regularly scheduled meeting. (Education Code 35186; 5 CCR 4686)

For any complaint concerning a facilities condition that poses an emergency or urgent threat to the health or safety of students or staff as described in item #3a above, a complainant who is not satisfied with the resolution proffered by the principal or Superintendent or designee may file an appeal to the Superintendent of Public Instruction within 15 days of receiving the district's response. The complainant shall comply with the appeal requirements specified in 5\_CCR 4632. (Education Code 35186; 5 CCR 4687)

All complaints and written responses shall be public records. (Education Code 35186; 5 CCR 4686)

*(cf. 1340 - Access to District Records)*

## **Reports**

The Superintendent or designee shall report summarized data on the nature and resolution of all complaints to the Board and the County Superintendent of Schools on a quarterly basis. The

report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. These summaries shall be publicly reported on a quarterly basis at a regularly scheduled Board meeting. (Education Code 35186; 5 CCR 4686)

## **Forms and Notices**

The Superintendent or designee shall ensure that the district's complaint form contains a space to indicate whether the complainant desires a response to his/her complaint and specifies the location for filing a complaint. A complainant may add as much text to explain the complaint as he/she wishes. However, complainants need not use the district's Williams complaint form in order to file a complaint. (Education Code 35186)

The Superintendent or designee shall ensure that a notice is posted in each classroom in each school containing the components specified in Education Code 35186. (Education Code 35186)

### *Legal Reference:*

#### EDUCATION CODE

1240 County superintendent of schools, duties

17592.72 Urgent or emergency repairs, School Facility Emergency Repair Account

33126 School accountability report card

35186 Williams uniform complaint procedure

35292.5 Restrooms, maintenance and cleanliness

37254 Supplemental instruction based on failure to pass exit exam by end of grade 12

48985 Notice to parents in language other than English

60119 Hearing on sufficiency of instructional materials

#### CODE OF REGULATIONS, TITLE 5

4600-4687 Uniform complaint procedures, especially:

4680-4687 Williams complaints

### *Management Resources:*

#### WEB SITES

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

California County Superintendents Educational Services Association: <http://www.ccesa.org>

California Department of Education, Williams case: <http://www.cde.ca.gov/eo/ce/wc/index.asp>

State Allocation Board, Office of Public School Construction: <http://www.opsc.dgs.ca.gov>

Regulation  
adopted: May 13, 2008

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California

**WILLIAMS UNIFORM COMPLAINT PROCEDURES**

**COMPLAINT FORM: WILLIAMS UNIFORM COMPLAINT PROCEDURES**

Education Code 35186 creates a procedure for the filing of complaints concerning deficiencies related to instructional materials, conditions of facilities that are not maintained in a clean or safe manner or in good repair, teacher vacancy or misassignment, or the lack of opportunity to receive intensive instruction and services to pupils who did not pass one or both parts of the high school exit examination by the end of grade 12. The complaint and response are public documents as provided by law. Complaints may be filed anonymously. However, if you wish to receive a response to your complaint, you must provide the contact information below.

Response requested?  Yes  No

Contact Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: Day: \_\_\_\_\_ Evening: \_\_\_\_\_

E-mail address, if any: \_\_\_\_\_

Location of the problem that is the subject of this complaint:

School: \_\_\_\_\_

Course title/grade level and teacher name: \_\_\_\_\_

Room number/name of room/location of facility: \_\_\_\_\_

Date problem was observed: \_\_\_\_\_

**Only the following issues may be the subject of this complaint process. If you wish to complain about an issue not specified below, please use the appropriate district complaint procedure.**

Specific issue(s) of the complaint: (Please check all that apply. A complaint may contain more than one allegation.)

1. Textbooks and instructional materials: (Education Code 35186; 5 CCR 4681)
  - A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state- or district-adopted textbooks or other required instructional materials to use in class.
  - A pupil does not have access to textbooks or instructional materials to use at home or after school. This does not require two sets of textbooks or instructional materials for each pupil.
  - Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.
  - A pupil was provided photocopied sheets from only a portion of a textbook or instructional materials to address a shortage of textbooks or instructional materials.

2. Teacher vacancy or misassignment: (Education Code 35186; 5 CCR 4681)

- A semester begins and a teacher vacancy exists. A teacher vacancy is a position to which a single designated certificated employee has not been assigned at the beginning of the school year for an entire year or, if the position is for a one-semester course, a position to which a single designated certificated employee has not been assigned at the beginning of a semester for an entire semester.
  - A teacher lacking credentials or training to teach English learners is assigned to teach a class with more than 20 percent English learners in the class.
  - A teacher is assigned to teach a class for which the teacher lacks subject matter competency.
3. Facility conditions: (Education Code 35186, 35292.5; 5 CCR 4683)
- A condition exists that poses an emergency or urgent threat to the health or safety of pupils or staff including gas leaks; nonfunctioning heating, ventilation, fire sprinklers, or air-conditioning systems; electrical power failure; major sewer stoppage; major pest or vermin infestation; broken windows or exterior doors or gates that will not lock and that pose a security risk; abatement of hazardous materials previously undiscovered that pose an immediate threat to pupils or staff; or structural damage creating a hazardous or uninhabitable condition.
  - A school restroom has not been cleaned or maintained regularly, is not fully operational, or has not been stocked at all times with toilet paper, soap, and paper towels or functional hand dryers.
  - The school has not kept all restrooms open during school hours when pupils are not in classes and has not kept a sufficient number of restrooms open during school hours when pupils are in classes. This does not apply when closing of the restroom is necessary for pupil safety or to make repairs.
4. High school exit exam intensive instruction and services: (Education Code 35186)
- Pupils who have not passed the high school exit exam by the end of grade 12 were not provided the opportunity to receive intensive instruction and services pursuant to Education Code 37254(d)(4) and (5) after the completion of grade 12.

Please describe the issue of your complaint in detail. You may attach additional pages and include as much text as necessary to fully describe the situation. For complaints regarding facilities conditions, please describe the emergency or urgent facilities condition and how that condition poses a threat to the health or safety of pupils or staff.

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Please file this complaint at the following location:

Elementary Education  
Ms. Rose Lock,  
Assistant Superintendent  
1936 Carlotta Drive  
Concord, CA 94519  
925-682-8000 ext. 4015  
Fax: 925-689-1466  
E-mail: [lockr@mdusd.k12.ca.us](mailto:lockr@mdusd.k12.ca.us)

Please provide a signature below. If you wish to remain anonymous, a signature is not required. However, all complaints, even anonymous ones, should be dated.

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(signature)

(date)

## **EMPLOYEE USE OF TECHNOLOGY**

The Governing Board intends that technological resources provided by the district be used in a responsible and proper manner in support of the instructional program and for the advancement of student learning.

*(cf. 0440 - District Technology Plan)*  
*(cf. 1113 - District and School Web Sites)*  
*(cf. 4040 - Employee Use of Technology)*  
*(cf. 6010 - Goals and Objectives)*  
*(cf. 6162.7 - Use of Technology in Instruction)*  
*(cf. 6163.1 - Library Media Centers)*

The Superintendent or designee shall notify students and parents/guardians about authorized uses of district computers and consequences for unauthorized use and/or unlawful activities.

*(cf. 5125.2 - Withholding Grades, Diploma or Transcripts)*  
*(cf. 5144 - Discipline)*  
*(cf. 5144.1 - Suspension and Expulsion/Due Process)*  
*(cf. 5144.2 - Suspension and Expulsion/Due Process: Students with Disabilities)*  
*(cf. 5145.12 - Search and Seizure)*

### **On-Line Services/Internet Access**

The Superintendent or designee shall ensure that all district computers with Internet access have a technology protection measure that blocks or filters Internet access to visual depictions that are obscene, child pornography, or harmful to minors, and that the operation of such measures is enforced. (20 USC 7001, 47 USC 254)

The Board desires to protect students from access to harmful matter on the Internet or other on-line services. The Superintendent or designee shall implement rules and procedures designed to restrict students' access to harmful or inappropriate matter on the Internet. He/she also shall establish regulations to address the safety and security of students when using electronic mail, chat rooms and other forms of direct electronic communication.

Disclosure, use and dissemination of personal identification information regarding students is prohibited.

Staff shall supervise students while they are using on-line services and may ask teacher aides and student aides to assist in this supervision.

Before using the district's on-line resources, each student and his/her parent/guardian shall sign and return an Acceptable Use Agreement-specifying user obligations and responsibilities. In that agreement, the student and his/her parent/guardian shall agree to not hold the district responsible and shall agree to indemnify and hold harmless the district and all district personnel for the failure of any technology protection measures, violations of copyright restrictions, users' mistakes or negligence, or any costs incurred by users.

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

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

In order to help ensure that the district adapts to changing technologies and circumstances, the Superintendent or designee shall regularly review this policy, the accompanying administrative regulation and other procedures. He/she shall also monitor the district's filtering software to help ensure its effectiveness.

### *Legal Reference:*

#### EDUCATION CODE

48980 *Required notification at beginning of term*  
51006 *Computer education and resources*  
51007 *Programs to strengthen technological skills*  
51870-51874 *Education Technology*  
51870.5 *Student Internet access*  
60044 *Prohibited instructional materials*

#### PENAL CODE

313 *Harmful matter*  
502 *Computer crimes, remedies*  
632 *Eavesdropping on or recording confidential communications*

#### UNITED STATES CODE, TITLE 20

6801-6979 *Technology for Education Act of 1994*  
7001 *Internet safety policy and technology protection measures, Title III funds*

#### UNITED STATES CODE, TITLE 47

254 *Universal service discounts (E-rate)*  
CODE OF FEDERAL REGULATIONS, TITLE 16  
312.1-312.12 *Children's online privacy protection*  
CODE OF FEDERAL REGULATIONS, TITLE 47  
54.520 *Internet safety policy and technology protection measures, E-rate discounts*

### *Management Resources:*

#### CDE PUBLICATIONS

*K-12 Network Technology Planning Guide: Building the Future, 1994*

#### CDE PROGRAM ADVISORIES

1223.94 *Acceptable Use of Electronic Information Resources*

#### WEB SITES

*Federal Communications Commission: <http://www.fcc.gov>*  
*U.S. Department of Education: <http://www.ed.gov>*  
*Commission on Online Child Protection: <http://www.copacommission.org>*  
*CDE: <http://www.cde.ca.gov>*  
*American Library Association: <http://www.ala.org>*  
*CSBA: <http://www.csba.org>*

Policy **MT. DIABLO UNIFIED SCHOOL DISTRICT**  
adopted: September 9, 2003 Concord, California

**EMPLOYEE USE OF TECHNOLOGY**

Electronic information resources offer access to computers and people throughout the world. Students may have access to electronic mail, college and university libraries, information and news from a variety of sources and research institutions, software of all types, discussion groups on a wide variety of topics, and other resources.

While electronic information resources offer tremendous opportunities of educational value, they also offer persons with illegal or unethical purposes avenues for reaching students, teachers, and others, including parents. The district does not have control of the information on commercial electronic information services or the information on the Internet, although it attempts to provide prudent and available barriers. Other sites accessible via the Internet may contain material that is illegal, defamatory, inaccurate or potentially offensive to some people. Although access to all Internet resources is available, it is the intent of the district to make Internet access available only to further its educational and administrative goals and objectives.

The district believes that the benefits to students from access to the Internet and some commercial electronic services, in the form of information resources and opportunities for collaboration far exceed any disadvantages of access. But ultimately, the parent(s) and guardian(s) of minors are responsible for setting and conveying the standards that their student should follow. To that end, the district supports and respects each family's right to decide whether or not to apply for district electronic information resources access.

Students of the district have access to electronic information resources through stand-alone and/or network connections to outside electronic services. These resources allow them the opportunity to publish and retrieve information via electronic means, including through the Internet.

These resources shall be used to:

1. Reinforce the adopted curriculum
2. Reinforce the educational goals of the district
3. Enhance available information in the library/media centers

**Procedures for Publishing of Information**

All information shall be considered as material, which supports student/staff publications, general school communications with the public or administrative activities of the district.

