

CONCEPTS AND ROLES

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

As the legal representative of the district in negotiations with employee representatives, the Board shall set goals and guidelines for collective bargaining, designate a chief negotiator, maintain communications during the bargaining process, and adopt the negotiated contract. The Board itself will not negotiate with any employee organization directly. Terms and conditions of employment which have been negotiated and stated in employee contracts shall have the force of policy. The Board shall hear employee complaints and appeals when such hearings are in accordance with Board policy or negotiated agreements. The Board shall also adopt wage and salary schedules and shall commit budget funds for staff development so that staff members may continue developing their skills.

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

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

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

Legal Reference:

EDUCATION CODE

35020 Duties of employees fixed by governing board

35035 Powers and duties of superintendent

35160 Powers of governing board

GOVERNMENT CODE

3540-3549.3 Public education employer-employee relations

DRUG AND ALCOHOL-FREE WORKPLACE

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

An employee shall not unlawfully manufacture, distribute, dispense, possess, or use any controlled substance in the workplace. (Government Code 8355; 41 USC 701)

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

The Superintendent or designee shall notify employees of the district's prohibition against drug use and the actions that will be taken for violation of such prohibition. (Government Code 8355; 41 USC 701)

An employee shall abide by the terms of this policy and shall notify the district, within five days, of his/her conviction for violation in the workplace of any criminal drug statute. (Government Code 8355; 41 USC 701)

The Superintendent or designee shall notify the appropriate federal granting or contracting agency within 10 days after receiving notification, from an employee or otherwise, of any conviction for a violation occurring in the workplace. (41 USC 701)

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

DRUG AND ALCOHOL-FREE WORKPLACE (continued)

Drug-Free Awareness Program

The Superintendent or designee shall establish a drug-free awareness program to inform employees about: (Government Code 8355; 41 USC 701)

1. The dangers of drug abuse in the workplace
2. The district's policy of maintaining a drug-free workplace
3. Available drug counseling, rehabilitation, and employee assistance programs
4. The penalties that may be imposed on employees for drug abuse violations occurring in the workplace

Legal Reference:

EDUCATION CODE

44011 Controlled substance offense

44425 Conviction of controlled substance offenses as grounds for revocation of credential

44836 Employment of certificated persons convicted of controlled substance offenses

44940 Compulsory leave of absence for certificated persons

44940.5 Procedures when employees are placed on compulsory leave of absence

45123 Employment after conviction of controlled substance offense

45304 Compulsory leave of absence for classified persons

GOVERNMENT CODE

8350-8357 Drug-free workplace

UNITED STATES CODE, TITLE 20

7111-7117 Safe and Drug Free Schools and Communities Act

UNITED STATES CODE, TITLE 21

812 Schedule of controlled substances

UNITED STATES CODE, TITLE 41

701-707 Drug-Free Workplace Act

CODE OF FEDERAL REGULATIONS, TITLE 21

1308.01-1308.49 Schedule of controlled substances

COURT DECISIONS

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

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

NONDISCRIMINATION IN EMPLOYMENT

The Board of Trustees desires to provide a positive work environment where employees and job applicants are assured of equal access and opportunities and are free from harassment in accordance with law. The Board prohibits district employees from discriminating against or harassing any other district employee or job applicant on the basis of the person's actual or perceived race, religious creed, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran status, gender, gender identity, gender expression, sex, or sexual orientation.

Prohibited discrimination consists of any adverse employment action, including termination or denial of promotion, job assignment, or training, based on any of the prohibited categories of discrimination listed above. Harassment consists of any unwelcome verbal, physical, or visual conduct that is based on any of the prohibited categories of discrimination listed above and that is so severe and pervasive that it adversely affects an individual's employment opportunities, has the purpose or effect of unreasonably interfering with the individual's work performance, or creates an intimidating, hostile, or offensive work environment.

The prohibition against discrimination based on the religious creed of an employee or job applicant includes any discrimination based on the person's religious dress or grooming practices or any conflict between the person's religious belief, observance, or practice and an employment requirement. The prohibition against discrimination based on the sex of an employee or job applicant shall include any discrimination based on the person's pregnancy, childbirth, breastfeeding, or any related medical conditions. (Government Code 12926, 12940)

The Board also prohibits retaliation against any district employee or job applicant who complains, testifies, assists, or in any way participates in the district's complaint procedures instituted pursuant to this policy.

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

Any employee or job applicant who believes that he/she has been or is being discriminated against or harassed in violation of district policy should, as appropriate, immediately contact his/her supervisor, the Director, or the Superintendent who shall advise the employee or applicant about the district's procedures for filing, investigating, and resolving any such complaint.

Complaints regarding employment discrimination or harassment shall immediately be investigated in accordance with AR 4031 - Complaints Concerning Discrimination in Employment.

NONDISCRIMINATION IN EMPLOYMENT (continued)

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment shall report the incident to the Coordinator or Superintendent as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately.

Training and Notifications

The Superintendent or designee shall provide training to employees about how to recognize harassment and discrimination, how to respond appropriately, and components of the district's policies and regulations regarding discrimination.

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. Such publication shall be included in each announcement, bulletin, or application form that is used in employee recruitment. (34 CFR 100.6, 106.9)

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

Legal Reference: (see next page)

NONDISCRIMINATION IN EMPLOYMENT (continued)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

CIVIL CODE

51.7 Freedom from violence or intimidation

GOVERNMENT CODE

11135 Unlawful discrimination

12900-12996 Fair Employment and Housing Act

PENAL CODE

422.56 Definitions, hate crimes

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

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 29

621-634 Age Discrimination in Employment Act

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

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

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

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

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

6101-6107 Age discrimination in federally assisted programs

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 Compliance information

104.7 Designation of responsible employee for Section 504

104.8 Notice

106.8 Designation of responsible employee and adoption of grievance procedures

106.9 Dissemination of policy

110.1-110.39 Nondiscrimination on the basis of age

COURT DECISIONS

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

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

Revised: November 13, 2014

Policy
adopted: March 21, 2013

EVERGREEN SCHOOL DISTRICT
San Jose, California

**All Personnel
Nondiscrimination In Employment**

AR 4030 (a)

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

Carole Schmitt
Director of Human Resources
3188 Quimby Road, San Jose, CA 95148
(408) 270-6800
cschmitt@eesd.org

Measures to Prevent Discrimination

To prevent unlawful discrimination, harassment, and retaliation against district employees, interns, and job applicants, the Superintendent or designee shall implement the following measures:

1. Publicize the district's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, to employees, volunteers, interns, job applicants, and the general public by: (5 CCR 4960; 34 CFR 100.6, 106.9)
 - a. Including them in each announcement, bulletin, or application form that is used in employee recruitment
 - b. Posting them in all district schools and offices, including staff lounges and other prominent locations
 - c. Posting them on the district's web site and providing easy access to them through district-supported social media, when available
2. Provide to employees information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to anyone who feels that he/she has been the victim of any discriminatory or harassing behavior
3. Provide training to employees, and interns regarding the district's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made
4. Periodically review the district's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure district compliance with law

Complaint Procedure

Any complaint by an employee or job applicant alleging discrimination or harassment shall be addressed in accordance with the following procedures:

1. Notice and Receipt of Complaint: A complainant who is an employee shall inform his/her supervisor. However, if the supervisor is the person against whom the employee is complaining, the employee shall inform the coordinator or the Superintendent. A job applicant shall inform the coordinator or the Superintendent or designee.

The complainant may file a written complaint in accordance with this procedure, or if he/she is an employee, may first attempt to resolve the situation informally with his/her supervisor.

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

The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, other evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

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

The coordinator shall meet with the complainant to describe the district's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The coordinator shall inform the complainant that the allegations will be kept confidential to the extent possible, but that some information may be revealed as necessary to conduct an effective investigation.

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

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

The coordinator also shall determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed to ensure that further incidents do not occur. The coordinator shall ensure that such interim measures do not constitute retaliation.

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

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the report also shall include any corrective action(s) that have been or will be taken to address the behavior, correct the effect on the complainant, and ensure that retaliation or further discrimination or harassment does not occur.

The report shall be presented to the complainant, the person accused, and the Superintendent or designee.

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

Other Remedies

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

1. To file a valid complaint with DFEH, within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960
2. To file a valid complaint directly with EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)
3. To file a valid complaint with EEOC after first filing a complaint with DFEH, within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by DFEH, whichever is earlier (42 USC 2000e-5)

EMPLOYEE USE OF TECHNOLOGY

The Board of Trustees recognizes the purpose of technology is to enhance the education of children. It also recognizes that technology can enhance performance by improving access to and exchange of information, offering effective tools to assist in providing a quality instructional program, and facilitating operations. The Board expects all employees to learn to use the available electronic resources that will assist them in their jobs. As needed, staff shall receive training in the appropriate use of these resources.

