

FILE CODE 4111.1/4211.1 NONDISCRIMINATION/AFFIRMATIVE ACTION

The Superintendent guarantees to all persons equal access to all categories of employment, assignment to a position, transfer, and promotion in this district. The Board shall not assign, transfer, promote, or retain staff, or fail to assign, transfer, promote, or retain staff, on the sole basis of race, creed, color, national origin, ancestry, age, sex, affectional or sexual orientation, gender identity or expression, marital status, domestic partnership status, familial status, pregnancy, liability for service in the Armed Forces of the United States, disability, nationality, atypical hereditary cellular or blood trait of any individual, nonapplicable disability or because of genetic information or refusal to submit to or make available the results of a genetic test.

An affirmative action/equity program shall be a part of every aspect of employment not limited to but including upgrading; demotion or transfer; recruitment or recruitment advertising; renewal or non-renewal; layoff or termination; rates of pay or other forms of compensation including fringe benefits; employment selection or selection for training and apprenticeships; promotion; or tenure.

The District's Affirmative Action Officer shall identify and recommend correction of any existing inequities, and any that occur in the future.

All District employees and pupils are required to cooperate in any investigation by the District's Affirmative Action Officer. Those District employees and/or pupils refusing to take part in an investigation, may be subject to disciplinary action.

Affirmative Action Officer and Team

The District designated Affirmative Action Officer shall:

- A. In collaboration with the affirmative action team coordinate the required professional development training for certificated and non-certificated staff;
- B. Notify all employees of District grievance procedures for handling discrimination complaints; and
- C. Ensure that the District grievance procedures, including investigative responsibilities and reporting information, are followed (see board policy 2224 Nondiscrimination/Affirmative Action).

Harassment and Favoritism

The District is an Affirmative Action employer and holds all its employees responsible for maintaining a working environment that is free from all discriminatory practices. Harassment or favoritism on any basis is prohibited.

District administrators and supervisors shall be familiarized with the actions that constitute harassment and favoritism. This material shall be included in the legally mandated affirmative action inservice training for all employees, and shall be clear and specific (see policy 2224). When harassment has been determined to have taken place, appropriate disciplinary action will follow. All such determinations shall be reported to the Superintendent.

Sexual Harassment

It is the policy of the District to maintain an instructional and working environment that is free from harassment of any kind. District administrators and supervisors will make it clear to all district employees, students and vendors that sexual harassment is prohibited. No supervisory employee shall threaten or insinuate, either directly or indirectly, that an employee's refusal to submit to sexual advances will adversely affect the employee's continued employment, evaluation, compensation,

assignment or advancement. No supervisory employee shall promise or suggest, either directly or indirectly, that an employee's submission to sexual advances will result in any improvement in any term or condition of employment of an employee. Sexually harassing conduct committed by nonsupervisory personnel is also prohibited.

Sexual harassment shall be specifically addressed in the affirmative action in-service programs required by law for all district employees.

Sexual harassment shall include, but not be limited to, unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- A. Submission to the conduct or communication is made a term and/or condition of employment or education;
- B. Submission to, or rejection of, the conduct or communication is the basis for decisions affecting education, employment or assignment;
- C. The conduct or communication has the purpose or effect of substantially interfering with an individual's work or educational performance; or
- D. The conduct or communication has the effect of creating an intimidating, hostile or offensive working environment or educational environment.

Sexual harassment of District employees or children interferes with the learning process and will not be tolerated in the district. Sexual harassment by board members, employees, parents, students, vendors and others doing business with the district is prohibited. Any student who has knowledge of or feels victimized by sexual harassment should immediately report his/her allegation to the building principal and/or designee. Anyone else who has knowledge of or feels victimized by sexual harassment should immediately report his/her allegation to the District's Affirmative Action Officer. Employees whose behavior is found to be in violation of this policy will be subject to the investigation procedure which may result in disciplinary action, up to and including dismissal. Other individuals whose behavior is found to be in violation of this policy will be subject to appropriate sanctions as determined and imposed by the Superintendent. This policy statement on sexual harassment shall be made available to all District employees.