**EMPLOYEE USE OF TECHNOLOGY** (continued)

1. Information selected for electronic publishing (including posting on news forums, electronic bulletin boards, and World Wide Web Pages) shall be presented to the site administrator, department director or assistant superintendent and/or designee prior to release.
2. The material, when received, shall be reviewed and evaluated prior to its release.
3. Material must not violate any state or federal laws, including:
  - a. Copyrights
  - b. Destruction of property
  - c. Invasion of privacy

**Student Use**

The site administrator or his/her designee is the primary person responsible for implementing items 1-4 below with support from the Curriculum and Instruction and Technology and Information Services Departments:

1. Students in grades 5 and below will have access to information resources that are selected by the instructor.
2. Parents/guardians shall be notified in writing prior to the initial use of the Internet.
  - a. A “Student Acceptable Use Agreement” form (E (1)6163.4) will be returned to the instructor prior to the student being allowed to use the instructional resources on the Internet or a commercial electronic online service.
  - b. No student shall participate unless he/she has returned the signed “Student Use Agreement” form .
  - c. This agreement covers only one academic year and must be renewed.
3. Staff shall supervise the student use of online services and in so doing may ask teacher assistants and student assistants to assist in this supervision.
4. Students will be given instruction on the proper use of the district network and the Internet as established by the Curriculum and Instruction and Technology and Information Services Departments.

## **EMPLOYEE USE OF TECHNOLOGY**

### **EMPLOYEE ACCEPTABLE USE AGREEMENT**

We are pleased to announce that Mt. Diablo Unified School District electronic information services are now available to students and teachers in our district who qualify as a result of participation in an orientation or training course. The Mt. Diablo Unified School District strongly believes in the educational value of such electronic services and recognizes the potential of such to support our curriculum and student learning in our district. Our goal in providing this service is to promote educational excellence by facilitating resource sharing, innovation, and communication. Mt. Diablo Unified School District will make every effort to protect students and teachers from any misuses or abuses as a result of their experiences with an information service. Mt. Diablo Unified School District shall ensure that all district computers with Internet access have a technology protection measure that prevents access to visual/audio depictions that are obscene or child pornography, and that the operation of such measures is enforced. Mt. Diablo Unified School District may disable the technology protection measure during use by an adult to enable access for bona fide research or other lawful purpose. All users must be continuously on guard to avoid inappropriate and illegal interaction with the information services.

Please read this document carefully. We must have your signed acknowledgment of the employee acceptable use policy before we can provide you with access.

Listed below are the provisions of this contract. If any user violates these provisions, access to the information service may be denied and they may be subject to legal and/or disciplinary action.

#### Terms and Conditions of This Contract

1. **PERSONAL RESPONSIBILITY.** As a representative of this school, I will accept personal responsibility for reporting any misuse of the network to the site administrator. Misuse can come in many forms, but it is commonly viewed/heard as any message(s) sent or received that indicate or suggest pornography, unethical or illegal solicitation, racism, sexism, offensive language, and other issues described below.
2. **PRIVILEGES.** The use of the information system is a privilege, not a right, and inappropriate use will result in a cancellation of those privileges. Each person who receives and/or shares an account will participate in an orientation or training course with a Mt. Diablo Unified School faculty member as to proper behavior and use of the network. The Mt. Diablo Unified School District site administrators (operating under the aegis of the school board and the district office) will decide what is appropriate use and their decision is final. The site administrator(s) may terminate access at any time deemed necessary. The administration, staff, or faculty of Mt.

Diablo Unified School District may request that the site administrator deny, revoke, or suspend specific user access.

3. **NETWORK ETIQUETTE AND PRIVACY.** You are expected to abide by the generally accepted rules of network etiquette. These rules include (but are not limited to) the following:
  - a. **BE POLITE.** Never send, or encourage others to send, abusive messages.
  - b. **USE APPROPRIATE LANGUAGE.** Remember that you are a representative of our school and district on a non-private system. You may be alone with your computer, but what you say and do can be viewed/heard globally! Never swear, use vulgarities, or any other inappropriate language.
  - c. **PRIVACY.** For your own privacy and the privacy of others, do not reveal your home address or personal phone number or the addresses and phone numbers of students, teachers, staff or colleagues.
  - d. **ELECTRONIC MAIL.** Electronic mail (e-mail) is not guaranteed to be private. Messages relating to or in support of illegal activities must be reported to the site administrator. Illegal activities of any kind are strictly forbidden.
  - e. **DISRUPTIONS.** The network is not to be used in any way that would disrupt use of the network by others.
4. **SERVICES.** The Mt. Diablo Unified School District makes no warranties of any kind, whether expressed or implied, for the service it is providing. Mt. Diablo Unified School District will not be responsible for any damages suffered while on this system(s). These damages include loss of data as a result of delays, non-deliveries, miss-deliveries, or service interruptions caused by the system or your errors or omissions. Use of any information obtained via the information system(s) is at your own risk. Mt. Diablo Unified School District specifically disclaims any responsibility for the accuracy of information obtained through this service.
5. **SECURITY.** Security on any computer system is a high priority because there are so many users. The district has the right to restrict or terminate Network and Internet access at any time for any reason. The district further has the right to monitor Network activity in any form that it sees fit to ensure proper use of the Network. If you identify a security problem notify the site administrator at once. Never demonstrate the problem to other users. Never use another individual's account without written permission from that person. Any user identified as a security risk will be denied access to the information system.

E(1) 4040(c)  
(E(1) 6163.4(c))

6. **VANDALISM.** Vandalism is defined as any malicious attempt to harm or destroy equipment, materials or data of another user or any other agencies or networks that are connected to the district system. This includes, but is not limited to the uploading or creation of computer viruses. Any vandalism will result in the loss of computer privileges, disciplinary action, and/or referral to legal authorities.

**Instruction**

E(2) 4040  
(E(2) 6163.4

**STUDENT USE OF TELECOMMUNICATION NETWORK/INTERNET SAFETY  
POLICY**

**STUDENT**

I understand and will abide by the provisions and conditions of this contract. I understand that any violations of the above provisions may result in disciplinary action, the revoking of my user access, and appropriate legal action. I also agree to report any misuse of the information system to the Mt. Diablo Unified School District site administrator in charge of the site in question. Misuse can come in many forms, but can be viewed/heard as any messages sent or received that indicate or suggest pornography, unethical or illegal solicitation, racism, sexism, inappropriate language, gossip, and other issues described under section 4 of the Acceptable Use Agreement above.

Student's Name (Please Print)

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

**PARENT OR GUARDIAN**

Students under the age of 18 must also have the signature of a parent or guardian who has read this contract.

As the parent or guardian of this student, I have read this contract and understand that it is designed for educational purposes. I understand that it is impossible for Mt. Diablo Unified School District to restrict access to all controversial materials, and I will not hold the district responsible for materials acquired on the network. I also agree to report any misuse of the information system to a Mt. Diablo Unified School District site administrator. Misuse can come in many forms, but can be viewed/heard as any messages sent or received that indicate or suggestion pornography, unethical or illegal solicitation, racism, sexism, inappropriate language, gossip and other issues described under section 4 of the Acceptable Use Agreement above.\*

I accept full responsibility for supervision if and when my child/s use is not in a school setting. I hereby give my permission to issue an account for my child and certify that the information contained on this form is correct.

Parent or Guardian Name (Please Print)

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

**SPONSORING MDUSD TEACHER**

I have read the Student Acceptable Use Agreement. Because the student may use the network for individual work or in the context of another class, I cannot be held responsible for the student use of the network. As the sponsoring teacher I do agree to instruct the student on acceptable use of the network and proper network etiquette. I will select what electronic resources will be used for students in grades 5 and below. I also agree to report any known misuse of the information system to the site administrator. Misuse can come in many forms, but can be viewed/heard as any messages sent or received that indicate or suggest pornography, unethical or illegal solicitation, racism, sexism, inappropriate language, gossip and other issues described under section 4 of the Acceptable Use Agreement above.

Teacher's Name (Please Print)

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

Exhibit  
version: September 9, 2003

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California

## NONDISCRIMINATION IN EMPLOYMENT

The Governing Board prohibits unlawful discrimination against and/or harassment of district employees and job applicants on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender or sexual orientation at any district site and/or activity. The Board also prohibits retaliation against any district employee or job applicant who complains, testifies or in any way participates in the district's complaint procedures instituted pursuant to this policy.

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

*(cf. 4032 - Reasonable Accommodation)*

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

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

Any district employee who engages or participates in unlawful discrimination, or who aids, abets, incites, compels or coerces another to discriminate, is in violation of this policy and is subject to disciplinary action, up to and including dismissal.

*(cf. 4117.4 - Dismissal)*

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

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

Any district employee who observes or has knowledge of an incident of unlawful discrimination or harassment shall report the incident to the principal, district administrator or Superintendent as soon as practical after the incident. Failure of a district employee to report discrimination or harassment may result in disciplinary action.

The Superintendent or designee shall regularly publicize, within the district and in the community, the district's nondiscrimination policy and the availability of complaint procedures. (34 CFR 100.6)

The district's policy and administrative regulation shall be posted in all schools and offices including staff lounges and student government meeting rooms. (5 CCR 4960)

The Board designates the following position as Coordinator for Nondiscrimination in Employment:

Julie Braun Martin  
Assistant Superintendent, Personnel Services  
1936 Carlotta Drive, Concord, CA 94519  
925.682.8000 ext. 4136

**NONDISCRIMINATION IN EMPLOYMENT** (continued)

**Other Remedies**

An employee may, in addition to filing a discrimination complaint with the district, file a complaint with the Office for Civil Rights (OCR), California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC). For further information, contact those agencies directly at:

Office for Civil Rights  
U.S. Department of Education  
Old Federal Building  
50 United Nations Plaza, Room 239  
San Francisco, CA  
(415)556-4275  
[www.ed.gov/offices/OCR](http://www.ed.gov/offices/OCR)

California Department of Fair Employment and Housing  
Oakland District Office  
1515 Clay Street, Suite 701  
Oakland, CA 94612-2512  
(510)622-2941  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

Equal Employment Opportunity Commission  
Oakland Local Office  
1301 Clay Street  
Suite 1170-N  
Oakland, CA 94612-05217  
(510)637-3230  
[www.eoc.gov](http://www.eoc.gov)

*Legal Reference: (see next page)*

## NONDISCRIMINATION IN EMPLOYMENT (continued)

### Legal Reference:

#### GOVERNMENT CODE

11135 Unlawful discrimination

12900-12996 Fair Employment and Housing Act

#### CODE OF REGULATIONS, TITLE 2

7287.6 Terms, conditions and privileges of employment

#### CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs receiving state financial assistance

#### UNITED STATES CODE, TITLE 20

1681-1688 Discrimination based on sex or blindness, Title IX

#### UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act of 1973

#### UNITED STATES CODE, TITLE 42

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

#### UNITED STATES CODE, TITLE 42

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

#### UNITED STATES CODE, TITLE 42

2000h-2-2000h-6 Title IX, 1972 Education Act Amendments

#### UNITED STATES CODE, TITLE 42

12101-12213 Americans With Disabilities Act

#### CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 American with Disabilities Act

#### CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 Compliance information

104.8 Notice

106.8 Designation of responsible employee and adoption of grievance procedures

106.9 Dissemination of policy

### Management Resources:

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, March, 1999

#### OFFICE OF CIVIL RIGHTS

Notice of Non-Discrimination, January, 1999

#### WEB SITES

EEOC: <http://www.eeoc.gov>

OCR: <http://www.ed.gov/offices/OCR>

DFEH: <http://www.dfeh.ca.gov>

Policy  
adopted: April 25, 2006

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California

**NONDISCRIMINATION IN EMPLOYMENT**

Unlawful discrimination or harassment of an individual on the basis of a protected classification includes:

1. Slurs, epithets, threats or verbal abuse
2. Derogatory or degrading comments, descriptions, drawings, pictures or gestures
3. Unwelcome jokes, stories, teasing or taunting
4. Any other verbal, written, visual or physical conduct against the individual which:
  - a. Adversely affects his/her employment opportunities
  - b. Has the purpose or effect of unreasonably interfering with his/her work performance or creating an intimidating, hostile or offensive work environment

Any employee or job applicant who feels that he/she has been or is being unlawfully discriminated against or harassed should immediately contact his/her supervisor, the Coordinator for Nondiscrimination in Employment (“Coordinator”) or the Superintendent in order to obtain procedures for reporting a complaint. Such complaints shall be filed in accordance with AR 4031 - Complaints Concerning Discrimination in Employment. An employee may bypass his/her supervisor when the supervisor is the alleged offender.

*(cf. 4031 - Complaints Concerning Discrimination in Employment)*  
*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*

Any supervisor who receives a discrimination/harassment complaint shall immediately notify the Coordinator or the Superintendent, who shall ensure that the complaint is appropriately investigated in accordance with district policy and regulations.

The Superintendent or designee shall ensure that annual training is provided to all employees regarding the issues of discrimination.

**COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT**

The following procedures shall be used when a district employee or job applicant has a complaint alleging that a specific action, policy, procedure or practice discriminates against him/her on any basis specified in the district's nondiscrimination policies.

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

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4032 - Reasonable Accommodation)*

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

1. The complaint should be initiated promptly after a complainant knew, or should have known of the alleged discrimination.
2. All parties involved in allegations of discrimination shall be notified when a complaint is filed, when a complaint meeting or hearing is scheduled, and when a decision or ruling is made. The parties also shall be notified of their right to appeal the decision to the next level.
3. When a complaint is brought against the individual responsible for the complaint process at any level, the complainant may address the complaint directly to the next appropriate level.
4. Meetings related to a complaint shall be held at times the district determines appropriate to the circumstances.
5. For the protection of all the parties involved, complaint proceedings shall be kept confidential insofar as appropriate.
6. All documents, communications and records dealing with the investigation of the complaint shall be placed in a confidential district personnel complaint file and not in the employee's individual personnel file.

*(cf. 1340 - Access to District Records)*

*(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)*

7. Time limits specified in these procedures may be revised only by written agreement of all parties involved. If the district fails to respond within a specified or adjusted time limit, a complainant may proceed to the next level. If a complainant fails to take the complaint to the next step within the prescribed time, the complaint shall be considered settled at the preceding step.

**COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT** (continued)**Level I**

The complainant shall immediately meet informally with his/her supervisor or the administrator of the school where the alleged discriminatory act occurred. A complaint regarding discrimination away from the school site should be discussed informally with the complainant's supervisor. If the complaint is resolved during the meeting, the supervisor shall submit a written summary of the complaint and a description of how the complaint was resolved to the complainant and the Coordinator for Nondiscrimination in Employment ("Coordinator" as designated by the Governing Board in BP 4030 - Nondiscrimination in Employment) within 10 working days of the meeting.

If the complaint is not resolved during the meeting, the complainant may file a formal complaint with the Coordinator within 10 working days of the meeting. If the complainant's concerns are not clear or cannot be resolved through informal discussion, the supervisor or other administrator shall prepare, within 10 working days, a written summary of his/her meeting(s) with the complainant. This report shall be made available to the Coordinator.

**Level II**

If the complaint is not resolved at the Level I informal meeting and the complainant decides to pursue it to the next level, the complainant shall submit the formal complaint on the district's Discrimination/Harassment complaint form to the Coordinator within 10 working days of the Level I meeting. The written complaint shall include the following:

1. The complainant's name, school or location, position, address and telephone number
2. The name and work location of the district staff member who committed the alleged violation
3. A description of the alleged discriminatory act(s) or omission(s)
4. The discriminatory basis alleged
5. A specific description of the time, place, nature, participants in and witnesses to the alleged violation(s)
6. Informal efforts made to resolve the problem
7. Individuals to whom the complaint has been communicated
8. Corrective action suggested

**COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT (continued)**

9. Any other pertinent information which may assist in investigating and resolving the complaint
10. The complainant's signature or that of his/her representative

The Coordinator, or designee, shall assign a staff member to assist the complainant with this writing if such help is needed. The Coordinator, or designee, shall respond to the complaint within 15 working days. The written response shall include a written decision, the basis for the decision, notice of the employee's right to appeal to Level III, and notice of the requirement to appeal within 10 working days.

The Coordinator shall conduct any investigation necessary to respond to the complaint, including discussion with the complainant, other person(s) involved, appropriate staff members and students, and all other relevant documents. If a response from third parties is necessary, the Coordinator may designate up to 10 additional working days for investigation of the complaint and shall respond to the complaint within ten (10) working days of completing the investigation.

**Level III**

If the complaint cannot be resolved at Level II, either party may present the complaint to the Superintendent or designee within 10 working days. The Superintendent, or designee, shall review the Level II investigation file, including the written complaint and all responses from district staff. The Superintendent or designee shall respond to the complaint in writing within 15 working days. The written response shall include a written decision, the basis for the decision, notice of the complainant's right to appeal to Level IV, and notice of the requirement to appeal within 10 working days.

If the Superintendent or designee finds it necessary to conduct further investigation, he/she may designate up to 10 additional working days for such investigation and shall respond to the complaint in writing within 10 working days of completing the investigation.

**Level IV**

If the complaint is not resolved at Level III, either party may file a written appeal to the Board within 10 working days after receiving the Level III response. The written appeal shall include specific reasons why the Level III response is unsatisfactory as well as a suggested remedy. The Superintendent or designee shall provide the Board with all information presented at previous levels.

**COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT** (continued)

The hearing shall be scheduled for the next regular Board meeting for which the matter can be placed on the agenda. Any complaint against a district employee shall be addressed in closed session in accordance with the law. The Board shall render its decision within 15 working days. The Board's decision shall be in writing and shall include the disposition of the complaint, the basis for the decision, and notice of the employee's right to appeal to the California Department of Education (CDE).

(cf. 1312.1 - Complaints Concerning District Employees)  
(cf. 9321 - Closed Session Purposes and Agendas)

**Other Remedies**

As noted, complainants may appeal the Board's action to the CDE. The Superintendent, or designee, shall ensure that complainants are informed that injunctions, restraining orders and other civil law remedies may also be available to them. This information shall be published with the district's nondiscrimination complaint procedures and included in any related notices. (Education Code 262.3)

*Legal Reference:*EDUCATION CODE

200-262.4 Prohibition of discrimination

GOVERNMENT CODE

12920-12921 Nondiscrimination

12940-12948 Discrimination prohibited; unlawful practices, generally

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

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

2000h-2 - 2000h-6 Title IX, 1972 Education Act Amendments

12101 - 12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101 - 35.190 Americans with Disabilities Act

*Management Resources:*EQUAL EMPLOYMENT OPPORTUNITY COMMISSIONEnforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, March, 1999OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERALProtecting Students from Harassment and Hate Crime, January, 1999WEB SITESEEOC: <http://www.eeoc.gov>OCR: <http://www.ed.gov/offices/OCR>

Regulation  
approved: November 26, 2002

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California

MT. DIABLO UNIFIED SCHOOL DISTRICT  
DISCRIMINATION/HARASSMENT COMPLAINT FORM

E 4031

Date \_\_\_\_\_

Your name \_\_\_\_\_

Your school and/or location \_\_\_\_\_

Position \_\_\_\_\_

Place where you may be reached \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Name of person(s) against whom complaint is made \_\_\_\_\_

Describe in detail the nature of your complaint. (In what way have you been adversely affected? Include all facts, names, dates, and places necessary for a complete understanding of your complaint. Use additional pages if necessary).

List all witnesses or other individuals who you believe can corroborate the allegations made in this complaint.

Have you made an effort to resolve this problem informally? Yes \_\_\_\_\_ No \_\_\_\_\_

To whom have you spoken? \_\_\_\_\_

When? \_\_\_\_\_

What was the result of the discussion? \_\_\_\_\_

List all individuals to whom you have communicated your complaint, either verbally or in writing, and the approximate date(s) of such communication(s).

Describe any corrective action you feel should be taken with regard to this complaint.

Submit/attach copies of all documentary or other physical evidence in your possession which supports your claim. If you are not in possession of such evidence, describe it to the best of your ability and list those persons who are in possession of it.

\_\_\_\_\_  
Signature of Complainant

\_\_\_\_\_  
Signature of Person Receiving Complaint

\_\_\_\_\_  
Date Received

## REASONABLE ACCOMMODATION

### 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 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. (29 CFR 1630.2)

*Reasonable accommodations* that an employer may need to provide in connection with modifications to the work environment or adjustments in how and when a job is performed that enable an individual with a disability to enjoy equal employment opportunities include, but are not limited to: (29 CFR 1630.2)

1. Making existing facilities accessible and usable
2. Restructuring the job duties
3. Offering part-time or modified work schedules
4. Acquiring or modifying equipment or devices
5. Changing tests, training materials or policies
6. Providing qualified readers or interpreters
7. Reassigning the employee to a vacant position

*Qualified individual with a disability* means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position and who, with or without reasonable accommodation, can perform the essential functions of such position. (29 CFR 1630.2)

**REASONABLE ACCOMMODATION** (continued)

*Undue hardship* is a determination based on an individualized assessment of current circumstances that shows that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors. (29 CFR 1630.2)

1. The nature and cost of the accommodation needed
2. The overall financial resources of the facility making the reasonable accommodation, the number of persons employed at this facility, the effect on expenses and resources of the facility, or the impact on the operations of the facility
3. The overall financial resources, size, number of employees, and the number, type and location of facilities of the district
4. The type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation
5. The impact of the accommodation on the operation of the facility

**Requests for Reasonable Accommodation**

The district designates the Coordinator for Nondiscrimination in Employment as specified in BP 4030 (“Coordinator”), to coordinate its efforts to comply with the Americans with Disabilities Act (ADA) and Fair Employment and Housing Act (FEHA), to investigate complaints, and to take the lead in facilitating the interactive process with employees.

When requesting reasonable accommodation, the employee or employee’s representative shall inform the employee’s supervisor that he/she needs assistance at work for a reason related to a medical condition.

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

All requests for reasonable accommodation that are received by administrators other than the Coordinator shall be forwarded to the Coordinator as soon as practical after they are received.

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

**REASONABLE ACCOMMODATION** (continued)

a limited release allowing the district to submit a list of specific questions to the health care or vocational professional. The district may utilize its Job Duty Checklist to obtain this information.

If the information and documentation submitted by the employee and/or the employee's health care or vocational professional does not specify the existence of a qualifying disability and explain the need for reasonable accommodation, the district may require the employee to submit to an examination by a health care professional selected and paid for by the district.

Upon receiving a request to accommodate an employee with a disability, the Coordinator shall:

1. Determine the essential functions of the job
2. Engage in an interactive process with the employee to:
  - a. Review the request for accommodation,
  - b. Identify the precise limitations resulting from the disability,
  - c. Identify potential means for providing accommodation, and
  - d. Assess their effectiveness
3. Develop a plan for reasonable accommodation without imposing undue hardship on the district

To qualify for a job, an individual shall not pose a significant risk of substantial harm to himself/herself or others in the workplace which cannot be eliminated or reduced by reasonable accommodation.

The determination of whether an individual poses a significant risk of substantial harm to himself/herself or others shall be made on a case-by-case basis and shall be based on objective, factual evidence, taking into consideration the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur and the imminence of potential harm. (29 CFR 1630.2)

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

If the employee or applicant is not satisfied with the decision of the Coordinator, he/she may appeal in writing to the Superintendent, or designee. The appeal shall be made within 10 working days of receiving the decision and shall include:

**REASONABLE ACCOMMODATION (continued)**

**Appeal Process**

1. A clear, concise statement of the reasons for 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 employee or applicant his/her written decision within 15 working days of receiving the appeal. The written decision shall include the basis for the decision, notice of the complainant's right to appeal, and notice of the requirement to appeal within 10 working days.

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

The employee or applicant also may appeal directly to the Office for Civil Rights, the Equal Employment Opportunity Commission, or the Department of Fair Employment and Housing.

*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

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 REGULATION, TITLE 29

1630.2 Direct threat

COURT DECISIONS

Echazabal v. Chevron USA (9<sup>th</sup> Circuit, 2000) 226 F.3d1063

*Management Resources*

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the American with Disabilities Act, March, 1999

WEB SITES

EEOC: <http://www.eeoc.gov>

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

Regulation  
approved: November 26, 2002

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California

**All Personnel**

BP 4119.1(a)

4219.1

**CIVIL AND LEGAL RIGHTS**

4319.1

Employees shall be entitled to full rights of citizenship, and no religious or political activities of any employee or the lack thereof shall be grounds for any discipline or discrimination with respect to the professional employment of such employee, providing said activities do not violate any local, State or Federal laws. The personal life of an employee is not an appropriate concern of the Governing Board except as it may directly prevent the employee from performing properly the assigned functions during the workday.

Whenever any employee is required to appear before the Superintendent, Board or any committee or member thereof concerning any matter which could adversely affect the continuation of that employee in office, position or employment or the salary or any increments pertaining thereto, then the employee shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have a representative of the appropriate employee organization present to advise and represent the employee during such meeting or interview.