Employees shall be responsible for the appropriate use of technology and shall use the district's electronic mail/Internet only for purposes related to their employment. Such use is a privilege which may be revoked at any time.

Employees should be aware that computer files and communications over electronic networks, including e-mail and voice mail, are not private. This technology shall be used for educational purposes, factual or directory information, and only to the individual on a need to know basis for conducting business of the district.

To ensure proper use, the Superintendent or designee may monitor the district's technological resources, including e-mail and voice mail systems, at any time without advance notice or consent. If passwords are used, they must be known to the Superintendent or designee so that he/she may have system access when the employee is absent.

The Superintendent or designee shall establish administrative regulations which outline employee obligations and responsibilities related to the use of technology. Employees who fail to abide by these regulations shall be subject to disciplinary action, revocation of the user account and legal action as appropriate.

The Superintendent or designee may establish guidelines and limits on the use of technological resources. He/She shall ensure that all employees using these resources receive copies of related policies, regulations and guidelines. Employees shall be asked to acknowledge in writing that they have read and understood these policies, regulations and guidelines.

Legal Reference: (see next page)

EMPLOYEE USE OF TECHNOLOGY (continued)

Legal Reference:

EDUCATION CODE

51870-51874 *Education technology*

52270-52272 *Education technology and professional development grants*

52295.10-52295.55 *Implementation of Enhancing Education Through Technology grant program*

GOVERNMENT CODE

3543.1 *Rights of employee organizations*

PENAL CODE

502 *Computer crimes, remedies*

632 *Eavesdropping on or recording confidential communications*

VEHICLE CODE

23123 *Wireless telephones in vehicles*

23123.5 *Mobile communication devices; text messaging while driving*

23125 *Wireless telephones in school buses*

UNITED STATES CODE, TITLE 20

6751-6777 *Enhancing Education Through Technology Act, Title II, Part D, especially:*

6777 *Internet safety*

UNITED STATES CODE, TITLE 47

254 *Universal service discounts (E-rate)*

CODE OF FEDERAL REGULATIONS, TITLE 47

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

EMPLOYEE USE OF TECHNOLOGY

Online/Internet Services: User Obligations and Responsibilities

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

1. The employee in whose name an online services account is issued is responsible for its proper use at all times. Employees shall keep account information, home addresses, and telephone numbers private. They shall use the system only under the account number to which they have been assigned.
2. Employees shall use the system safely, responsibly, and primarily for work-related purposes.
3. Employees shall not access, post, submit, publish, or display harmful or inappropriate matter that is threatening, obscene, disruptive, or sexually explicit, or that could be construed as harassment or disparagement of others based on their race, ethnicity, national origin, sex, gender, sexual orientation, age, disability, religion, or political beliefs.
4. Employees shall not use the system to promote unethical practices or any activity prohibited by law, Board policy, or administrative regulations.
5. Employees shall not use the system to engage in commercial or other for-profit activities without permission of the Superintendent or designee.
6. Copyrighted material shall be posted online only in accordance with applicable copyright laws.
7. Employees shall not attempt to interfere with other users' ability to send or receive email, nor shall they attempt to read, delete, copy, modify, or forge other users' email.
8. Employees shall not develop any classroom or work-related web sites, blogs, forums, or similar online communications representing the district or using district equipment or resources without permission of the Superintendent or designee. Such sites shall be subject to rules and guidelines established for district online publishing activities including, but not limited to, copyright laws, privacy rights, and prohibitions against obscene, libelous, and slanderous content. Because of the unfiltered nature of blogs, any such site shall include a disclaimer that the district is not responsible for the content of the messages. The district retains the right to delete material on any such online communications.

EMPLOYEE USE OF TECHNOLOGY (continued)

9. Users shall report any security problem or misuse of the services to the Superintendent or designee.

Unacceptable Uses

Privacy – The system, including electronic mail (e-mail), is not guaranteed to be private. Operators of the system do have access to all data transmitted. Messages relating to or in support of illegal activities will be reported to the authorities.

Vandalism

Cyberbullying – includes the posting of harassing messages, direct threats, social cruelty, or other harmful text or images on the Internet, social networking sites, or other digital technologies, as well as breaking into another person's account and assuming that person's identity in order to damage that person's reputation or friendships.

Filtering – District has the right, to the extent required by law, to place reasonable restrictions on the material accessed or posted through the system.

Media Publishing – All published media must follow district guidelines and is subject to review.

Plagiarism – Employees will not plagiarize works. Plagiarism is taking the ideas or writings of others and presenting them as if they were their own.

Copyright Infringement – Employees will respect the rights of copyright owners. Copyright infringement occurs when a work, software, music, video, etc. that is protected by a copyright is inappropriately reproduced. Employees should request permission from the copyright owner if they are unsure whether or not they can use a work.

Services – The district makes no guarantee that the functions of the services provided by or through the district system will be error-free or without defect. The district will not be responsible for any damage suffered, including but not limited to, loss of data or interruption of service.

Consequences – The use of technology in district is a privilege, not a right. In addition to any criminal and civil penalties, employees are also subject to discipline for technology-related offenses. Depending on the seriousness of the violation, sanctions may include suspension or termination of computer privileges or any other appropriate employment sanction (eg. reprimand, suspension, demotion, or termination).

CERTIFICATED PERSONNEL

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

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

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

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

The Superintendent of Schools and the Board shall encourage the staff to participate cooperatively in the study and recommendation of district policies to effect the highest standards of service through established channels.

Legal Reference:

EDUCATION CODE

90 *Definition, certificated and certified*

44006 *Certificated person*

GOVERNMENT CODE

3543.2 *Scope of representation*

RECRUITMENT AND SELECTION

Cautionary Notice: As added and amended by SBX3 4 (Ch. 12, Third Extraordinary Session, Statutes of 2009), ABX4 2 (Ch. 2, Fourth Extraordinary Session, Statutes of 2009), and SB 70 (Ch. 7, Statutes of 2011), Education Code 42605 grants districts flexibility in "Tier 3" categorical programs. The Evergreen School District has accepted this flexibility and thus is deemed in compliance with the statutory or regulatory program and funding requirements for these programs for the 2008-09 through 2014-15 fiscal years. As a result, the district may temporarily suspend certain provisions of the following policy or regulation that reflect these requirements. For further information, please contact the Superintendent or designee.

The Board of Trustees is committed to employing suitable, qualified individuals to carry out the district's mission to provide high-quality education to its students and to ensure the efficient running of district operations.

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

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

The district's selection procedures shall include screening processes, interviews, observations, and recommendations from previous employers as necessary to identify the best possible candidate for a position. The Superintendent or designee may establish an interview committee, as appropriate, to rank candidates and recommend finalists. All discussions and recommendations shall be confidential in accordance with law.

During job interviews, applicants may be asked to describe or demonstrate how they will be able to perform the duties of the job. No inquiry shall be made with regard to any category of discrimination prohibited by state or federal law.

Legal Reference: (see next page)

RECRUITMENT AND SELECTION (continued)

Legal Reference:

EDUCATION CODE

200-262.4 *Prohibition of discrimination*

44066 *Limitations on certification requirement*

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

44735 *Incentive grants for recruiting teachers for low-performing schools*

44740-44741 *Personnel management assistance teams*

44750 *Teacher recruitment resource center*

44830-44831 *Employment of certificated persons*

44858 *Age or marital status in certificated positions*

44859 *Prohibition against certain rules and regulations re residency*

45103-45139 *Employment (classified employees)*

49406 *Examination for tuberculosis*

52051 *Academic Performance Index*

GOVERNMENT CODE

815.2 *Liability of public entities and public employees*

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

12940-12956 *Discrimination prohibited; unlawful practices*

UNITED STATES CODE, TITLE 8

1324a *Unlawful employment of aliens*

1324b *Unfair immigration related practices*

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*

COURT DECISIONS

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

Revised: November 13, 2014

Policy
adopted: March 21, 2013

EVERGREEN SCHOOL DISTRICT
San Jose, California

All Personnel

AR4111

4211

RECRUITMENT AND SELECTION

4311

In the employment of teachers and other certificated personnel, consideration is given to professional training, teaching experience, and personal characteristics desirable in good teachers. Each candidate will:

1. Submit an official college transcript to the personnel office.
2. Submit a record of teaching and other work experience to the personnel office.
3. Submit a copy of appropriate credentials.
4. Submit a placement file with letters of reference.
5. Complete district application forms.