District employees or students may file a formal grievance related to sexual harassment on any of the grounds addressed in this policy. The Affirmative Action Officer will receive all complaints and carry out a prompt and thorough investigation and will protect the rights of both the person making the complaint and the alleged harasser.

Findings of discrimination in the form of sexual harassment will result in appropriate disciplinary action.

Pregnancy

The District prohibits discrimination against pregnant women and those who suffer medical conditions related to pregnancy and childbirth. The Superintendent's designee shall ensure that reasonable accommodations are made that will allow them to maintain a healthy pregnancy or recovery from childbirth, without being removed from their positions, placed on unpaid leave or fired.

The District shall provide reasonable accommodations to pregnant women and those who suffer medical conditions related to pregnancy and childbirth, such as bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restructuring or modified work schedules and temporary transfer to less strenuous or hazardous work.

Requested accommodations that cause the District an undue hardship are not required by law and

shall not be provided.

Lactation Provisions

Students admitted or returning to school following the birth of a child who choose to continue providing their milk for their infant shall receive the accommodations required by law that support their choice to breast feed.

Accommodations shall include but shall not be limited to:

A. Milk expression breaks for breastfeeding

The student shall be allowed to breastfeed or express milk during the school day using their normal breaks, study hall and meal times. For time that may be needed beyond the usual break times, the student may request a pass to the school nurse. The school nurse with the consultation of the principal and the student's teacher(s) may at the request of the student develop regular schedule accommodation that better support their choice to breastfeed.

B. A place to express milk.

A private room (not a toilet stall or restroom) shall be made available for the student to breastfeed or express milk. The room will be private and sanitary, located near a sink with running water for washing hands and rinsing out breast pump parts, and have an electrical outlet. If the student prefers, she may also breastfeed in other comfortable locations agreed upon consultation with the principal. Expressed milk can be stored in general refrigerators; in designated refrigerators provided in the lactation room or other location; or in the student's personal cooler.

C. Staff Support

The principal shall ensure that pregnant and breastfeeding students are notified about the district's lactation support policies and procedures. The principal shall be responsible for negotiating policies and practices that will help facilitate each student's infant feeding goals. It is expected that all employees will assist in providing a positive atmosphere of support for breastfeeding students.

The building principal shall ensure that the New Jersey Department of Education signage shall be displayed in a clear and conspicuous manner in the school's waiting area, as well as in any lactation room that is made available. The New Jersey Department of Education signage shall contain information about breast feeding; affirm a mother's right to nurse in public; and indicate that lactation rooms are being made available for the privacy and comfort of nursing mothers.

The building principal shall ensure board policy and regulations on provisions for milk expression breaks, for breastfeeding and the designated lactation room(s) are distributed to staff and students who are pregnant and nursing mothers returning from maternity leave.

(See the district policies at 5134 and 4111.1/4211.1 Breastfeeding Regulation.)

Employment and Contract Practices

The District shall ensure all persons, regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, have equal and bias-free access to all categories of employment and equal pay for equal work among members of the school district's staff.

The District shall not enter into any contract with a person, agency, or organization that discriminates on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, either in employment practices or in the provision of benefits or services to students or employees.

The Superintendent/designee will ensure that appropriate administrators implement the District's affirmative action policies by:

- A. Adhering to the administrative code in selection of vendors and suppliers; informing vendors and suppliers that their employees are bound by the District's affirmative action policies in their contacts with District staff and pupils (see board policy 3327 Relations with Vendors);
- B. Continuing implementation and refinement of existing practices and affirmative action plans, making certain that all recruitment, hiring, evaluation, training, promotion, personnel-management practices and collective bargaining agreements are structured and administered in a manner that furthers equal employment opportunity principles and eliminates discrimination on any basis protected by law, holding inservice programs on affirmative action for all staff in accordance with law.

"Whistleblower" Protection

The Superintendent and/or designee prohibits discrimination or retaliation against any school employee who does any of the following:

- A. Discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the District that the employee reasonably believes is in violation of a law, or a rule or regulation established pursuant to law or is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity;
- B. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation established pursuant to law by the district including any violation involving deception of, or misrepresentation; or
- C. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of law, rule or regulation; is fraudulent or criminal; or is incompatible with public health, safety or welfare or protection of the environment.