***Whistleblower Protection***

All employees shall have the right to disclose improper governmental activities to a Board member, a school administrator, a member of the County Board of Education, County Superintendent of Schools, or the Superintendent of Public Instruction. An improper governmental activity is an activity by the district or a district employee that violates state or federal law, is economically wasteful, or involves gross misconduct, incompetency or inefficiency. (Education Code 44111, 44112)

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

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

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

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

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

*(cf. 1312.3 - Uniform Complaint Procedures)*

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

*Legal Reference: (see next page)*

BP 4119.1(b)  
4219.1  
4319.1

## **CIVIL AND LEGAL RIGHTS (continued)**

### *Legal Reference:*

#### EDUCATION CODE

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

*7050-7057 Political activities of school officers and employees*

*44040 Unlawful to discriminate solely because of employee's appearance before certain boards or committees*

*44110-44114 Reporting by school employees of improper governmental activity*

*44801 Leave of absence for employees elected to the Legislature*

*49091.24 Teacher rights to refuse evaluation/survey of personal life*

### **CIVIL CODE**

*51 Unruh Civil Rights Act*

### **GOVERNMENT CODE**

*3540.1 Public employment definitions*

*3543.5 Interference with employee's rights prohibited*

*12940-12950 Discrimination prohibited; unlawful practices*

#### UNITED STATES CODE, TITLE 42

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

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

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

*12101-12213 Americans with Disabilities Act*

**All Personnel**

BP 4119.11(a)

4219.11

**SEXUAL HARASSMENT**

4319.11

The Governing Board prohibits sexual harassment of district employees and job applicants. The Board also prohibits retaliatory behavior or action against district employees or other persons who complain, testify or otherwise participate in the complaint process established pursuant to this policy and the administrative regulation.

*(cf. 4030 - Nondiscrimination in Employment)*

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation and correction of sexual harassment, including but not limited to:

1. Providing periodic training to all staff regarding the district's sexual harassment policy, particularly the procedures for filing complaints and employees' duty to use the district's complaint procedures in order to avoid harm.

*(cf. 4131 – Staff Development)*

*(cf. 4231 – Staff Development)*

*(cf. 4331 – Staff Development)*

2. Publicizing and disseminating the district's sexual harassment policy to staff.

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

3. Ensuring prompt, thorough and fair investigation of complaints.
4. Taking timely and appropriate corrective/remedial actions after completion of investigation. This may require interim separation of the complainant and the alleged harasser, and subsequent monitoring of developments.

Any district employee or job applicant who feels that he/she has been sexually harassed, or who has knowledge of any incident of sexual harassment by or against another employee, a job applicant or a student, shall immediately contact his/her supervisor, the principal, the Coordinator for Nondiscrimination in Employment (“Coordinator”) as designated by the governing board in Board Policy 4030 and listed below, or Superintendent to obtain procedures for filing a complaint. Complaints of sexual harassment shall be filed on the District's Discrimination/Harassment Complaint Form, and shall follow the complaint process set forth in AR 4031(b) – (e).

Coordinator for Nondiscrimination in Employment  
Julie Braun Martin, Assistant Superintendent, Personnel Services  
1936 Carlotta Drive  
Concord, Ca 94519  
925-682-8000, ext. 4136

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

## **SEXUAL HARASSMENT** (continued)

An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.

A supervisor, principal or other district administrator who receives a harassment complaint shall promptly notify the Coordinator or the Superintendent.

All complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or take other subsequent necessary action. (5 CCR 4964)

Any district employee who engages or participates in sexual harassment, or who aids, abets, incites, compels or coerces another to commit sexual harassment against a district employee, job applicant or student, is in violation of this policy and is subject to disciplinary action, up to and including dismissal.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

### *Legal Reference:*

#### EDUCATION CODE

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

#### GOVERNMENT CODE

12900-12996 *Fair Employment and Housing Act*

#### LABOR CODE

1101 *Political activities of employees*

1102.1 *Discrimination: sexual orientation*

#### CODE OF REGULATIONS, TITLE 5

4900-4965 *Nondiscrimination in elementary and secondary education programs receiving state financial assistance*

#### 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*

2000h-2-2000h-6 *Title IX, 1972 Education Act Amendments*

#### CODE OF FEDERAL REGULATIONS, TITLE 34

106.9 *Dissemination of policy*

#### COURT DECISIONS

*Faragher v. City of Boca Raton*, (1998) 118 S.Ct. 2275

*Burlington Industries v. Ellreth*, (1998) 118 S.Ct. 2257

*Gebser v. Lago Vista Independent School District*, (1998) 118 S.Ct. 1989

*Oncale v. Sundowner Offshore Serv. Inc.*, (1998) 118 S.Ct. 998

*Juarez v. Ameritech Mobile Systems*, (N.D. Ill.) 746 F.Supp. 798

*Dornhecker v. Malibu Grand Prix Corp.*, (5th Cir. 1987) 828 F.2d. 307

*Meritor Savings Bank, FSB v. Vinson et al.*, (1986) 447 U.S. 57

BP 4119.11(c)  
4219.11  
4319.11

**SEXUAL HARASSMENT** (continued)

*Management Resources:*

OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Protecting Students from Harassment and Hate Crime, January, 1999

WEB SITES

EEOC: <http://www.eeoc.gov>

OCR: <http://www.ed.gov/offices/OCR>

**All Personnel**

AR 4119.11(a)

4219.11

**SEXUAL HARASSMENT**

4319.11

Prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors or other unwanted verbal, visual or physical conduct of a sexual nature made against another person of the same or opposite gender, in the work or educational setting, when: (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is made expressly or implicitly a term or condition of the individual's employment
2. Submission to or rejection of such conduct by the individual is used as the basis for an employment decision affecting him/her
3. The conduct has the purpose or effect of unreasonably interfering with the other individual's work performance; creating an intimidating, hostile or offensive work environment; or adversely affecting the other individual's evaluation, advancement, assigned duties, or any other condition of employment or career development
4. Submission to or rejection of the conduct by the other individual is used as the basis for any decision affecting him/her regarding benefits, services, honors, programs or activities available at or through the district

In order to constitute hostile environment sexual harassment, the conduct must be sufficiently severe, pervasive and persistent so that it creates an objectively hostile or abusive environment and must be gender based.

Other examples of actions that might constitute sexual harassment, whether committed by a supervisor or any other employee, include but are not limited to:

1. Unwelcome leering, sexual flirtations or propositions
2. Unwelcome sexual slurs, epithets, threats, innuendoes, derogatory comments or sexually degrading descriptions
3. Graphic verbal comments about an individual's body, or overly personal conversations or pressure for sexual activity
4. Sexual jokes, stories, drawings, pictures, graffiti, gestures or sexually explicit e-mails
5. Spreading sexual rumors
6. Massaging, grabbing, fondling, stroking or brushing the body
7. Touching an individual's body or clothes in a sexual way

**SEXUAL HARASSMENT** (continued)

8. Cornering, blocking, leaning over or impeding normal movements
9. Displaying or referring to sexually suggestive objects, such as profane or vulgar materials or pornography, or using sexual computer screen savers, in the educational or work environment
10. Any act of retaliation against an individual who reports a violation of the district's sexual harassment policy or who participates in the investigation of a sexual harassment complaint
11. This policy applies to all phases of the employment relationship and educational environment, including recruitment, testing, hiring, promotions, demotions, transfer, layoff, termination, rates of pay, benefits, selection for training, classroom instruction, and extra-curricular activities.

**Notifications**

A copy of the Governing Board's policy and this administrative regulation shall: (Education Code 231.5)

1. Be displayed in a prominent location in the main administrative building or other area of the school where notices of district rules, regulations, procedures and standards of conduct are posted
2. Be provided to each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or whenever a new employee is hired

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

3. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures and standards of conduct

All employees shall receive either a copy of information sheets prepared by the California Department of Fair Employment and Housing or a copy of district information sheets that contain, at a minimum, components on: (Government Code 12950)

AR 4119.11(c)  
4219.11  
4319.11

**SEXUAL HARASSMENT** (continued)

1. The illegality of sexual harassment
2. The definition of sexual harassment under applicable state and federal law
3. A description of sexual harassment, with examples
4. The district's complaint process available to the employee
5. The legal remedies and complaint process available through the Fair Employment and Housing Department and Equal Employment Opportunity Commission
6. Directions on how to contact the Fair Employment and Housing Department and Equal Employment Opportunity Commission

## TOBACCO-FREE SCHOOLS

The Governing Board recognizes the health hazards associated with tobacco products, including the breathing of second-hand smoke, and desires to provide a healthy environment for students and staff. Employees are encouraged to serve as models for good health practices that are consistent with the district's instructional programs.

In accordance with state and federal law, smoking is prohibited in all district facilities and vehicles. (20 USC 6083; Labor Code 6404.5)

*(cf. 5131.62 - Tobacco)*  
*(cf. 6142.8 - Comprehensive Health Education)*  
*(cf. 6143 - Courses of Study)*

The Board further prohibits the use of tobacco products at all times on district grounds. This prohibition applies to all employees, students and visitors at any activity or athletic event on property owned, leased or rented by or from the district.

The Superintendent or designee shall inform students, parents/guardians, employees and the public about this policy and related procedures.

*(cf. 4118 - Suspension/Disciplinary Action)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

Signs prohibiting the use of tobacco shall be prominently displayed at all entrances to school property.

The Superintendent or designee shall maintain a list of clinics and other resources which may assist individuals who wish to stop using tobacco products.

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

### *Legal Reference:*

#### EDUCATION CODE

48901 *Smoking or use of tobacco; steps to discourage*

#### HEALTH AND SAFETY CODE

39002 *Control of air pollution from nonvehicular sources*

104420 *Implementation of tobacco use prevention program*

#### LABOR CODE

6404.5 *Occupational safety and health: use of tobacco products*

#### UNITED STATES CODE, TITLE 20

6083 *Nonsmoking policy for children's services*

#### COURT DECISIONS

*Eureka Teachers Assn v. Eureka City School District (1992) PERB Order #955 (16 PERC 23168)*

*CSEA #506 and Associated Teachers of Metropolitan Riverside v. Riverside Unified School District (1989) PERB Order #750 (13 PERC 20147)*

Policy  
adopted: April 8, 2003

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California

**TOBACCO-FREE SCHOOLS**

**Employee Notifications**

The Superintendent or designee shall notify employees of the district's tobacco-free schools policy. The notification shall also inform them of:

1. Their need to abide by district policy as a condition of employment.
2. The dangers of tobacco use in the workplace, including its threat to the health and safety of employees, students and the public.
3. Available resources which may help employees stop using tobacco.
4. Possible disciplinary actions in accordance with Board policy, state law and applicable collective bargaining agreements.

**Enforcement Procedures for Visitors**

A visitor who smokes on district property shall be informed of the district's tobacco-free schools policy and asked to refrain from smoking. If the person fails to comply with this request, the following actions may ensue:

1. The matter may be referred to the Superintendent or designee responsible for the area or the event.
2. The Superintendent or designee may direct the person to leave school property.
3. If necessary, the Superintendent or designee may request local law enforcement assistance in removing the person from school premises.
4. If the person repeatedly violates the tobacco-free schools policy, the Superintendent or designee may prohibit him/her from entering district property for a specified period of time.

*(cf. 3515.2 - Disruptions)*

**TUTORING**

The Governing Board expects teachers and other members of the instructional staff to make every effort to resolve students' learning problems at school before recommending that parents/guardians engage a tutor or other professional help. By maintaining a competent, dedicated staff and adequate instructional resources, the Board seeks to minimize the need for individual tutoring.

*Legal Reference:*

GOVERNMENT CODE

*1126 Incompatible activities of employees*

**TUTORING**

Consistent with Governing Board policy, the following rules relating to tutoring have been established:

1. A teacher may not accept any kind of remuneration for tutoring any student enrolled in his/her class.
2. No tutoring for which a teacher receives a fee will be carried on in a school building.
3. Teachers who accept outside tutoring engagements shall make their own arrangements with the parents/guardians for the fees to be assessed.

## **INDUSTRIAL ACCIDENT/ILLNESS LEAVE**

### **Absence from Duties Due to Accident or Illness**

Each full-time employee will be allowed absence due to accident, illness, or quarantine as provided in the negotiated contractual agreement. Any days not used will be accumulated indefinitely by the employee for use if necessary during succeeding years.

After all earned sick leave days at full pay have been used and additional absence due to illness or accident is necessary, the employee shall receive the difference between his/her own salary and the amount paid a substitute up to a total of five school months, exclusive of the earned sick leave days at full pay.

For six or more consecutive days of absence due to illness or accident, verification by a licensed physician or recognized practitioner of a church must be presented before allowing payment.

Unused sick leave days may be transferred when a certificated person assumes a position in another district during the school year following his/her termination from the former school district.