All Personnel

BP 4111.2

4211.2

LEGAL STATUS REQUIREMENT

4311.2

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

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

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

Legal Reference:

UNITED STATES CODE, TITLE 8

1324a Unlawful employment of aliens

1324b Unfair immigrant-related employment practices

CODE OF FEDERAL REGULATIONS, TITLE 8

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

ADMINISTRATIVE INTERNS

Any request to participate in an Administrative Intern Program sponsored by a local university or college which necessitates released time from the normal day must be approved and recommended by the Superintendent to the Board of Trustees. Such approval and recommendations shall comply with all of the following:

1. That in any year no more than two percent (2%) of the staff will be approved for such programs.
2. That any released time will be made up by the individual at the discretion of the district.
3. That agreement on all phases of the internship be reached by the district with the sponsoring institution.
4. That any released time not to exceed one day per month.

CERTIFICATION

Cautionary Notice: As added and amended by SBX3 4 (Ch. 12, Third Extraordinary Session, Statutes of 2009), ABX4 2 (Ch. 2, Fourth Extraordinary Session, Statutes of 2009), and SB 70 (Ch. 7, Statutes of 2011), Education Code 42605 grants districts flexibility in "Tier 3" categorical programs. The Evergreen School District has accepted this flexibility and thus is deemed in compliance with the statutory or regulatory program and funding requirements for these programs for the 2008-09 through 2014-15 fiscal years. As a result, the district may temporarily suspend certain provisions of the following policy or regulation that reflect these requirements. For further information, please contact the Superintendent or designee.

The Board of Trustees recognizes that the district's ability to provide a high-quality educational program is dependent upon the employment of certificated staff who are adequately prepared and have demonstrated proficiency in basic skills and in the subject matter to be taught. The Superintendent or designee shall ensure that persons employed in positions requiring certification qualifications possess the appropriate credential or permit from the Commission on Teacher Credentialing (CTC) authorizing their employment in such positions.

All teachers of core academic subjects shall meet the requirements of the No Child Left Behind Act. (20 USC 6319, 7801; 5 CCR 6100-6125)

When a credentialed teacher or intern is not available, the district may request that the CTC issue a short-term staff permit, provisional internship permit (PIP), visiting faculty permit, emergency permit, or credential waiver under the conditions and limitations provided in state or federal law.

When requesting a PIP, the Board shall approve, as an action item at a public Board meeting, a notice of intent to employ the applicant in the identified position. (5 CCR 80021.1)

Before requesting a visiting faculty permit or emergency permit, the Board shall annually approve a Declaration of Need for Fully Qualified Educators as an action item at a regularly scheduled public Board meeting. (Education Code 44300.1; 5 CCR 80026)

The Superintendent or designee shall provide support and guidance to noncredentialed teachers in accordance with law to ensure the quality of the instructional program. He/she also may provide assistance and support to staff holding preliminary credentials to help them meet the qualifications required for the professional clear credential.

Responsibility for Renewal

All certificated personnel are personally responsible for the renewing of their credentials and for keeping them valid.

CERTIFICATION (continued)

Oaths

Every applicant shall, prior to the first day of employment, state under oath whether he/she is a member of the Communist Party. He/she shall not become an employee.

Any certificated employee who is not a citizen of the United States shall file, prior to the first day of service, an oath to support the institutions and policies of the United States during the period of his/her sojourn within the State.

Legal Reference:

EDUCATION CODE

- 8360-8370 *Qualifications of child care personnel*
 - 32340-32341 *Unlawful issuance of a credential*
 - 35186 *Complaints regarding teacher vacancy or misassignment*
 - 41520-41522 *Teacher Credentialing Block Grant*
 - 42647 *Eligibility to issue warrants*
 - 44066 *Limitations on certification requirements*
 - 44200-44399 *Teacher credentialing, especially:*
 - 44250-44277 *Credential types; minimum requirements*
 - 44279.1-44279.7 *Beginning Teacher Support and Assessment Program*
 - 44300-44302 *Emergency permits and visiting faculty permits*
 - 44320.2 *Teachers' performance assessment*
 - 44325-44328 *District interns*
 - 44330-44355 *Certificates and credentials*
 - 44380-44387 *Alternative certification program*
 - 44395-44399 *National Board for Professional Teaching Standards*
 - 44420-44440 *Revocation and suspension of credentials*
 - 44450-44468 *University internship program*
 - 44560-44562 *Certificated Staff Mentoring Program*
 - 44735 *Teaching as a Priority Block Grant*
 - 44830-44929 *Employment of certificated persons; requirement of proficiency in basic skills*
 - 56060-56063 *Substitute teachers in special education*
- ##### CODE OF REGULATIONS, TITLE 5
- 6100-6125 *Teacher qualifications, No Child Left Behind Act*
 - 80001-80674.6 *Commission on Teacher Credentialing*
- ##### UNITED STATES CODE, TITLE 20
- 6311 *Parental notifications*
 - 6312 *Title I local educational agency plan*
 - 6319 *Highly qualified teachers*
 - 7801 *Definitions, highly qualified teacher*

Legal Reference: (continued on next page)

CERTIFICATION (continued)

Legal Reference: (continued)

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 *Highly qualified teachers*

200.61 *Parent notification regarding teacher qualifications*

COURT DECISIONS

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

All Personnel

BP 4112.4

4212.4

HEALTH EXAMINATIONS

4312.4

It is the policy of the Board to require every employee to present evidence of freedom from tuberculosis as required by state law, and to require of every certificated employee who has not previously held a position requiring certification qualifications to submit a medical certificate in a form prescribed by the State Board of Education.

The Board reserves the right to require, at the district's expense, periodic medical examinations by a physician and surgeon licensed under the Business and Professions Code of all certificated employees in order to determine that each such employee is free from communicable diseases which render the employee unfit to instruct or associate with children.

On the request of the Superintendent of Schools, and for reason, the Board may require any employee who shows evidence of physical, mental or emotional disorder which is interfering with job performance to undergo examination by his/her own physician, who may also attend the employee during the district examination.

Legal Reference:

EDUCATION CODE

44839 *Medical certificate; periodic medical examination*

44839.5 *Requirements for employment of retirant*

44932 *Grounds for dismissal of permanent employee*

44942 *Suspension or transfer of certificated employee on ground of mental illness*

45122 *Physical examinations*

49406 *Examination for tuberculosis*

BUSINESS AND PROFESSIONS CODE

2700-2838 *Nurses*

3500-3546 *Physician assistants*

HEALTH AND SAFETY CODE

121525 *Private and parochial school employees, examination for tuberculosis*

CODE OF REGULATIONS, TITLE 5

5502 *Filing of notice of physical examination for employment of retired persons*

5503 *Physical examination for employment of retired persons*

5504 *Medical certification procedures*

COURT DECISIONS

Doe v. Lincoln Unified School District, (2010) 188 Cal.App.4th 758

Leonel v. American Airlines, Inc., (2005) 400 F.3d. 702

Raven v. Oakland Unified School District, (1989) 213 Cal.App.3d 1347

All Personnel

AR 4112.4

4212.4

HEALTH EXAMINATIONS

4312.4

Chest X-Ray or Intra-Dermal Test

All employees upon initial employment shall present evidence of having submitted to examination (chest x-ray, skin test, or other tests designated as acceptable by the county health department) to determine that they are free of active tuberculosis prior to commencing service and every four (4) years thereafter or more often if directed by the Board upon recommendation of the local health officer.

All Personnel

BP 4112.42(a)

4212.42

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS

4312.42

The Board of Trustees desires to ensure that district-provided transportation is safe for students, staff, and the public. To that end, the Superintendent or designee shall establish a drug and alcohol testing program for all district drivers and other employees who hold a commercial driver's license which is necessary to perform duties related to their employment with the district. This program shall be designed to fulfill the requirements of state and federal law.

The district's testing program shall include pre-employment drug testing and reasonable suspicion, random, post-accident, return-to-duty, and follow-up drug and alcohol testing of drivers. (49 USC 31306)

The Superintendent or designee shall contract for testing services and shall ensure that testing contractors and procedures are certified by the U.S. Department of Health and Human Services to conduct drug specimen analysis and to conform to the requirements of federal law.

No driver may operate a district vehicle when his/her blood alcohol content is found to be .01 percent or greater. A driver shall not consume alcohol while on duty or for four hours prior to on-duty time and up to eight hours following an accident or until he/she undergoes a post-accident test, whichever occurs first. A driver shall not report for duty or remain on duty that requires performing safety-sensitive functions when the driver uses a controlled substance, unless so instructed by a physician. (49 CFR 382.205, 382.207, 382.209; Vehicle Code 34520.3; 13 CCR 1213.1)

Any driver who tests positive for alcohol or drugs or who refuses to submit to a test shall be removed from safety-sensitive functions and may be subject to disciplinary action up to and including dismissal in accordance with law, administrative regulations, and the district's collective bargaining agreement.