The District shall ensure that notices are posted conspicuously in each school, informing employees that they are protected under the *Conscientious Employee Protection Act*.

Appeals

Grievances related to equity in employment practices shall be submitted to the Affirmative Action Officer. Any individual may petition the Commissioner in writing to resolve a dispute arising related to equity in employment practices.

Report on Implementation

The District shall utilize grievance forms and procedures to implement this policy. The Superintendent and/or designee shall be responsible for informing district employees of the identity and location of the affirmative action officer and the implementing procedures.

Adopted by State District Superintendent: January 25, 2005

NJSBA Review/Update: November 2010

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Adopted by the Board of Education: March 26, 2019

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Key Words

Affirmative Action, Nondiscrimination, Employee Nondiscrimination/Affirmative Action, Domestic Partnership Act

Legal References:

[N.J.S.A. 10:5-1](#) *et seq.* Law Against Discrimination

See particularly:

[N.J.S.A. 10:5-3](#), [-3.1-4.1](#), [-12](#), [-27](#)

[N.J.S.A. 18A:6-5](#) Inquiry as to religion and religious tests prohibited

[N.J.S.A. 18A:6-6](#) No sex discrimination

[N.J.S.A. 18A:18A-17](#) Facilities for handicapped persons

[N.J.S.A. 18A:26-1](#) Citizenship of teachers, etc.

[N.J.S.A. 18A:26-1.1](#) Residence requirements prohibited

[N.J.S.A. 18A:29-2](#) Equality of compensation for male and female teachers

[N.J.S.A. 18A:36-20](#) Discrimination Prohibition

[N.J.S.A. 26:4B-4](#) Right to breastfeed in public

[N.J.S.A. 26:-4C-1 through 3](#) Lactation rooms

[N.J.S.A. 26:8A-1](#) *et seq.* *Domestic Partnership Act*

[N.J.S.A. 34:19-1](#) *et seq.* *Conscientious Employee Protection Act*

See particularly:

[N.J.S.A. 34:19-3](#)

[N.J.A.C. 6A:7-1.1](#) *et seq.* Managing for Equality and Equity in Education

See particularly:

[N.J.A.C. 6A:7-1.4 -1.5](#), [-1.6 -1.8](#)

[N.J.A.C. 6A:30-1.1](#) *et seq.* Evaluation of the Performance of School Districts

Executive Order 11246 as amended

P.L. 1997, c 101 (C.26:4B-4) Right to Breastfeed in Public

P.L. 2019, c 242, Requirements regarding the provision of lactation rooms for nursing mothers

[29 U.S.C.A. 201](#) - *Equal Pay Act of 1963* as amended

[20 U.S.C.A. 1681](#) *et seq.* - Title IX of the Education Amendments of 1972

[42 U.S.C.A. 2000e](#) *et seq.* - Title VII of the *Civil Rights Act of 1964* as amended by the *Equal Employment Opportunities Act of 1972*

[29 U.S.C.A. 794](#) *et seq.* - Section 504 of the *Rehabilitation Act of 1973*

[20 U.S.C.A. 1401](#) *et seq.* - *Individuals with Disabilities Education Act*

[42 U.S.C.A. 12101](#) *et seq.* - *Americans with Disabilities Act (ADA)*

[Meritor Savings Bank v. Vinson](#), 477 U.S. 57 (1986)

[School Board of Nassau County v. Arline](#), 480 U.S. 273 (1987)

Vinson v. Superior Court of Alameda County, 740 P.2d 404 (Cal. Sup. Ct. 1987)

Taxman v. Piscataway Bd. of Ed., 91 F. 3d 1547 (3d Cir. 1996)

Saxe v. State College Area School Dist., 240 F. 3d 200 (3d Cir. 2001)

The Comprehensive Equity Plan, New Jersey State Department of Education

Possible Cross References:

*2224 Nondiscrimination/affirmative action

*3320 Purchasing procedures

*4111 Recruitment, selection and hiring

*4112.8 Nepotism

*4147 Employee safety

*4211 Recruitment, selection and hiring

*5145.4 Equal educational opportunity

*6121 Nondiscrimination/affirmative action

*Indicates policy is included in the Critical Policy Reference Manual.

Newark Board of Education