See also the MDEA Contractual Agreement for information on Leaves of Absence not covered here.

*Legal Reference:*

EDUCATION CODE

*44977 Salary deductions during absence from duties*

*44978 Provisions for certificated employee sick leave*

*44983 Exception to sick leave*

*44984 Required rules for industrial accident and illness leave of absence*

*Management Resources:*

### **WEB SITES**

*Department of Industrial Relations: <http://www.dir.ca.gov/DIR/OS&H/DOSH/dosh1.html>*

**INDUSTRIAL ACCIDENT/ILLNESS LEAVE**

In conformance with the provisions of Education Code 44984, the Governing Board has adopted rules and regulations for industrial accident and illness leaves of absence for employees as follows:

Allowable leave for industrial accidents and illnesses shall be for a maximum of 60 days during which the schools of the district are required to be in session or when the employee would otherwise have been performing work for the district in any one fiscal year for the same accident.

Allowable leave shall not be accumulated from year to year.

1. Industrial accident or illness leave shall commence on the first day of absence.
2. When a person employed in a position requiring certification qualifications is absent from assigned duties on account of an industrial accident or illness, payment shall be made of such portion of the salary due for any month in which the absence occurs so as, when added to the temporary disability indemnity under Division 4 or Division 4.5 of the Labor Code, not to result in a total greater than the employee's full salary.
3. Industrial accident or illness leave shall be reduced by one day for each day of authorized absence regardless of a temporary disability indemnity award.
4. When an industrial accident or illness leave overlaps into the next fiscal year, the employee shall be entitled only to the amount of unused industrial accident leave due for the same illness or injury in the fiscal year of occurrence.
5. If, upon termination of the 60 days of industrial accident or illness leave, the employee is not medically able to return to work, the employee shall be entitled to the benefits provided in Education Code 44977/44978/44983 (which deal with regular sick leave), and for the purposes of each of these sections, the absence shall be deemed to have commenced on the date of termination of the industrial accident or illness leave, provided that if the employee continues to receive temporary disability indemnity, election may be made to take as much of the accumulated sick leave which, when added to the temporary disability indemnity, will result in a payment not exceeding the employee's full salary.
6. The Board may, in the consideration of individual cases, provide for such additional leave of absence for industrial accident or illness as it deems appropriate.
7. During any paid leave of absence, the employee shall endorse to the district the temporary disability indemnity checks received due to the industrial accident or illness. The district, in turn, shall issue the employee appropriate salary warrants for payment of the employee's salary and shall deduct normal retirement and other authorized contributions.

**INDUSTRIAL ACCIDENT/ILLNESS LEAVE** (continued)

8. The employee shall qualify for the provisions of this policy when a regular position with the district is assumed.
9. An employee requesting or claiming leave of absence for an industrial accident or illness is required to provide a doctor's statement verifying that the employee is unable to fulfill assigned regular duties because of the injury or illness.
10. An employee returning from an industrial accident or illness leave granted under the provisions of this policy is required to submit a doctor's statement verifying that the responsibilities of the position can be resumed.

**MT. DIABLO UNIFIED SCHOOL DISTRICT**

**PERSONNEL SERVICES**

1936 Carlotta Drive  
Concord, CA 94519 \* 925-682-8000

**CHILD ABUSE AND NEGLECT REPORTING LAW**

(Penal Code sections 11164 et seq.) Reporter Responsibility

- Definitions:** The following situations are reportable conditions:
- Physical abuse
  - Sexual abuse
  - Child exploitation, child pornography and child prostitution
  - Neglect
  - Unlawful corporal punishment or injury
  - Willful cruelty or unjustifiable punishment
- Who Reports:** The following individuals are legally mandated reporters as defined in Penal Code section 11165.7:
- Teachers
  - Teacher's Aide or Assistant
  - Instructional Aides
  - All classified employees
  - Child Welfare and Attendance supervisors and certificated pupil personnel employees
  - Employees of licensed community care or child day care facilities
  - Employees of school district police or security departments
  - Administrators in child abuse prevention programs
  - Child care custodians
  - Health practitioners
  - Child Protective Agencies
- When to Report:** A telephone report must be made immediately when the reporter observes a child in his/her professional capacity or within the scope of his/her employment and has knowledge of, or has reasonable suspicion that the child has been abused. A written report, on a standard form, must be sent within 36 hours after the telephone report has been made.
- To Whom Do You Report:** You have a choice of reporting to the Police or Sheriff's Department, the Probation Department, or Child Welfare Agency. Each County has preferred reporting procedures.
- Individual Responsibility:** Any individual who is named in the reporting law must report abuse. If the individual confers with a superior and a decision is made that the superior file the report, one report is sufficient. However, if the superior disagrees, the individual with the original suspicion must report.
- Anonymous Reporting:** Mandated reporters are required to give their names and the information listed in Penal Code section 11167. Non-mandated reporters may report anonymously. Child protective agencies are required to keep the mandated reporter's name confidential, unless a court orders the information disclosed.
- Immunity:** Any legally mandated reporter has immunity when making a report. In the event a civil suit is filed against the reporter, reimbursement for fees incurred in the suit will occur up to \$50,000 (P.C. Section 11172). No individual can be dismissed, disciplined or harassed for making a report of suspected child abuse.

**Liability:** Legally mandated reporters can be criminally liable for failing to report suspected abuse. The penalty for this misdemeanor is punishable up to six months in county jail, a fine of \$1,000 or both. Mandated reporters can also be civilly liable for the failure to report.

**Notification Regarding Abuse:** . Your identity as a mandated reporter is confidential and need not be disclosed to parents or guardians. Parent notification is not advised because it will jeopardize your confidentiality and, in extreme cases, could endanger the child. If a student is released to the custody of a peace officer following a report, you should not notify the parent's of the student's whereabouts. If the parents contact the school, they should be referred to the agency that took the student into protective custody.

I understand that I am a legally mandated reporter. I have clarified any information listed above which I did not understand, am now aware of my reporting responsibilities, and am willing to comply.

## DRUG AND ALCOHOL-FREE WORKPLACE

The Governing Board believes that the maintenance of drug and alcohol-free workplaces is essential to school and district operations.

No employee shall unlawfully manufacture, distribute, dispense, possess, use or be under the influence of any alcoholic beverage, drug or controlled substance as defined in the Controlled Substances Act and Code of Federal Regulations before, during or after school hours at school or in any other district workplace.

The Superintendent or designee shall:

1. Publish and give to each employee a notification of the above prohibitions. The notification shall specify the actions that will be taken against employees who violate these prohibitions. The notification shall also state that as a condition of employment, the employee will abide by the terms of this policy and notify the employer, within five days, of any criminal drug or alcohol statute conviction which he/she receives for a violation occurring in the workplace.

For the purpose of this policy, "conviction" shall mean a finding of guilt, including a plea of nolo contendere, or imposition of sentence, or both, by any judicial body charged to determine violations of federal or state criminal drug or alcohol statutes.

2. Establish a drug and alcohol-free awareness program to inform employees about:
  - a. The dangers of drug and alcohol abuse in the workplace
  - b. The district policy of maintaining drug and alcohol-free workplaces
  - c. Any available drug and alcohol counseling, rehabilitation, and employee assistance programs and
  - d. The penalties that may be imposed on employees for drug and alcohol abuse violations
3. Notify the appropriate federal granting or contracting agencies within 10 days after receiving notification, from an employee or otherwise, of any conviction for a violation occurring in the workplace.
4. Initiate disciplinary action within 30 days after receiving notice of a conviction for a violation in the workplace from an employee or otherwise. Such action shall be consistent with state and federal law, the appropriate employment contract, the applicable collective bargaining agreement and district policy and practices.

5. Make a good faith effort to continue maintaining a drug and alcohol-free workplace through implementation of Board policy.

In taking disciplinary action, the Board shall require termination when termination is required by law. When termination is not required by law, the Board shall either take disciplinary action, up to and including termination, or shall require the employee to satisfactorily participate in and complete a drug assistance or rehabilitation program approved by a federal, state or local health, law enforcement or other appropriate agency. The Board's decision shall be made in accordance with relevant state and federal laws, employment contracts, collective bargaining agreements and district policies and practices.

*(cf. 4117.4 - Dismissal)*  
*(cf. 4118 - Suspension/Disciplinary Action)*  
*(cf. 4159/4258/4359 - Employee Assistance Programs)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

Legal Reference:

EDUCATION CODE

[44011](#) *Controlled substance offense*  
[44065](#) *Issuance of credentials*  
[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 41

*701-707 Drug-Free Workplace Act*

CODE OF FEDERAL REGULATIONS, TITLE 21

*1300.1-1300.15 Definitions relating to controlled substances*

THE DRUG-FREE WORKPLACE ACT OF 1988

*Public Law 100-690, 5151-5160*

DRUG-FREE SCHOOLS AND COMMUNITIES ACT AMENDMENT OF 1989

*H.R. 3614*

UNITED STATES CODE, TITLE 21

*202 schedules I-V*

*812 Controlled Substances Act*

Policy  
adopted: September 9, 2003

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California

**DRUG AND ALCOHOL-FREE WORKPLACE  
NOTICE TO EMPLOYEES**

YOU ARE HEREBY NOTIFIED that it is a violation of Board policy for any employee at a school district workplace to unlawfully manufacture, distribute, dispense, possess, use or be under the influence of any alcoholic beverage, drug or controlled substance as defined in the Controlled Substances Act and Code of Federal Regulations.

"School district workplace" is defined as any place where school district work is performed, including a school building or other school premises; any school-owned or school-approved vehicle used to transport students to and from school or school activities; any off-school sites when accommodating a school-sponsored or school-approved activity or function, such as a field trip or athletic event, where students are under district jurisdiction; or during any period of time when an employee is supervising students on behalf of the district or otherwise engaged in district business.

As a condition of your continued employment with the district, you will comply with the district's policy on Drug and Alcohol-Free Workplace and will, any time you are convicted of any criminal drug or alcohol statute violation occurring in the workplace, notify your supervisor of this conviction no later than five days after such conviction.

Pursuant to the federal Omnibus Transportation Employee Testing Act of 1991, school bus drivers shall be subject to a drug and alcohol testing program that fulfills the requirements of the Code of Federal Regulations, Title 49, Part 382.

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

Pursuant to California Education Code 44836 and 45123, the Board may not employ or retain in employment persons convicted of a controlled substance offense as defined in Education Code 44011. If any such conviction is reversed and the person acquitted in a new trial or the charges dismissed, his/her employment is no longer prohibited.

Pursuant to Education Code 45123, the district may employ for classified service a person who has been convicted of a controlled substance offense only if it determines, from evidence presented, that the person has been rehabilitated for at least five years. The Board shall determine the type and manner of presentation of the evidence, and the Board's determination as to whether or not the person has been rehabilitated is final.

Pursuant to Education Code 44425, whenever the holder of any credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing has been convicted of a controlled substance offense as defined in Education Code 44011, the commission shall forthwith suspend the credential. When the conviction becomes final or when imposition of sentence is suspended, the commission shall revoke the credential. (Education Code 44425)

**DRUG AND ALCOHOL-FREE WORKPLACE NOTICE TO EMPLOYEES**

(continued)

Pursuant to Education Code 44940, the district must immediately place on compulsory leave of absence any certificated employee charged with involvement in the sale, use or exchange to minors of certain controlled substances.

Pursuant to Education Code 44940, the district may immediately place on compulsory leave of absence any certificated employee charged with certain controlled substance offenses.

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(Employee Signature)

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(Date)

## MEMORANDUM

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TO: All District Employees

FROM: Assistant Superintendent/Personnel Services

RE: Alcohol and Controlled Substance Use in the Workplace

As we begin the new year, it seems appropriate to reiterate and underscore Mt. Diablo Unified School District's perpetual commitment to providing a safe environment for the students in our charge as well as the District's obligation for ensuring the safety and well-being of its employees and the public.

Employees who report to duty under the influence of drugs and or alcohol, or with drugs on their persons; endanger themselves, their fellow employees, students and the general public. Therefore, Mt. Diablo Unified School District has adopted, and aggressively enforces, a Drug Free Workplace policy (Board Policy 4020) which clearly reflects the District's intolerance for compromises to the safety of students, staff and the community.