The Superintendent or designee shall ensure that each driver receives an explanation of the federal regulations and the district's policy and procedure in accordance with law. In addition, each driver shall sign a statement certifying that he/she has received a copy of the above materials. Representatives of employee organizations shall be notified of the availability of this information. (49 CFR 382.601)

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

Post-Accident

After a reportable accident the employee must be tested as soon as possible after the accident. A reportable accident includes all accidents that involve any of the following:

1. A citation is issued by local police or highway patrol.
2. A vehicle is towed away.
3. An injury occurs.

Alcohol testing must be administered within two (2) hours following the accident. If it is not, the district must document why a test was not given. If the test is not administered within 8 hours following the accident, the district will cease attempts to administer the alcohol test and document why no test was administered.

Legal Reference:

EDUCATION CODE

35160 Authority of governing boards

VEHICLE CODE

34500-34520.5 Safety regulations

CODE OF REGULATIONS, TITLE 13

1200-1293 Motor carrier safety, especially:

1213.1 Placing drivers out-of-service

UNITED STATES CODE, TITLE 49

31306 Alcohol and controlled substances testing

41501-41507 Transportation Employee Testing Act

CODE OF FEDERAL REGULATIONS, TITLE 49

40.1-40.413 Part 40, Procedures for transportation workplace drug and alcohol testing programs

382.101-382.605 Controlled substance and alcohol use and testing; especially:

382.205 On-duty use

382.207 Pre-duty use

382.209 Use following an accident

Certificated Personnel

AR 4112.5(a)
4312.5

CRIMINAL RECORD CHECK

Applicants for Employment

The Superintendent or designee shall ensure that each person to be employed submits fingerprints, either electronically through the Live Scan system or on fingerprint identification cards, for processing by the Department of Justice. If the district is using the Live Scan system, the Superintendent or designee shall also provide the applicant with a Live Scan request form and a list of nearby Live Scan locations.

The Superintendent or designee shall ensure that no person is hired in a position requiring certification qualifications or supervising positions requiring certification qualifications who has been convicted of a violent or serious felony as listed in Penal Code 667.5(c) or 1192.7(c), unless that person has obtained a certificate of rehabilitation and a pardon. (Education Code 44830.1)

Subsequent Arrest Notification

The Superintendent or designee shall request subsequent arrest notification from the Department of Justice as provided under Penal Code 11105.2. (Education Code 44830.1)

Current Employees

The Superintendent or designee shall not retain in employment any current certificated employee who is a temporary employee, substitute employee or probationary employee serving before March 15 of the employee's second probationary year if he/she has been convicted of a violent or serious felony. (Education Code 44830.1)

Upon notification by the Department of Justice of such conviction, the Superintendent or designee shall immediately place that employee on leave without pay. (Education Code 44830.1)

When the district receives written electronic notification of the fact of conviction from the Department of Justice, the Superintendent or designee shall terminate that employee without regard to any other procedure for termination specified in the Education Code or district procedures, unless that employee has received a certificate of rehabilitation and a pardon. (Education Code 44830.1)

If the employee challenges the Department of Justice record and the Department of Justice withdraws in writing its notification, the Superintendent or designee shall immediately reinstate that employee with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement. (Education Code 44830.1)

Legal Reference: (see next page)

CRIMINAL RECORD CHECK (continued)

Legal Reference:

EDUCATION CODE

44010 Sex offense

44332 Temporary certificate

44332.5 Registering certificates by certain districts

44332.6 Criminal record check, county board of education

44346.1 Applicants for credential, conviction of a violent or serious felony

44830.1 Certificated employees, conviction of a violent or serious felony

44830.2 Certificated employees; interagency agreement

44836 Conviction of a sex offense

45122.1 Classified employees, conviction of a violent or serious felony

45125 Use of personal identification cards to ascertain conviction of crime

45125.01 Classified employees; interagency agreements

45125.5 Automated records check

45126 Duty of Department of Justice to furnish information

PENAL CODE

667.5 Prior prison terms, enhancement of prison terms

1192.7 Plea bargaining limitation

11105.2 Subsequent arrest notification

CODE OF REGULATIONS, TITLE 11

703 Release of criminal offender record information

708 Destruction of criminal offender record information

All Personnel

AR 4112.6(a)

4212.6

PERSONNEL RECORDS

4312.6

Placement of Material in Personnel Files

1. Material in the employee's personnel file will normally include but shall not be limited to the following:
 - a. Application for employment.
 - b. Employment sign-up information, such as: Authorization to employ, oath of office, notice of employment, fingerprint card, medical examination records, tuberculosis card, etc.
 - c. Verification of education, experience, and credential or license as required.
 - d. Assignment order forms.
 - e. Officer of employment.
 - f. Performance appraisal reports and related materials.
 - g. Retirement entry or separation material.
 - h. Medical information required as per policy (4112.4) and regulations.
2. All material to be placed in a personnel file shall be processed through the administrator responsible for the maintenance of personnel files.
3. Material of a derogatory nature shall be addressed accordance with contract.

Personnel File Review Procedures (SEE CONTRACT)

Legal Reference: (see next page)

AR 4112.6(b)
4212.6
4312.6

PERSONNEL FILES (continued)

Legal Reference:

EDUCATION CODE

35253 Regulations to destroy records

44031 Personnel file contents and inspection

44663 Performance appraisals and related materials

GOVERNMENT CODE

3305-3306.5 District police officers; personnel files

6250-6270 California Public Records Act, especially:

6254 Exemption for personnel records if invasion of personal privacy

6254.3 Disclosure of home address and phone number

LABOR CODE

1198.5 Inspection of personnel files

PENAL CODE

11165.14 Report of investigation of child abuse complaint

CODE OF REGULATIONS, TITLE 5

16020-16022 Records, general provisions

16023-16027 Retention of records

COURT DECISIONS

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

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

ATTORNEY GENERAL OPINIONS

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

All Personnel

BP 4112.61

4212.61

EMPLOYMENT REFERENCES

4312.61

The Superintendent or designee shall process all requests for references, letters of recommendation, or information about the reasons for separation regarding all district employees other than himself/herself. All letters of recommendation to be issued on behalf of the district for current or former employees must be approved by the Superintendent or designee.

At his/her discretion, the Superintendent or designee may refuse to give a recommendation. Any recommendation he/she gives shall provide a careful, truthful and complete account of the employee's job performance and qualifications.

Legal Reference:

LABOR CODE

1050-1054 Reemployment privileges

CIVIL CODE

47 Privileged communication

CODE OF CIVIL PROCEDURE

527.3 Labor disputes

CODE OF REGULATIONS, TITLE 5

80332 Professional candor and honesty in letters or memoranda of employment recommendation

COURT DECISIONS

Randi W. v. Muroc Joint Unified School District et al., (1997) 14 Cal. 4th 1066

All Personnel

AR 4112.61

4212.61

EMPLOYMENT REFERENCES

4312.61

No certificated employee shall write or sign any letter or memorandum which intentionally omits significant facts, or which states as facts matters which the writer does not know of his/her own knowledge to be true, relating to the professional qualifications or personal fitness to perform certificated services of any person who the writer knows will use the letter or memorandum to obtain professional employment. (5 CCR 80332)

No certificated employee shall agree to provide a positive letter of recommendation which misrepresents facts as a condition of another employee's resigning or withdrawing action against the district. (5 CCR 80332)

All Personnel

BP 4112.8

4212.8

EMPLOYMENT OF RELATIVES

4312.8

The Board of Trustees desires to maximize staff and community confidence in district hiring, promotion, and other employment decisions by promoting practices that are free of conflicts of interest or the appearance of impropriety.

The Board prohibits the appointment of any person to a position for which his/her relative maintains management, supervisory, evaluation, or promotion responsibilities and prohibits an employee from participating in any decision that singularly applies to any of his/her relatives.

For purposes of this policy, *relative* includes the individual's spouse, domestic partner, parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, aunts, uncles, nieces, nephews, and the similar family of the individual's spouse or domestic partner.

The following shall govern conflict of interest in the employment of staff:

1. No spouse, minor child or dependent of a Board member shall be appointed to a full-time position in this school district.
2. A spouse or child of a Board member may be employed for limited term or short-term employment on a competitive basis among persons who are eligible, as provided by law.

In addition, the Superintendent or designee may determine, on a case-by-case basis, whether to appoint a person to a position in the same department or facility as an employee with whom he/she maintains a personal relationship when that relationship has the potential to create (1) an adverse impact on supervision, safety, security, or morale of other district employees or (2) a conflict of interest for the individuals involved which is greater because of their relationship than it would be for another person.

