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

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

(cf. 4030 - Nondiscrimination in Employment)
(cf. 4119.21/4219.21/4319.21 - Professional Standards)
(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)

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

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

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

(cf. 3515 - Campus Security)
(cf. 4040 - Employee Use of Technology)

Whistleblower Protection

An employee shall have the right to disclose to a Board member, a school administrator, a member of the County Board of Education, County Superintendent of Schools, or the Superintendent of Public Instruction any improper governmental activity by the district or a district employee that violates state or federal law, is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. When the employee has reasonable cause to believe that the information discloses a violation of state or federal

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statute or a violation of or noncompliance with a state or federal rule or regulation, he/she has the right to disclose such information to a government or law enforcement agency or to refuse to participate in any such activity. (Education Code 44112, 44113; Labor Code 1102.5)

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

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

(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Retaliation

The district has zero tolerance for any retaliation against its employees who engage in protected activity, which includes complaining, testifying, assisting or otherwise participating in good faith in any federal, state, or other complaint investigatory process, proceeding, or hearing of alleged discrimination or other alleged unlawful activity that violates federal or state law or board policy and/or administrative regulation or who oppose conduct or an employment practice reasonably believed to be unlawful, such as discrimination. An employee's participation in these activities is protected and encouraged by the district.

With a focus on ensuring an employment and education environment free from discrimination, the district will take all necessary and immediate action to prevent and correct activities that violate this policy. Any district employee who engages or participates in retaliation or who aids, abets, incites, compels, or coerces another to retaliate against an employee is in violation of this policy and is subject to disciplinary action up to and including dismissal.

Some examples of protected activity include, but are not limited to an

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employee's participation in a federal government investigation involving an alleged violation of Title VI of the 1964 Civil Rights Act of 1964 ("Title VI") (prohibiting discrimination based on disability) or the Equal Education Opportunities Act (ensuring, among other protections, that appropriate educational services are provided to ELL students). Other examples of protected activity include the filing of a complaint with or otherwise participating in a state investigation conducted by the California Department of Fair Employment and Housing ("DFEH") concerning discrimination based on a protected status or the filing of a complaint under state law providing whistleblower protection such as the Reporting of School Employees of Improper Governmental Activities Act.

An employee is retaliated against when he or she suffers an adverse employment action after he or she participates in a protected activity, where the adverse action is casually connected to the protected activity. Some examples of adverse employment actions may include, but are not limited to a termination; demotion; suspension; loss of pay; undeserved negative performance evaluation; refusal to consider for promotion; unwarranted lateral transfer, change in work schedule, or job reassignment; or any other employment action that would deter a reasonable employee from participating in a protected activity. Annoyances, inconveniences, and petty slights at the workplace are not adverse actions.

The Chief Human Resources Officer or designee will take all actions necessary to ensure the prevention, investigation, and correction of retaliation, including but not limited to:

1. Providing training to employees in accordance with the law and administrative regulation
2. Publicizing and disseminating the District's retaliation policy to its staff
3. Ensuring prompt, thorough, and fair investigation of complaint
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the individual who is the subject of the complaint and subsequent monitoring of developments

All complaints and allegations of retaliation shall be kept confidential during

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the complaint procedure except when disclosure is necessary during the investigatory process to take subsequent corrective action.

Any district employee who feels that he/she has been retaliated against or has knowledge of any incident of retaliation by or against another employee shall promptly report the incident to his or her supervisor, the District's Chief Human Resource Officer, or the Superintendent. A supervisor, principal or other administrator who receives a retaliation complaint shall promptly notify the District's Chief Human Resources Officer or the Superintendent.

Complaints of retaliation shall be filed in accordance with AR 4031 – Complaint Concerning Discrimination in Employment. Under no circumstances shall an employee be required to submit a complaint to an individual in his or her direct line of supervision who is either a subject of the complaint or a witness to the allegations of the complaint. An employee may choose to submit a complaint to the next appropriate level or directly to the Chief Human Resources Officer.

After filing a complaint with the district, the employee may also file a copy of the complaint with local law enforcement and/or seek civil law remedies against the supervisor or administrator who retaliated or attempted to retaliate against him/her, in accordance with Education Code 44114.

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 4144/4244/4344 - Complaints)

Protection against Liability

No employee shall be liable for harm caused by his/her act or omission when he/she is acting within the scope of employment or district responsibilities; when the employee's act or omission is in conformity with federal or state law, district policy, or administrative regulation; or when the employee's act or omission is in furtherance of an effort to control, discipline, expel, or suspend a student or to maintain order or control in the classroom or school.

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

(cf. 9260 - Legal Protection)

The protection against liability shall not apply when:

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

Legal Reference:

EDUCATION CODE

200-262.4 - Prohibition of discrimination

7050-7058 - Political activities of school officers and employees

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

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

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

48950 - Speech and other communication

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

CIVIL CODE

51 Unruh Civil Rights Act

GOVERNMENT CODE

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815.3 - *Intentional torts*
820-823 - *Tort claims act*
825.6 - *Indemnification of public entity*
3540.1 - *Public employment definitions*
3543.5 - *Interference with employee's rights prohibited*
12650-12656 - *False claims actions*
12940-12951 - *Discrimination prohibited; unlawful practices*
LABOR CODE
1102.5-1106 - *Whistleblower protections*
UNITED STATES CODE, TITLE 18
16 - *Crime of violence defined*
UNITED STATES CODE, TITLE 20
6731-6738 - *Teacher liability protection*
UNITED STATES CODE, TITLE 42
2000d-2000d-7 - *Title VI, Civil Rights Act*
2000e-2000e-17 - *Title VII, Civil Rights Act of 1964 as amended*
2000h-2000h-6 - *Title IX, 1972 Education Act Amendments*
12101-12213 - *Americans with Disabilities Act*
COURT DECISIONS
Hartnett v. Crosier (2012) 205 Cal.App.4th 685
Johnson v. Poway Unified School District (2011) 658 F.3d 954
Ohton v. CSU San Diego (2007) 56 Cal.Rptr.3d 111
Garcetti v. Ceballos (2006) 543 U.S. 1186
O'Conner v. Ortega (1987) 480 U.S. 709
New Jersey v. T.L.O. (1985) 468 U.S. 325

Management Resources:

WEB SITES

California Attorney General: <http://www.oag.ca.gov>

Policy

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PASADENA UNIFIED SCHOOL DISTRICT

Pasadena, California