The District's Drug Free Workplace policy and the rules and regulations supporting the policy have been developed to publicly articulate our commitment to the safety of our students, the community and our fellow employees. The impairing effects of alcohol and drugs violate policy as well as everyone's entitlement to a safe workplace and learning environment. Consequently, it is imperative that all employees bear in mind that in recognition of this entitlement, the District will proceed with dismissal proceedings for any incident of employee use of alcohol or controlled substances while on duty at work. This includes being under the influence of alcohol or controlled substance while on duty at work. Additionally, the District will proceed with dismissal proceedings for incidents including, but not limited to, the possession of illegal drugs while on duty at work. In this context, the workplace includes all facilities under the control and use of the District.

While the District intends to address all instances of controlled substance possession as well as alcohol and controlled substance use consistently and aggressively, it also recognizes the value and importance of promoting the

physical and emotional well-being of its employees. And, as alcohol and controlled substance-related problems compromise employee well-being, the District encourages employees with drug and or alcohol dependencies or problems to voluntarily obtain the earliest possible diagnosis and treatment of their problem. The District is sympathetic to the fact that employees may at times require assistance and support in dealing with problems and difficulties including alcohol and substance abuse. As such, the District will continue to work with employees who request assistance in addressing their problem.

Alcohol and drug related problems have an adverse effect on your health and well-being and can ultimately affect your career. If you have a problem with alcohol and or a controlled substance, please contact your health care provider or the Employee Assistance Program. A substance abuse resource list is attached for your information. If you need further assistance or information regarding resources for help, please contact the Personnel Office. Be assured that all such requests are dealt with compassionately and confidentially.

GI/dnl

Attach.

## **SUBSTANCE ABUSE RESOURCE LIST**

If you should need support services related to drug or alcohol abuse, please call your present health provider. They may be able to assist you, direct you to appropriate treatment, monitor your progress and release you to return to work upon completion of your program.

**General CalPERS Health Benefits Information:                    1-888-225-7377**

**Kaiser**

Your group number is 3-20.  
Information call:    1-800 464-4000

**PERS CHOICE**

Your group number is CB050A  
Information call:    1-877-737-7776

**Blue Shield**

Your group number is PH0001-0001  
Information call:    1-800-334-5847

**PERS Care**

Your group number is KB050A  
Information call:    1-877-737-7776

**OTHER:**

**Employee Assistance Program:            1-800-227-1060**

The EAP is a counseling and consultation service designed to help you and your eligible family members with a wide range of personal issues. The services are confidential, and the cost has been covered by the District.

You must be an employee of the District who is eligible for District-paid benefits or spouse, or dependent child, under age 25 and not serving in the military.

Kaiser plan employees are eligible to receive 3 sessions per family member each plan year. All other eligible employees and their dependents are entitled to receive 5 sessions per family member each calendar year.

The Alcohol and Drug Abuse Council of Contra Costa County, Inc.  
Center County – 171 Mayhew Way, Pleasant Hill                    932-8100

Alcoholics Anonymous of Contra Costa County  
185 Mayhew Way, Walnut Creek – 24 Hour Services                    939-4155

Alcoholics Anonymous Referral Service & Treatment  
Program – 24 Hour Help Line                    1-800-711-6375

Drug Abuse 24 Hour Hotline and Treatment                    1-800-222-0828

**All Personnel**

BP 4119.41(a)

4219.41

**EMPLOYEES WITH INFECTIOUS DISEASE**

4319.41

The Governing Board encourages each employee to inform the district as soon as possible if he/she contracts an infectious disease which creates a physical or mental disability. The Board will reasonably accommodate the needs of such individuals.

The Board may reassign or grant disability leave to an employee who is unable to perform his/her job responsibilities because of illness or because the employee's illness significantly endangers his/her health or safety or the health or safety of others.

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

*(cf. 4261.1 - Personal Illness/Injury Leave)*

No employee will be discriminated against because of his/her disability. Legal protections established for disabled persons extend to individuals significantly impaired by infectious diseases.

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

*(cf. 4030 - Nondiscrimination in Employment)*

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

When informed that an employee has a disabling infectious disease, the Superintendent or designee may request that the employee sign a release form to provide confidential medical information and records.

In determining a reasonable accommodation of the employee's condition, the Superintendent or designee may consult with public health officials or physicians with expertise in the diagnosis and treatment of infectious disease. The Superintendent or designee may also communicate with the employee's physician regarding the employee's ability to perform the essential requirements of the job with reasonable accommodation and without posing significant health or safety risks to the employee or others.

The Superintendent or designee shall prepare a confidential report which includes his/her recommendation and the medical information upon which it is based. These recommendations shall take into consideration:

1. The nature of the disease and the probability of its being transmitted, including the duration and severity of the risk
2. The physical condition of the employee, including diagnosis, treatment, and prognosis of the condition
3. The actual requirements of the employee's job and the expected type of interaction with others in the school setting

## **EMPLOYEES WITH INFECTIOUS DISEASE** (continued)

This report shall be forwarded to the Board for confidential review and action.

The job assignment of an employee with a disabling infectious disease shall be reevaluated whenever there is a change in medical knowledge or in the employee's medical regimen or health which might affect his/her assignment.

### **Confidentiality**

The Board and the Superintendent or designee shall ensure that employee rights to confidentiality are strictly observed. The district shall disclose medical record information only to the extent required or permitted by law. The medical records of any employee with a disabling infectious disease shall be held in strict confidence.

#### *Legal Reference:*

CIVIL CODE

56-56.37 Confidentiality of medical information

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

HEALTH AND SAFETY CODE

120975-121020 Mandated blood testing and confidentiality to protect public health

CODE OF REGULATIONS, TITLE 2

7293.5 et seq.

UNITED STATES CODE, TITLE 29

701 et seq. Rehabilitation Act

UNITED STATES CODE, TITLE 42

12101-12213 Americans With Disabilities Act

COURT DECISIONS

School Board of Nassau County, Fla. v. Arline, 408 U.S. 273 (1987)

**All Personnel**

BP 4119.42(a)  
4219.42  
4319.42

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**

As part of its commitment to provide a safe and healthful work environment, the Governing Board recognizes the importance of developing an exposure control plan. The Superintendent or designee shall establish a written exposure control plan in accordance with state and federal standards for dealing with potentially infectious materials in the workplace to protect employees from possible infection due to contact with bloodborne pathogens, including but not limited to hepatitis B virus, hepatitis C virus and human immunodeficiency virus (HIV).

*(cf. 4119.43/4219.43/4319.43 - Universal Precautions)*  
*(cf. 4157/4257/4357 - Employee Safety)*

The Superintendent or designee shall determine which employees have occupational exposure to bloodborne pathogens and other potentially infectious materials. In accordance with the district's exposure control plan, employees having occupational exposure shall be offered the hepatitis B vaccination.

The Superintendent or designee may exempt designated first aid providers from pre-exposure hepatitis B vaccination under the conditions specified by state regulations. (8 CCR 5193(f))

Any employee not identified by the Superintendent or designee as having occupational exposure may submit a request to the Superintendent or designee to be included in the training and hepatitis B vaccination program. The Superintendent or designee may deny a request when there is no reasonable anticipation of contact with any infectious material.

*Legal Reference: (see next page)*

BP 4119.42(b)  
4219.42  
4319.42

**EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**  
(continued)

*Legal Reference:*

LABOR CODE

142.3 Authority of Cal/OSHA to adopt standards

144.7 Requirement to amend standards

CODE OF REGULATIONS, TITLE 8

3204 Access to employee exposure and medical records

5193 California bloodborne pathogens standards

CODE OF FEDERAL REGULATIONS, TITLE 29

1910.1030 OSHA bloodborne pathogens standards

*Management Resources:*

CDE ADVISORIES

1016.89 Guidelines for Informing School Employees about Preventing the Spread of Infectious Diseases, including Hepatitis B and AIDS/HIV Infections and Policies for Dealing with HIV-Infected Persons in School Settings

WEB SITES

OSHA: <http://www.osha.gov>

Cal/OSHA: [http://www.dir.ca.gov/occupational\\_safety.html](http://www.dir.ca.gov/occupational_safety.html)

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

Policy  
adopted: September 9, 2003

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California

## EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS

### Definitions

*Occupational exposure* means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties. (8 CCR 5193(b))

*Exposure incident* means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious materials that result from the performance of an employee's duties. (8 CCR 5193 (b))

*Parenteral contact* means piercing mucous membranes or the skin barrier through such events as needlesticks, human bites, cuts, and abrasions. (8 CCR 5193(b))

A *sharp* is any object that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident. (8 CCR 5193(b))

A *sharps injury* is any injury caused by a sharp, including but not limited to cuts, abrasions or needlesticks. (8 CCR 5193(b))

*Work practice controls* are controls that reduce the likelihood of exposure by defining the manner in which a task is performed. (8 CCR 5193(b))

*Engineering controls* are controls, such as sharps disposal containers, needleless systems, and sharps with engineered sharps injury protection, that isolate or remove the bloodborne pathogens hazard from the workplace. (8 CCR 5193(b))

*Engineered sharps injury protection* is a physical attribute built into a needle device or into a non-needle sharp which effectively reduces the risk of an exposure incident. (8 CCR 5193(b))

### Exposure Control Plan

The district's exposure control plan shall contain at least the following components: (8 CCR 5193(c))

1. A determination of which employees have occupational exposure to blood or other potentially infectious materials

The district's exposure determination shall be made without regard to the use of personal protective equipment and shall include a list of:

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**

(continued)

- a. All job classifications in which all employees have occupational exposure
  - b. Job classifications in which some employees have occupational exposure
  - c. All tasks and procedures, or groups of closely related tasks and procedures, in which occupational exposure occurs and which are performed by employees listed in item #b above
2. The schedule and method of implementing:
- a. Methods of compliance required by 8 CCR 5193(d), such as universal precautions, general and specific engineering and work practice controls, and personal protective equipment
- (cf. 4119.43/4219.43/4319.43 - Universal Precautions)*
- b. Hepatitis B vaccination
  - c. Bloodborne pathogen post-exposure evaluation and follow-up
  - d. Communication of hazards to employees, including labels, signs, information and training
  - e. Recordkeeping
3. The district's procedure for evaluating circumstances surrounding exposure incidents
4. An effective procedure for gathering information about each exposure incident involving a sharp, as required for the log of sharps injuries
5. An effective procedure for periodically determining the frequency of use of the types and brands of sharps involved in exposure incidents documented in the sharps injury log
6. An effective procedure for identifying currently available engineering controls and selecting such controls as appropriate for the procedures performed by employees in their work areas or departments

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**

(continued)

7. An effective procedure for documenting instances when a licensed healthcare professional directly involved in a patient's care determines, in the reasonable exercise of clinical judgment, that the use of an engineering control would jeopardize an individual's safety or the success of a medical, dental or nursing procedure involving the individual
8. An effective procedure for obtaining the active involvement of employees in reviewing and updating the exposure control plan with respect to the procedures performed by employees in their respective work areas or departments

The exposure control plan shall be reviewed and updated at least annually and whenever necessary to: (8 CCR 5193(c))

1. Reflect new or modified tasks and procedures affecting occupational exposure
2. To the extent that sharps are used in the district, reflect progress in implementing the use of needleless systems and sharps with engineered sharps injury protection
3. Include new or revised employee positions with occupational exposure
4. Review and evaluate the exposure incidents which occurred since the previous update
5. Review and respond to information indicating that the exposure control plan is deficient in any area

The district's exposure control plan shall be accessible to employees upon request. (8 CCR 3204(e))

### **Preventive Measures**

The Superintendent or designee shall use engineering and work practice controls to eliminate or minimize employee exposure, and shall regularly examine and update controls to ensure their effectiveness. (8 CCR 5193(d))

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS (continued)**

### **Hepatitis B Vaccination**

The hepatitis B vaccination and vaccination series shall be made available to all employees who have occupational exposure as identified in the Bloodborne Pathogens Exposure Control Plan. The hepatitis B vaccination shall be made available after an employee with occupational exposure has received the required training and within 10 working days of initial assignment, unless the employee has previously received the complete hepatitis B vaccination series, or antibody testing has revealed that the employee is immune, or vaccination is contraindicated by medical reasons. (8 CCR 5193(f))

Employees who decline to accept the vaccination shall sign the hepatitis B declination statement. (8 CCR 5193(f))

The Superintendent or designee may exempt designated first aid providers from the pre-exposure hepatitis B vaccine in accordance with 8 CCR 5193 (f).

### **Information and Training**

The Superintendent or designee shall ensure that all employees with occupational exposure participate in a training program containing the elements required by state regulations, during working hours and at no cost to the employee. This program shall be offered at the time of initial assignment to tasks where occupational exposure may take place, at least annually thereafter, and whenever a change of tasks or procedures affects the employee's exposure. (8 CCR 5193(g))

Designated first aid providers shall receive training that includes the specifics of reporting first-aid incidents which involve blood or body fluids which are potentially infectious. (8 CCR 5193(g))

### **Reporting Incidents**

All exposure incidents shall be reported as soon as possible to the Superintendent or designee.