An employee shall notify his/her supervisor within 30 days of any change in his/her circumstances that may constitute a violation of this policy.

Legal Reference:

EDUCATION CODE

35107 School district employees

FAMILY CODE

297-297.5 Rights, protections, benefits under the law; registered domestic partners

GOVERNMENT CODE

1090-1098 Prohibitions applicable to specified officers

12940 Unlawful employment practices

CODE OF REGULATIONS, TITLE 2

7292.0-7292.6 Marital status discrimination, especially:

7292.5 Employee selection

ASSIGNMENT

Cautionary Notice: As added and amended by SBX3 4 (Ch. 12, Third Extraordinary Session, Statutes of 2009), ABX4 2 (Ch. 2, Fourth Extraordinary Session, Statutes of 2009), and SB 70 (Ch. 7, Statutes of 2011), Education Code 42605 grants districts flexibility in "Tier 3" categorical programs. The Evergreen School District has accepted this flexibility and thus is deemed in compliance with the statutory or regulatory program and funding requirements for these programs for the 2008-09 through 2014-15 fiscal years. As a result, the district may temporarily suspend certain provisions of the following policy or regulation that reflect these requirements. For further information, please contact the Superintendent or designee.

In order to serve the best interests of students and the educational program, the Board of Trustees authorizes the Superintendent or designee to assign certificated personnel to positions for which their preparation, certification, professional experience, and aptitude qualify them.

Teachers may be assigned to any school within the district in accordance with the collective bargaining agreement or Board policy.

Assignment to Courses/Classes

The Superintendent or designee shall assign teachers to courses based on the grade level and subject matter authorized by their credentials.

When there is no credential authorization requirement for teaching an elective course, the Superintendent or designee shall select the credentialed teacher whose knowledge and skills best prepare him/her to provide instruction in that subject.

Teachers who are assigned to teach core academic subjects shall meet the requirements of the No Child Left Behind Act (NCLB) pertaining to qualifications of highly qualified teachers. (20 USC 6319, 7801; 5 CCR 6100-6126)

The Superintendent or designee may assign a teacher, with his/her consent, to a position outside his/her credential authorization when specifically authorized by law or regulation, and in accordance with the local teaching assignment options described in the Commission on Teacher Credentialing's Administrator's Assignment Manual. Assignments made pursuant to Education Code 44256, 44258.2, and 44263 shall be annually approved by Board resolution. In such cases, the Superintendent or designee shall reference in district records the statute or regulation under which the assignment is authorized.

The Superintendent or designee shall periodically report to the Board on teacher assignments and vacancies, including the number and type of assignments made outside a teacher's credential authorization through a local teaching assignment option. Whenever district misassignments and vacancies are reviewed by the County Superintendent of Schools or Commission on Teacher Credentialing, as applicable, the Superintendent or designee shall report the results to the Board and shall provide recommendations for remedying any identified issues.

ASSIGNMENT (continued)

Equitable Distribution of Qualified Teachers

In order to ensure that highly qualified and experienced teachers are equitably distributed among district schools, including those with higher than average levels of low-income, minority, and/or academically underperforming students, the Superintendent or designee shall:

1. Verify that all teachers of core academic subjects possess the qualifications of highly qualified teachers as required by NCLB or develop immediate and long-term solutions for ensuring that all core academic classes will be taught by highly qualified teachers
2. Not assign teachers with provisional internship permits, short-term staffing permits, or credential waivers to schools that have 40 percent or higher poverty or are ranked in deciles 1-3 on the statewide Academic Performance Index
3. Not place interns in high-poverty, low-performing schools in greater numbers than in schools with low poverty or higher academic achievement
4. Compare teacher retention rates across district schools and develop strategies to recruit and retain experienced and effective teachers in hard-to-staff schools

Legal Reference: (see next page)

ASSIGNMENT (continued)

Legal Reference:

EDUCATION CODE

33126 *School accountability report card*

35035 *Additional powers and duties of superintendent*

35186 *Complaint process*

37616 *Assignment of teachers to year-round schools*

44225.6 *Commission report to the legislature re: teachers*

44250-44277 *Credentials and assignments of teachers*

44314 *Subject matter programs, approved subjects*

44395-44398 *Incentives for assigning NBPTS-certified teachers to high-priority schools*

44824 *Assignment of teachers to weekend classes*

44955 *Reduction in number of employees*

GOVERNMENT CODE

3543.2 *Scope of representation*

CODE OF REGULATIONS, TITLE 5

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

80003-80005 *Credential authorizations*

80020-80020.5 *Additional assignment authorizations*

80335 *Performance of unauthorized professional services*

80339-80339.6 *Unauthorized certificated employee assignment*

UNITED STATES CODE, TITLE 20

6311 *State plan*

6319 *Highly qualified teachers*

6601-6651 *Teacher and Principal Training and Recruiting Fund*

7801 *Definitions, highly qualified teacher*

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 *Highly qualified teachers*

SHARED WORKLOAD CONTRACTS

The Board of Trustees of the district recognizes the value in reduced workload or shared contract for the certificated individual, employee and the district where the needs can best be served by such an arrangement.

It shall be the policy of the Board to approve such arrangements when supported by the certificated individuals who will participate, the Principal, and the Superintendent.

SHARED WORKLOAD CONTRACTS

Work Year

Administrative Regulations

1. Education Government Code
 - a. In compliance with Education Code Section 45025
 - b. In compliance with Education Code Section 44922
 - c. In compliance with Education Code Section 22724
 - d. In compliance with Government Code Section 20815
2. Definition: Reduced Workload
 - a. 50% Requirement
 - b. A certificated employee must work at least 50% over the entire year. This may be achieved by: actually working 50% throughout the year; working 100% half the year and not working the other half; working 25% half the year and 75% the other half; or any other combination totaling at least 50%.
 - c. Time of Request
 - d. The approval and contract must be executed prior to the beginning of the school year or semester in which the certificated employee will be in the reduced workload program.
3. Salary, Benefits, Credit for experience and retirement. Each individual certificated employee participating in the reduced workload program will receive:
 - a. One-half (1/2) the annual salary assigned each.
 - b. One-half (1/2) of the annual number of sick days credited.
 - c. One-half (1/2) of the health and dental premiums and any other negotiated group benefits paid by the district.
 - d. Two years of half-time teaching under this program will count as one year toward salary schedule improvement.

SHARED WORKLOAD CONTRACTS (continued)

4. Other duties and rights.
 - a. Both certificated employees will attend district in-service days and parent conference days when in service.
 - b. Half-time teachers under this provision desiring to return to full-time teaching status will be placed in the pool of certificated employees returning from leave status seeking full-time status in compliance with the current contract.

EVALUATION/SUPERVISION

The Board of Trustees believes that regular and comprehensive evaluations can help instructional staff improve their teaching skills and raise students' levels of achievement. Evaluations also serve to hold staff accountable for their performance. The Superintendent or designee shall evaluate the performance of certificated staff members in accordance with law, negotiated employee contracts and Board-adopted evaluation standards.

Objective standards from California Standards for the Teaching Profession shall be reviewed and may be incorporated in district evaluation standards with the agreement of the exclusive representative of the certificated staff.

Evaluation procedures may include observation of teacher performance in the classroom.

The Superintendent or designee shall ensure that evaluation ratings have uniform meaning throughout the district.

Evaluations shall be used to recognize the exemplary skills and accomplishments of staff and to identify areas needing improvement. Staff members are encouraged to take initiative to request assistance as necessary to promote effective teaching.

Legal Reference:

EDUCATION CODE

33039 *State guidelines for teacher evaluation procedures*

35171 *Availability of rules and regulations for evaluation of performance*

44500-44508 *Peer assistance and review program for teachers*

44660-44665 *Evaluation and assessment of performance of certificated employees (the Stull Act)*

GOVERNMENT CODE

3543.2 *Scope of representation*

UNITED STATES CODE, TITLE 20

6319 *Highly qualified teachers*

7801 *Definition of highly qualified teacher*

Policy revised: June 13, 2013

Policy

adopted: March 21, 2013

EVERGREEN SCHOOL DISTRICT

San Jose, California

PROBATIONARY/PERMANENT STATUS

Probationary Status

Probationary employees shall receive training, assistance and evaluations consistent with their needs as new teachers. Such training and assistance may consist of inservice training and/or meetings with the employee's evaluator to discuss areas of strength and areas requiring improvement. Inservice training may be provided during school hours as part of a comprehensive staff development program.

The performance of each probationary employee shall be evaluated and assessed at least once every school year.

Permanent Status

Granting of permanent status shall be based on completion of the probationary period in accordance with applicable law. Employees granted permanent status acquire specific rights under the Education Code, including those relating to discipline and dismissal. (Education Code 44932-44988)

Legal Reference:

EDUCATION CODE

44466 Status of university interns

44850.1 No tenure in administrative or supervisory position

44885.5 Status of district interns

44908 Complete year for probationary employees

44911-44913 Service not computed in eligibility for permanent status

44915 Classification of probationary employees

44917-44921 Status of substitute or temporary employees

44929.20 Continuing contracts (not to exceed four years - ADA under 250)

44929.21 Districts of 250 ADA or more

44929.23 Districts with less than 250 ADA

44929.28 Employment by another district

44930-44988 Resignations, dismissals and leaves of absence, especially:

44948.2 Election to use provisions of Section 44948.3

44948.3 Dismissal of probationary employees

PROBATIONARY/PERMANENT STATUS

Assignment of Probationary Certificated Employees

The principal has primary responsibility for ensuring that the needs of each probationary certificated employee assigned under his/her direction for assistance, further training, and evaluation are recognized and addressed.

Assistance and training shall consist of, but not be limited to:

1. Planning, supervision and conference with the employee's supervisor.
2. Individual training and/or assistance, as needed.
3. School level staff development.

Assistance and training may also include:

1. District level staff development.
2. Participation in a professional growth program.

Assistance and training needs which are recognized by the principal, but which are beyond his/her ability to provide, shall be communicated to the Superintendent.

RETIREMENT

Retirement for Service

Any certificated employee who is a member of the State Teachers Retirement System may retire for service at the employee's option upon written application to the Teachers Retirement Board under the following conditions:

1. The employee has attained the age of 55 or more and has at least five years of credited California Service, provided five of the final six years of credited service have been in California

Or

2. The employee is credited with service which is not used as a basis for benefits under any other public retirement system, provided the employee has attained age 55 and retires concurrently under the Public Employees Retirement System, or under the University of California Retirement System, or under a local system.

Employees retiring from service should notify the Superintendent of their intention 60 days prior to retirement.

Retirement for Disability

Any certificated employee may retire for disability under the terms and conditions of the Education Code. (For conditions of early retirement, see ETA Agreement.)

Legal Reference: EDUCATION CODE
 22000 et seq.. State Teacher's Retirement System
 44906 Age when permanent classification ceases
 44907 Effect of retirement

All Personnel

BP 4117.2

4217.2

RESIGNATION

4317.2

Any district employee who desires to resign his/her position shall submit, in writing, a letter of resignation which indicates the date which the employee intends as his/her last day at work. The Board of Trustees encourages employees to provide advance notice that is appropriate for the position they hold.

The Board authorizes the Superintendent or designee to accept an employee's written resignation and to set its effective date. Once the Superintendent or designee has accepted and set an effective date for this resignation, the resignation may not thereafter be withdrawn by the employee.

The effective date of the resignation shall be a date not later than the close of the school year during which the resignation is received. However, an employee and the Board may agree that a resignation will be accepted at a mutually agreed upon date not later than two years beyond the close of the school year during which the resignation is received by the Board. (Education Code 44930, 45201)

Legal Reference:

EDUCATION CODE

35161 Board delegation of any powers or duties

44242.5 Reports of change in employment status, alleged misconduct

44420 Failure to fulfill contract as ground for suspension of diplomas and certificates

44433 Unauthorized departure from service as unprofessional conduct

44930 Acceptance and date of resignation

45201 Power to accept resignation

CODE OF REGULATIONS, TITLE 5

80303 Reports of change in employment status

80304 Notice of sexual misconduct

COURT DECISIONS

American Federation of Teachers, Local #1050 v. Board of Education of Pasadena Unified School District, (1980) 107 Cal.App.3d 829

Policy revised: June 13, 2013

Policy

adopted: March 21, 2013

EVERGREEN SCHOOL DISTRICT

San Jose, California

PERSONNEL REDUCTION

The Board of Trustees may reduce the number of probationary and permanent certificated employees when, in the opinion of the Board, one or more of the following conditions makes such reduction necessary:

1. Average daily attendance (ADA) in all of the schools in the district during the first six months of the school year has declined below the level for the same period in either of the previous two school years. (Education Code 44955)
2. A particular kind of service is to be reduced or discontinued not later than the beginning of the following school year. (Education Code 44955)
3. Attendance in the district will decline in the following year as a result of the termination of an interdistrict tuition agreement. (Education Code 44955)
4. An amendment of state law requires modification of the curriculum. (Education Code 44955)
5. The state Budget Act reveals that the district's total revenue limit per ADA for the fiscal year of that Budget Act has not increased by at least two percent. (Education Code 44955.5)

Seniority

Except as otherwise provided by law, a permanent employee who is certificated and competent to render a service shall not be terminated or given a reduction in hours and wages while a probationary employee, or other employee with less seniority, is retained to render the service. (Education Code 44955)

The Superintendent or designee shall prepare a master seniority list on the basis of district records and evidence presented. (Education Code 44846)

Special Procedure Based Upon Late Adoption of the State Budget

When the Board, during the time period between five days after enactment of the Budget Act and August 15, determines that the total revenue limit per ADA has not increased by at least two percent and that the district therefore needs to reduce the number of certificated staff pursuant to Education Code 44955.5, the Board shall adopt a schedule of notice and hearings and the district shall otherwise proceed pursuant to Education Code 44949 and 44955. (Education Code 44955.5)

PERSONNEL REDUCTION (continued)

Reappointment

If the number of employees is increased or the discontinued service reestablished, permanent certificated employees under 65 years of age shall have the right to reappointment, in order of seniority for 39 months, after being terminated. Probationary certificated employees under 65 years of age shall have the same right for 24 months after being terminated, subject to the prior reappointment rights of permanent employees. (Education Code 44956, 44957)

Reappointed certificated employees shall not be subject to any requirements that were not imposed on employees who continued in service. Their period of absence shall be treated as a leave of absence and not considered a break in the continuity of their service. (Education Code 44956, 44957)

(See ETA Collective Bargaining Agreement)

Legal Reference:

EDUCATION CODE

- 44830 *Employment of certificated persons*
- 44949 *Dismissal of probationary employees*
- 44955 *Reduction in number of permanent employees*
- 44955.5 *Termination of certificated employees*
- 44956-44959.5 *Rights of employees*

GOVERNMENT CODE

- 3543.2 *Scope of representation*

COURT DECISIONS

- California Teachers Association v. Vallejo City Unified School District*, (2007) 149 Cal.App.4th 135
- Bakersfield Elementary Teachers Association v. Bakersfield City School District*, (2006) 145 Cal.App.4th 1260
- Cousins v. Weaverville Elementary School District*, (1994) 24 Cal.App.4th 1846
- Forker v. Board of Trustees*, (1984) 160 Cal.App.3d 13
- Moreland Teachers Assoc. v. Kurze*, (1980) 109 Cal.App.3d 648
- King v. Berkeley Unified School District*, (1979) 89 Cal.App.3d 1016

PERSONNEL REDUCTION

Lay-off Notice

Any certificated employee who is to be terminated because of reduction in attendance or reduction or discontinuance of a particular kind of service shall be notified in accordance with State law by the registered prepaid mail sent to the last known address of the employee, of such termination as of July 1. The notification shall state the reason(s) for the termination, the right of the employee to a hearing, and reemployment rights as stated in the Education Code. (Failure to give such notice, or failure to provide for a hearing if requested shall permit the employee to be reemployed for the ensuing year.)

Order of Termination

Employees shall be terminated in inverse of the order in which they were employed by the district in a probationary position, with no permanent employees to be terminated until all probationary employees have been terminated unless the retained probationary employee is certificated and competent to render service in an area where no permanent employee who is terminated is so certificated and competent.

When two or more employees have the same anniversary date of employment and not all such employees are to be terminated, the board, on recommendation of the Superintendent , shall determine which individuals are to be terminated on the basis of the needs of the district, not by chance.

Employee Right to Hearing on Dismissal

Any employee terminated because of reduction of attendance for reduction or elimination of a particular program has the right to a hearing to determine whether there is cause for not reemploying the employee for the ensuing year. The necessary steps are as follows:

1. The terminated employee must request the hearing in writing and the request must be delivered to the person who sent the notice of termination within seven calendar days after the notice was served on the employee. Failure to do so constitutes a waiver of the right of the employee to a hearing.
2. The proceeding for the hearing shall be specified in Government Code Section 11500 et seq. except as provided in the Education Code.
3. After the hearing and after obtaining the recommendation of the hearing officer, the Board shall determine whether the employee shall be terminated as notified or shall be reemployed.
4. If a request for a hearing is granted and the subsequent proceedings last past the specified termination date of July 1, that date will stand as the termination date if the Board affirms its original decision for termination.