Unvaccinated designated first aid providers must report any first aid incident involving the presence of blood or other potentially infectious material, regardless of whether an exposure incident occurred, by the end of the work shift. The full hepatitis B vaccination series shall be made available to such employees no later than 24 hours after the first aid incident. (8 CCR 5193(f))

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS (continued)**

### **Sharps Injury Log**

The Superintendent or designee shall establish and maintain a log recording each exposure incident involving a sharp. The exposure incident shall be recorded within 14 working days of the date the incident is reported to the district. (8 CCR 5193(c))

The information recorded shall include the following, if known or reasonably available: (8 CCR 5193(c))

1. Date and time of the exposure incident
2. Type and brand of sharp involved in the exposure incident
3. A description of the exposure incident, including:
  - a. Job classification of the exposed employee
  - b. Department or work area where the exposure incident occurred
  - c. The procedure that the exposed employee was performing at the time of the incident
  - d. How the incident occurred
  - e. The body part involved in the incident
  - f. If the sharp had engineered sharps injury protection, whether the protective mechanism was activated and whether the injury occurred before, during or after the protective mechanism was activated
  - g. If the sharp had no engineered sharps injury protection, the injured employee's opinion as to whether and how such a mechanism could have prevented the injury
  - h. The employee's opinion about whether any other engineering, administrative or work practice could have prevented the injury

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**

(continued)

### **Post-Exposure Evaluation and Follow-up**

Following a report of an exposure incident, the Superintendent or designee shall immediately make available to the exposed employee, at no cost, a confidential medical evaluation, post-exposure evaluation and follow-up. The Superintendent or designee shall, at a minimum: (8 CCR 5193(f))

1. Document the route(s) of exposure and the circumstances under which the exposure incident occurred
2. Identify and document the source individual, unless that identification is infeasible or prohibited by law
3. Provide for the collection and testing of the employee's blood for hepatitis B, hepatitis C and HIV serological status
4. Provide for post-exposure prophylaxis, when medically indicated, as recommended by the U.S. Public Health Service
5. Provide for counseling and evaluation of reported illnesses

The Superintendent or designee shall provide the health care professional with a copy of 8 CCR 5193; a description of the employee's duties as they relate to the exposure incident; documentation of the route(s) of exposure and circumstances under which exposure occurred; results of the source individual's blood testing, if available; and all medical records maintained by the district relevant to the appropriate treatment of the employee, including vaccination status. (8 CCR 5193(f))

The district shall maintain the confidentiality of the affected employee and the exposure source during all phases of the post-exposure evaluation. (8 CCR 5193(f))

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

### **Records**

Upon an employee's initial employment and at least annually thereafter, the Superintendent or designee shall inform employees with occupational exposure of the existence, location and

AR 4119.42(g)  
4219.42  
4319.42

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**

(continued)

availability of related records; the person responsible for maintaining and providing access to records; and the employee's right of access to these records. (8 CCR 3204)

*(cf. 1340 - Access to District Records)*

*(cf. 3580 - District Records)*

Medical records for each employee with occupational exposure shall be kept confidential and not disclosed or reported without the employee's written consent to any person within or outside the workplace except as required by law. (8 CCR 5193(h))

Upon request by an employee, or a designated representative with the employee's written consent, the Superintendent or designee shall provide access to a record in a reasonable time, place and manner, no later than 15 days after the request is made. (8 CCR 3204(e))

Records shall be maintained as follows: (8 CCR 3204(d), 5193(h))

1. Medical records shall be maintained for the duration of employment plus 30 years.
2. Training records shall be maintained for three years from the date of training.
3. The sharps injury log shall be maintained five years from the date the exposure incident occurred.
4. Exposure records shall be maintained for at least 30 years.
5. Each analysis using medical or exposure records shall be maintained for at least 30 years.

**All Personnel**

E 4119.42  
4219.42  
4319.42

**EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**

**Hepatitis B Vaccine Declination**

I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring hepatitis B virus (HBV) infection. I have been given the opportunity to be vaccinated with hepatitis B vaccine, at no charge to myself. However, I decline hepatitis B vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials and I want to be vaccinated with hepatitis B vaccine, I can receive the vaccination series at no charge to myself.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Employee Name (Please print)

\_\_\_\_\_  
Date

**All Personnel**

BP 4119.43  
4219.43  
4319.43

## **UNIVERSAL PRECAUTIONS**

In order to protect employees from contact with potentially infectious blood or other body fluids, the Governing Board requires that universal precautions be observed throughout the district.

Universal precautions are appropriate for preventing the spread of all infectious diseases and shall be used regardless of whether bloodborne pathogens are known to be present.

*(cf. 4157/4257/4357 - Employee Safety)*  
*(cf. 5141.1 - Accidents)*  
*(cf. 5141.22 - Infectious Diseases)*  
*(cf. 5141.23 - Infectious Disease Prevention)*  
*(cf. 5141.24 - Specialized Health Care Services)*  
*(cf. 5141.6 - Student Health and Social Services)*  
*(cf. 6145.2 - Athletic Competition)*

Employees shall immediately report any exposure incident or first aid incident in accordance with the district's exposure control plan or other safety procedures.

*(cf. 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens)*

### *Legal Reference:*

#### HEALTH AND SAFETY CODE

*117600-118360 Handling and disposal of regulated waste*

*120875 Providing information to school districts on AIDS, AIDS-related conditions and Hepatitis B*

*120880 Information to employees of school district*

#### CODE OF REGULATIONS, TITLE 8

*5193 California bloodborne pathogens standard*

#### CODE OF FEDERAL REGULATIONS, TITLE 29

*1910.1030 OSHA bloodborne pathogens standards*

### *Management Resources:*

#### CDE PROGRAM ADVISORIES

*1016.89 Guidelines for Informing School Employees about Preventing the Spread of Infectious Diseases, including Hepatitis B and AIDS/HIV Infections and Policies for Dealing with HIV-Infected Persons in School Settings*

#### WEB SITES

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

Policy  
adopted: September 9, 2003

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California

**All Personnel**

AR 4119.43(a)

**UNIVERSAL PRECAUTIONS**

4219.43

4319.43

**Definitions**

*Universal precautions* are an approach to infection control. All human blood and certain human body fluids, including but not limited to semen, vaginal secretions and any body fluid that is visibly contaminated with blood, are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), hepatitis C virus (HCV) and other bloodborne pathogens. (8 CCR 5193(b))

*Personal protective equipment* includes specialized clothing or equipment worn or used for protection against a hazard. General work clothes such as uniforms, pants, shirts or blouses not intended to function as protection against a hazard are not considered to be personal protective equipment. (8 CCR 5193(b))

A *sharp* is any object that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident. (8 CCR 5193(b))

*Engineered sharps injury protection* is a physical attribute built into a needle device or into a non-needle sharp which effectively reduces the risk of an exposure incident. (8 CCR 5193(b))

**Employee Information**

The Superintendent or designee shall distribute to employees information provided by the California Department of Education regarding acquired immune deficiency syndrome (AIDS), AIDS-related conditions, and hepatitis B. This information shall include, but not be limited to, any appropriate methods employees may use to prevent exposure to AIDS and hepatitis B, including information concerning the availability of a vaccine to prevent contraction of hepatitis B, and that the cost of this vaccination may be covered by the health plan benefits of the employees. Information shall be distributed at least annually, or more frequently if there is new information supplied by the California Department of Education. (Health and Safety Code 120875, 120880)

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

*(cf. 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens)*

**Infection Control Practices**

The Superintendent or designee shall ensure that the worksite is effectively maintained in a clean and sanitary condition, and shall implement an appropriate written schedule for cleaning and decontamination of the worksite. (8 CCR 5193(d))

**UNIVERSAL PRECAUTIONS** (continued)

Where occupational exposure remains after the institution of engineering and work practice controls, the Superintendent or designee shall provide appropriate personal protective equipment at no cost to the employee. Such equipment may include gloves, gowns, masks, eye protection, and other devices that do not permit blood or other potentially infectious materials to pass through or reach the employee's clothes, skin, eyes, mouth or other mucous membranes under normal conditions of use. The Superintendent or designee shall maintain, repair, make accessible and require employees to use and properly handle protective equipment. (8 CCR 5193(d))

The Superintendent or designee shall provide handwashing facilities which are readily accessible to employees. When provision of handwashing facilities is not feasible, the Superintendent or designee shall provide an appropriate antiseptic hand cleanser in conjunction with clean cloth or paper towels, or antiseptic towelettes. (8 CCR 5193(d))

For the prevention of infectious disease, employees shall routinely: (8 CCR 5193(d))

1. Perform all procedures involving blood or other potentially infectious materials in such a manner as to minimize splashing, spraying, spattering, and generating droplets of these substances.
2. Use personal protective equipment as appropriate.
  - a. Appropriate clothing, including but not limited to, gowns, aprons, lab coats, clinic jackets or similar outer garments, shall be worn in occupational exposure situations.

If a garment becomes penetrated by blood or other potentially infectious materials, the employee shall remove the garment immediately or as soon as feasible. All personal protective equipment shall be removed prior to leaving the work area. When removed, it shall be placed in an appropriately designated area or container for storage, washing, decontamination or disposal.

- b. Gloves shall be worn when it can be reasonably anticipated that the employee may have hand contact with blood, other potentially infectious materials, mucous membranes and nonintact skin, and when handling or touching contaminated items or surfaces.

**UNIVERSAL PRECAUTIONS** (continued)

Disposable gloves shall be replaced as soon as practical when contaminated, or as soon as feasible if they are torn, punctured, or when their ability to function as a barrier is compromised. They shall not be washed or decontaminated for reuse. Utility gloves may be decontaminated for reuse if the integrity of the gloves is not compromised, but must be discarded if they are cracked, peeling, torn, punctured, or exhibit other signs of deterioration or when their ability to function as a barrier is compromised.

- c. Masks in combination with eye protection devices or face shields shall be worn whenever splashes, spray, spatter, or droplets of blood or other potentially infectious materials may be generated and eye, nose or mouth contamination can be reasonably anticipated.

3. Wash hands and other skin surfaces thoroughly with soap and running water:

- a. Immediately or as soon as feasible following contact of hands or any other skin or mucous membranes with blood or other potentially infectious materials
- b. Immediately after removing gloves or other personal protective equipment

When handwashing facilities are not available, the employee shall use antiseptic hand cleanser in conjunction with clean cloth or paper towels, or antiseptic towelettes. In such instances, hands shall be washed with soap and running water as soon as feasible.

- 4. Refrain from eating, drinking, smoking, applying cosmetics or lip balm, or handling contact lenses in work areas with a reasonable likelihood of occupational exposure.
- 5. Clean and decontaminate all equipment and environmental and work surfaces after contact with blood or other potentially infectious material, no later than the end of the shift or more frequently as required by state regulations.
- 6. Rather than using the hands directly, use mechanical means such as a brush and dust pan, tongs or forceps to clean up broken glassware which may be contaminated.

**UNIVERSAL PRECAUTIONS** (continued)

7. Use effective patient-handling techniques and other methods designed to minimize the risk of a sharps injury in all procedures involving the use of sharps in patient care.

*(cf. 5141.21 - Administering Medication and Monitoring Health Conditions)*

*(cf. 5141.24 - Specialized Health Care Services)*

- a. Needleless systems shall be used to administer medication or fluids, withdraw body fluids after initial venous or arterial access is established, and conduct any other procedure involving the potential for an exposure incident for which a needleless system is available as an alternative to the use of needle devices. If needleless systems are not used, needles or non-needle sharps with engineered sharps injury protection shall be used.
  - b. Contaminated needles or other sharps shall not be broken, bent, recapped, removed from devices, or stored or processed in a manner that requires employees to reach by hand into the containers where these sharps have been placed.
  - c. Disposable sharps shall not be reused.
8. Handle, store, treat and dispose of regulated waste in accordance with Health and Safety Code 117600-118360 and other applicable state and federal regulations.
- a. Immediately or as soon as possible after use, contaminated sharps shall be placed in containers meeting the requirements of 8 CCR 5193(d)(3)(D). Containers shall be easily accessible, maintained upright throughout use where feasible, and replaced as necessary to avoid overfilling.
  - b. Specimens of blood or other potentially infectious material shall be placed in a container which prevents leakage during collection, handling, processing, storage, transport or shipping.