PERSONNEL REDUCTION (continued)

5. The decision of the Board is final.

Employee Rights for Reemployment

1. Any permanent employee whose services have been terminated as provided in the Education Code shall have reemployment rights as specified in the Education Code. A copy of the sections shall be enclosed with the notice of termination.
2. Any probationary employee whose services have been terminated shall have reemployment rights as specified in the Education Code. A copy of the sections shall be included with the notice of termination.
3. After the hearing and after obtaining the recommendation of the hearing officer, the Board shall determine whether the employee shall be terminated as notified or shall be reemployed.
4. If a request for a hearing is granted and the subsequent proceedings last past the specified termination date of July 1, that date will stand as the termination date if the Board affirms its original decision for termination.
5. The decision of the Board is final.

Personnel Records

A copy of the notice of termination shall be placed in the personnel file of each employee terminated under provisions of the Education Code and a statement shall be placed in any letters of recommendation which may be solicited from the district to the effect that the employee was terminated according to the Education Code, and that the employee was terminated without prejudice.

DISMISSAL

Permanent Employees

Permanent employees shall not be dismissed from their position except when cause for dismissal can be shown. Cause and procedures for dismissal are defined by provisions of Education Code 44932-44947.

Probationary Employees (District of 250 ADA or more)

During the school year, certificated probationary employees may be dismissed for causes specified in Education Code 44932 or for unsatisfactory performance determined pursuant to Education Code 44660-44665. Procedures and time limits for such action shall be those set forth in Education Code 44948.3.

At the end of the school year, the Governing Board may decide not to rehire probationary employees without a statement of reasons, giving notice in accordance with Education Code 44929.21.

SUSPENSION/DISCIPLINARY ACTION

The Board of Trustees expects all employees to exhibit professional and appropriate conduct and serve as positive role models both at school and in the community. An employee may be suspended or disciplined for unprofessional or inappropriate conduct in accordance with law, the district's collective bargaining agreement, Board policy, and administrative regulation.

The Superintendent or designee may take disciplinary action as he/she deems appropriate in light of the particular facts and circumstances involved and based on the severity of the misconduct. Disciplinary actions may include, but not be limited to, verbal warnings, written warnings, reassignment, suspension, freezing or reduction of wages, compulsory leave, or dismissal.

The Superintendent or designee shall ensure that, consistent with law, disciplinary actions are taken in a consistent, nondiscriminatory manner and are appropriately documented.

Dismissal

A certificated employee may be dismissed from the service of the district for just cause or because of lay-off of personnel authorized under the Education Code.

1. Certificated personnel may be dismissed at any time for violation of any causes for dismissal listed in the Education Code.
2. Probationary certificated personnel may be dismissed (not rehired for the ensuing year) at the end of the school year for cause only, using the procedures and notices specified in the Education Code.
3. Both permanent and probationary certificated employees may be laid off under provisions of the Education Code. Personnel records of employees dismissed because of lay-off will show that the dismissal was made without prejudice against the employee.

*See ETA Collective Bargaining Agreement

Notice of Intention to Discharge Employee

On the filing of written charges, duly signed and verified by the person filing them, with the Board, or upon a written statement of charges formulated by the Board, charging that there exists cause for the dismissal of a permanent employee of the district, the Board may, by a majority vote give notice of its intention to dismiss the employee at the end of thirty days from the date of service of the notice unless the employee demands a hearing on the charges.

SUSPENSION/DISCIPLINARY ACTION (continued)

Any written charges of unprofessional conduct or incompetency shall state the statutes and rules the certificated employee is alleged to have violated and the facts relevant to each occasion of alleged unprofessional conduct or incompetency, and the Board shall not act on those charges unless during the previous half-year or semester, and at least 45 and 90 days respectively, before filing of the charge, the board or its authorized representatives has given the employee written notice of the unprofessional conduct or incompetency, specifying the nature of the charges and giving specific instances of behavior and particulars as will enable the employee to correct his/her faults and overcome the grounds for the charge.

The notice of intention to discharge the employee shall not be given between May 15th and September 15th in any year. It shall be in writing and be served on the employee personally or by registered mail addressed to the employee's last known address. A copy of the charges filed containing the information required by Government Code Section 11503 and the provisions of Article 3, Chapter 5 of the Education Code.

Right of Appeal

When any employee who has been served with notice of the Board's intention to dismiss him/her demands a hearing, the board may either rescind its action or schedule a hearing on the matter.

*(See ETA Collection Bargaining Agreement)

Hearing

Any hearing requested by an employee after receipt of notice of the intention of the Board to dismiss the employee shall be conducted according to the provisions of the Education Code.

No hearing will be granted as a result of dismissal by the board to any temporary or substitute employee. The action of the board is final.

*(See ETA Collective Bargaining Agreement)

In accordance with law, the Superintendent or designee shall notify the Commission on Teacher Credentialing when the status of a credentialed employee has been changed as a result of alleged misconduct.

Legal Reference: (see next page)

SUSPENSION/DISCIPLINARY ACTION (continued)

Legal Reference:

EDUCATION CODE

44008 *Effect of termination of probation*
44009 *Conviction of specified crimes*
44010 *Sex offense - definitions*
44011 *Controlled substance offense - definitions*
44242.5 *Reports and review of alleged misconduct*
44425 *Conviction of a sex or narcotic offense*
44660-44665 *Evaluation and assessment of performance of certificated employees*
44830.1 *Criminal record summary certificated employees*
44930-44988 *Resignations, dismissal, and leave of absence, especially:*
44940 *Sex offenses and narcotic offenses; compulsory leave of absence*
44940.5 *Compulsory leave of absence*
45055 *Drawing of warrants for teachers*
48907 *Exercise of free speech, expression*
48950 *Speech and other communication*
51530 *Advocacy or teaching of communism*

GOVERNMENT CODE

3543.2 *Scope of representation*

HEALTH AND SAFETY CODE

11054 *Schedule I; substances included*
11055 *Schedule II, substances included*
11056 *Schedule III, substances included*
11357-11361 *Marijuana*
11363 *Peyote*
11364 *Opium*
11370.1 *Possession of controlled substances with a firearm*

PENAL CODE

187 *Murder*
291 *School employees arrest for sex offense*
667.5 *Prior prison terms, enhancement of prison terms*
1192.7 *Plea bargaining limitation*

CODE OF REGULATIONS, TITLE 5

80303 *Reports of change in employment status*
80304 *Notice of sexual misconduct*

COURT DECISIONS

Crowl v. Commission on Professional Competence, (1990) 225 Cal. App. 3d 334

SUSPENSION/DISCIPLINARY ACTION

Any of the following causes may subject a certificated employee to disciplinary action, including suspension and/or dismissal:

1. Immoral or unprofessional conduct.
2. Commission, aiding or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof.
3. Dishonesty.
4. Incompetency.
5. Evident unfitness for service.
6. Physical or mental condition unfitting the employee to instruct or associate with children.
7. Persistent violation of or refusal to obey the school laws of the state or the reasonable regulations prescribed for the government of the schools by the state board of education or by the Board of this district.
8. Conviction of a felony or of any crime involving moral turpitude.
9. Advocating or teaching Communism, or being a member of the Communist Party or any organization advocating the forcible or violent overthrow of the government of the United States or of any state.
10. Violation of any provision of the Education Code, Sections 7001 to 7007, inclusive. (Prohibition of Communist Party membership).
11. Membership by the employee in the Communist Party.
12. Other acts or omissions by the employee which are deemed to constitute unprofessional conduct.

All Personnel

BP 4119.1(a)

4219.1

CIVIL AND LEGAL RIGHTS

4319.1

The Board of Trustees 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.

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.

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 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)

CIVIL AND LEGAL RIGHTS (continued)

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, 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.

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.

The protection against liability shall not apply when:

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: (see next page)

CIVIL AND LEGAL RIGHTS (continued)

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

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

All Personnel

BP 4119.11(a)

4219.11

SEXUAL HARASSMENT

4319.11

The Board of Trustees 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 administrative regulation.

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 training to employees in accordance with law and administrative regulation
2. Publicizing and disseminating the district's sexual harassment policy to staff
3. Ensuring prompt, thorough, and fair investigation of complaints
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments

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

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 report the incident to his/her supervisor, the principal, district administrator or Superintendent.

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

Complaints of sexual harassment shall be filed in accordance with AR 4031 - Complaints Concerning Discrimination in Employment. An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.