*(cf. 4157/4257/4357 - Employee Safety)*

*(cf. 5141.1 - Accidents)*

*(cf. 5141.22 - Infectious Diseases)*

*(cf. 5141.23 - Infectious Disease Prevention)*

*(cf. 5141.6 - Student Health and Social Services)*

*(cf. 6145.2 - Athletic Competition)*

**CONFLICT OF INTEREST**

**Incompatible Activities**

Governing Board members shall not engage in any employment or activity which is inconsistent with, incompatible with, in conflict with or inimical to the Board member's duties as an officer of the district. (Government Code 1126)

**Conflict of Interest Code**

The district's conflict of interest code shall comprise of the terms of California Code of Regulations, Title 2, Section 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with a district attachment specifying designated positions and the specific types of disclosure statements required for each position.

Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code in even-numbered years. If no change in the code is required, the district shall submit by October 1 a written statement to that effect to the code reviewing body. If a change in the code is necessitated by changed circumstances, the district shall submit an amended code to the code reviewing body. (Government Code 87306.5)

When a change in the district's conflict of interest code is necessitated by changed circumstances such as the creation of new designated positions, amendments or revisions shall be submitted to the code reviewing body within 90 days. (Government Code 87306)

When reviewing and preparing conflict of interest codes, the district shall provide officers, employees, consultants and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

If a Board member or designated employee determines that he/she has a financial interest in a decision, as described in Government Code 87103, this determination shall be disclosed. The member shall be disqualified from voting unless his/her participation is legally required. (2 CCR 18700)

Statements of economic interests submitted to the district by designated employees in accordance with the conflict of interest code shall be available for public inspection and reproduction. (Government Code 81008)

**Financial Interest**

Board members and designated employees shall not be financially interested in any contract made by the Board or in any contract they make in their capacity as Board members or designated employees. (Government Code 1090)

A Board member shall not be considered to be financially interested in a contract if his/her

**CONFLICT OF INTEREST** (continued)

interest includes, but is not limited to, any of the following: (Government Code 1091.5)

1. That of an officer who is being reimbursed for his/her actual and necessary expenses incurred in the performance of an official duty
2. That of a recipient of public services generally provided by the public body or board of which he/she is a member, on the same terms and conditions as if he or she were not a member of the board
3. That of a landlord or tenant of the contracting party if such contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial or other public district of this state or an adjoining state unless the subject matter of such contract is the property in which such officer or employee has such interest as landlord or tenant in which even his/her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Government Code 1091
4. That of a spouse of an officer or employee of the district if his/her spouse's employment or officeholding has existed for at least one year prior to his/her election or appointment
5. That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the Board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records
6. That of a noncompensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the nonprofit board or to which the school Board has legal obligation to give particular consideration, and provided further that such interest is noted in its official records
7. That of a person receiving salary, per diem, or reimbursement for expenses from a governmental entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that such interest is disclosed to the Board at the time of consideration of the contract, and provided further that such interest is noted in its official records
8. That of an attorney of the contracting party or that of an owner, officer, employee or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm

**CONFLICT OF INTEREST** (continued)

In addition, a Board member or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his/her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor. (Government Code 1091.5)

A Board member shall not be deemed to be financially interested in a contract if he/she has only a remote interest in the contract and if the remote interest is disclosed during a Board meeting and noted in the official Board minutes. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member to enter into the contract. Remote interests are specified in Government Code 1091(b); they include, but are not limited to, the interest of a parent in the earnings of his/her minor child. (Government Code 1091)

A Board member may enter into a contract if the rule of necessity or legally required participation applies as defined in Government Code 87101.

Even if there is no prohibited or remote interest, a Board member shall abstain from voting on personnel matters that uniquely affect a relative of the Board member. A Board member may vote, however, on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. "Relative" means an adult who is related to the person by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

A relationship within the third degree includes the individual's parents, grandparents and great-grandparents, children, grandchildren and great-grandchildren, brothers, sisters, aunts and uncles, nieces and nephews, and the similar family of the individual's spouse unless the individual is widowed or divorced.

**Gifts**

Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730.

The limitations on gifts do not apply to wedding gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value. (Government Code 89503)

Gifts of travel and related lodging and subsistence shall be subject to the prevailing gift limitation except as described in Government Code 89506.

**CONFLICT OF INTEREST** (continued)

A gift of travel does not include travel provided by the district for Board members and designated employees. (Government Code 89506)

**Honoraria**

Board members and designated employees shall not accept any honorarium, which is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private gathering, in accordance with law. (Government Code 89501, 89502)

The term *honorarium* does not include: (Government Code 89501)

1. Earned income for personal services customarily provided in connection with a bona fide business, trade or profession unless the sole or predominant activity of the business, trade or profession is making speeches
2. Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the district for donation into the general fund without being claimed as a deduction from income for tax purposes

**APPENDIX  
DESIGNATED POSITIONS/DISCLOSURE CATEGORIES**

1. Persons occupying the following positions are designated employees in **Category 1**:

Governing Board Members  
Superintendent of Schools  
Assistant/Associate Superintendent  
Purchasing Agent

Designated persons in this category must report:

- a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries or of any land owned or used by the district. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.
- b. Investments or business positions in or income from sources which:
  - (1) Are engaged in the acquisition or disposal of real property within the district

**CONFLICT OF INTEREST** (continued)

- (2) Are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district or
- (3) Manufacture or sell supplies, books, machinery or equipment of the type used by the district

2. Persons occupying the following positions are designated employees in **Category 2**:

Director  
Principal  
Assistant Principal  
Maintenance and Operations Director  
Program Coordinator  
Project Specialist  
Supervisor  
Dean of Students

Designated persons in this category must report investments or business positions in or income from sources which:

- a. Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs, or
  - b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.
3. Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis by the Superintendent or designee. The Superintendent or designee's written determination shall include a description of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection along with this conflict of interest code.
- a. Approve a rate, rule or regulation
  - b. Adopt or enforce a law
  - c. Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement

**CONFLICT OF INTEREST** (continued)

- d. Authorize the district to enter into, modify or renew a contract that requires district approval
- e. Grant district approval to a contract or contract specifications which require district approval and in which the district is a party
- f. Grant district approval to a plan, design, report, study or similar item
- g. Adopt or grant district approval of district policies, standards or guidelines

A consultant is also an individual who, pursuant to a contract with the district, serves in a staff capacity with the district and in that capacity participates in making a governmental decision as defined in 2 CCR 18702.2 or performs the same or substantially all the same duties for the district that would otherwise be performed by an individual holding a position specified in the district's Conflict of Interest Code. (2 CCR 18701)

*Legal Reference: (see next page)*

**CONFLICT OF INTEREST (continued)**

*Legal Reference:*

EDUCATION CODE

1006 *Qualifications for holding office*

35107 *School district employees*

35230-35240 *Corrupt practices*

35233 *Prohibitions applicable to members of governing boards*

GOVERNMENT CODE

1090-1098 *Prohibitions applicable to specified officers*

1125-1129 *Incompatible activities*

81000-91015 *Political Reform Act of 1974, especially:*

82011 *Code reviewing body*

82019 *Definition of designated employee*

82028 *Definition of gifts*

82030 *Definition of income*

87100-87103.6 *General prohibitions*

87200-87210 *Disclosure*

87300-87313 *Conflict of interest code*

87500 *Statements of economic interests*

89501-89503 *Honoraria and gifts*

91000-91014 *Enforcement*

CODE OF REGULATIONS, TITLE 2

18110-18997 *Regulations of the Fair Political Practices Commission*

COURT DECISIONS

*Thorpe v. Long Beach Community College District*, (2000) 83 Cal.App.4th. 655

*Kunec v. Brea Redevelopment Agency*, (1997) 55 Cal.App.4th 511

ATTORNEY GENERAL OPINIONS

82 *Ops. Cal. Atty. Gen.* 83 (1999)

81 *Ops. Cal. Atty. Gen.* 327 (1998)

80 *Ops. Cal. Atty. Gen.* 320 (1997)

69 *Ops. Cal. Atty. Gen.* 255 (1986)

68 *Ops. Cal. Atty. Gen.* 171 (1985)

65 *Ops. Cal. Atty. Gen.* 606 (1982)

*Management Resources:*

WEB SITES

*Fair Political Practices Commission: <http://www.fppc.ca.gov>*

Bylaw  
adopted: October 8, 2002

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California

**VIDEO SURVEILLANCE**

The Governing Board believes that the health, welfare and safety of all staff, students and visitors to District property is of paramount importance. In addition, the Board recognizes the need to protect District facilities and grounds, equipment, and supplies from vandalism and theft. The Board further recognizes that staff, students and visitors to District property enjoy certain privacy rights and protections. Accordingly, the Board authorizes the use of video surveillance equipment on District property in such a manner as to maximize safety and discipline while respecting the individual's right to be free from unreasonable search and seizure. Video surveillance equipment shall be used primarily in public areas and shall be visible and obvious to the persons in those areas. Staff, students and parent/guardian shall be notified that video surveillance may be used and the information collected by such video surveillance equipment may be used in civil, criminal, administrative and disciplinary proceedings.

**VIDEO SURVEILLANCE**

**Surveillance Cameras.** The Board may authorize the use of video surveillance cameras or similar electronic surveillance equipment on District property to ensure the health, welfare, and safety of all staff, students, and visitors to District property and to safeguard District facilities and equipment. The Superintendent or Superintendent’s designee shall have the authority to install video surveillance equipment subject to the guidelines set forth below.

**Permissible Locations.** Video surveillance cameras may be used to observe the following public areas:

Outdoor facilities and grounds: including but not limited to common areas such as parking lots, walkways, picnic areas, athletic fields, stadiums, and points of ingress and egress.

Indoor facilities: foyers, lobbies, hallways, gymnasiums, technology labs, music rooms, and other indoor common areas containing money, property and/or expensive technical or specialized District equipment.

School buses: both regular and activity buses.

**Conditionally Permissible Locations.** Surveillance cameras may be used to observe the following locations:

Offices and work locations: provided that the following notice is prominently posted in the space being observed in advance of and during the surveillance.

*“NOTICE OF SURVEILLANCE CAMERA IN USE. A surveillance camera is, or may be, in operation in this area. You have no reasonable expectation of privacy in this area.”*

Classrooms: with the written consent of the principal and teacher (EC 51512) with the same notice as required for offices and work locations.

**Notice.** The District shall provide written notice to students and employees that video surveillance may occur on District property. The video surveillance equipment shall also be identified by appropriate signage.

A copy of the Board policy and this rule shall also be posted at each school in a location readily visible by students, staff, and members of the public.

**Impermissible Locations:** Video surveillance cameras shall not be used in locations where individuals have a reasonable expectation of privacy, including the interior of any restroom, toilet, bathroom, washroom, shower, locker room, changing area, or lavatory.

**VIDEO SURVEILLANCE** (continued)

**Ownership, Use and Access of Images.** The images captured by video surveillance equipment are the sole property of the District. The images captured through the video surveillance equipment shall only be viewed by designated District administrators and those individuals specifically authorized by District administrators.

The images may be used in disciplinary or criminal proceedings instituted against students, employees, parents/guardians, and other individuals within the area being observed, subject to applicable state and federal law.

Video recordings may be made part of a student's educational record or a staff member's personnel record. The District shall comply with all applicable state and federal laws with regard to record retention and maintenance.

**Law Enforcement.** This rule does not apply to surveillance cameras placed by any law enforcement agency including the district attorney, the sheriff's office, the highway patrol, the city police, or any state or federal law enforcement agency. These agencies are governed by laws and regulations pertaining to the activities of the agency.

**Equipment/Technology.** Prior to accepting, authorizing and/or installing any video surveillance equipment the District shall fully consider the total cost of ownership of such equipment to insure efficiency, economy, and ease of use.

The District may set operational standards for video surveillance equipment and standardize the video surveillance technology to be used throughout the District with the goal of achieving long-term compatibility, adaptability, and sustainability. Any proposed acquisition or installation of video surveillance equipment is subject to the District's rules, regulations and procedures governing capital outlays.

*Legal Reference:*

<http://www.leginfo.ca.gov/calaw.html>

EDUCATION CODE

51512 *Electronic Listening Or Recording Device*

PENAL CODE

635 *etc.*

647 (k)

653

84 *Opps. Cal. Atty. Gen. 146 (2001)*

*New Jersey v. TLO (1985) 469 US 325*

Regulation  
approved: October 11, 2005

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
Concord, California