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.

Legal Reference: (see next page)

SEXUAL HARASSMENT (continued)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act, especially:

12940 Prohibited discrimination

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

CODE OF REGULATIONS, TITLE 2

7287.8 Retaliation

7288.0 Sexual harassment training and education

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

Department of Health Services v. Superior Court of California, (2003) 31 Cal.4th 1026

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

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

All Personnel

AR 4119.11(a)

4219.11

SEXUAL HARASSMENT

4319.11

Definitions

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 sex in the work or educational setting when: (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is made explicitly 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 having a negative impact upon the individual's work or has the purpose or effect of creating an intimidating, hostile, or offensive work environment. The conduct is sufficiently severe, persistent, pervasive, or objectively offensive so as to create a hostile or abusive working environment or to limit the individual's ability to participate in or benefit from an education program or activity.
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.

Other examples of actions that might constitute sexual harassment, whether committed by a supervisor, a co-worker, or a non-employee, in the work or educational setting, include, but are not limited to:

1. Unwelcome verbal conduct such as sexual flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sexual activity; sexual jokes or stories; unwelcome sexual slurs, epithets, threats, innuendoes, derogatory comments, sexually degrading descriptions, or the spreading of sexual rumors
2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit emails; displaying sexually suggestive objects
3. Unwelcome physical conduct such as massaging, grabbing, fondling, stroking, or brushing the body; touching an individual's body or clothes in a sexual way; cornering, blocking, leaning over, or impeding normal movements

Prohibited sexual harassment may also include 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.

SEXUAL HARASSMENT (continued)

Training

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment. All newly hired or promoted supervisory employees shall receive training within six months of their assumption of the supervisory position. (Government Code 12950.1)

The district's training and education program for supervisory employees shall include information and practical guidance regarding the federal and state laws on the prohibition against and the prevention and correction of sexual harassment, and the remedies available to the victims of sexual harassment in employment. The training shall also include all of the content specified in 2 CCR 7288.0 and practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation. (Government Code 12950.1; 2 CCR 7288.0)

In addition, the Superintendent or designee shall ensure that all employees receive periodic training regarding the district's sexual harassment policy, particularly the procedures for filing complaints and employees' duty to use the district's complaint procedures.

Notifications

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

1. Be displayed in a prominent location in the main administrative building, district office, 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
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 (DFEH) or a copy of district information sheets that contain, at a minimum, components on: (Government Code 12950)

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 DFEH and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact DFEH and the EEOC
7. The protection against retaliation provided by 2 CCR 7287.8 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by DFEH and the EEOC

In addition, the district shall post, in a prominent and accessible location, DFEH's poster on discrimination in employment and the illegality of sexual harassment. (Government Code 12950)

Board approved: September 12, 2013

Regulation
approved: March 21, 2013

EVERGREEN SCHOOL DISTRICT
San Jose, California

All Personnel

BP 4119.23(a)
4219.23
4319.23

**UNAUTHORIZED RELEASE OF CONFIDENTIAL/
PRIVILEGED INFORMATION**

The Board of Trustees recognizes the importance of keeping confidential information confidential. Staff shall maintain the confidentiality of information acquired in the course of their employment. Confidential/privileged information shall be released only to the extent authorized by law.

Disclosure of Closed Session Information

An employee shall not disclose confidential information acquired by being present during a closed session to a person not entitled to receive such information, unless the Board authorizes disclosure of that information. (Government Code 54963)

Confidential information means a communication made in a closed session that is specifically related to the basis for the Board to meet lawfully in closed session. (Government Code 54963)

An employee who willfully discloses confidential information acquired during a closed session may be subject to disciplinary action if he/she has received training or notice as to the requirements of this policy. (Government Code 54963)

The district shall not take disciplinary action against any employee for disclosing confidential information acquired in a closed session, nor shall the disclosure be considered a violation of the law or Board policy, when the employee is: (Government Code 54963)

1. Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts necessary to establish the illegality or potential illegality of a Board action that has been the subject of deliberation during a closed session
2. Expressing an opinion concerning the propriety or legality of Board action in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action
3. Disclosing information that is not confidential

Other Disclosures

An employee who willfully releases confidential/privileged information about the district, students or staff shall be subject to disciplinary action.

No employee shall disclose confidential information acquired in the course of his/her official duties. Confidential information includes information that is not a public record subject to disclosure under the Public Records Act, information that by law may not be disclosed, or information that may have a material financial effect on the employee.

**UNAUTHORIZED RELEASE OF CONFIDENTIAL/
PRIVILEGED INFORMATION (continued)**

Any action by an employee which inadvertently or carelessly results in release of confidential/privileged information shall be recorded, and the record shall be placed in the employee's personnel file. Depending on the circumstances, the Superintendent or designee may deny the employee further access to any privileged information and shall take any steps necessary to prevent any further unauthorized release of such information.

Legal Reference:

EDUCATION CODE

35010 *Control of district; prescription and enforcement of rules*

35146 *Closed sessions*

35160 *Authority of governing boards*

44031 *Personnel file contents and inspection*

44932 *Grounds for dismissal of permanent employees*

44933 *Other grounds for dismissal*

45113 *Rules and regulations for classified service*

49060-49079 *Pupil records*

GOVERNMENT CODE

1098 *Public officials and employees: confidential information*

6250-6270 *Inspection of public records*

54950-54963 *Brown Act*

UNITED STATES CODE, TITLE 20

1232g *Family Education Rights and Privacy Act*

All Personnel

BP 4119.25

4219.25

POLITICAL ACTIVITIES OF EMPLOYEES

4319.25

The Board of Trustees respects the right of school employees to engage in political discussions and activities on their own time and at their own expense. On such occasions, employees shall make it clear that they are acting as individuals and not as representatives of the district.

Like other community members, employees may use school facilities for meetings under the Civic Center Act.

Employees shall refrain from prohibited activities identified in law and administrative regulations. Employees who engage in these activities shall be subject to disciplinary action and/or criminal penalties.

Legal Reference:

EDUCATION CODE

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

38130-38139 *Civic Center Act*

51520 *Prohibited solicitations on school premises*

GOVERNMENT CODE

3543.1 *Rights of employee organizations*

COURT DECISIONS

Downs v. Los Angeles Unified School District, (9th Cir. 2000) 228 F.3d 1003

California Teachers Association v. Governing Board of San Diego Unified School District, (1996) 45 Cal.App. 4th 1383

L.A. Teachers Union v. L.A. City Board of Education, (1969) 71 Cal.2d 551

ATTORNEY GENERAL OPINIONS

84 *Ops. Cal. Atty. Gen. 106 (2001)*

84 *Ops. Cal. Atty. Gen. 52 (2001)*

77 *Ops. Cal. Atty. Gen. 56 (1994)*

PERB RULINGS

California Federation of Teachers, Local 1931 v. San Diego Community College District (2001) PERB Order #1467 (26 PERC 33014)

All Personnel

AR 4119.25(a)
4219.25
4319.25

POLITICAL ACTIVITIES OF EMPLOYEES

District employees shall not:

1. Use district funds, services, supplies or equipment to urge the passage or defeat of any ballot measure or candidate, including any candidate for election to the Board of Trustees (Education Code 7054)
2. During working hours and on district property, solicit or receive any political funds or contributions to promote the passage or defeat of a ballot measure that would affect the rate of pay, hours of work, retirement, civil service or other working conditions (Education Code 7056)
3. During working hours and on district property, solicit or receive any political funds or contributions to promote the passage or defeat of other types of ballot measures
4. Use district time to urge the passage or defeat of any ballot measure or candidate
5. Use district equipment for the preparation or reproduction of political campaign materials, even if the district is reimbursed
6. Post or distribute political campaign materials on district property
7. Disseminate political campaign materials through the district's mail service, e-mail or staff mailboxes
8. Use students to write, address or distribute political campaign materials
9. Present viewpoints on particular candidates or ballot measures in the classroom without giving equal time to the presentation of opposing views
10. Wear buttons or articles of clothing that express political opinions on ballot measures or candidates during instructional time

However, teachers shall not be prohibited from wearing political buttons during noninstructional time, such as Back-to-School Night.

Nothing in Board policy or administrative regulation shall be construed to prevent employees from soliciting or receiving funds or contributions for political purposes during nonworking time, including before and after school, the lunch period or other scheduled work intermittency during the school day. (Education Code 7056)

AR 4119.25(b)
4219.25
4319.25

POLITICAL ACTIVITIES OF EMPLOYEES (continued)

Employee Organizations

Employee organizations may use district mailboxes and other means to communicate with employees, subject to reasonable regulation. Employee organizations may have access at reasonable times to areas in which employees work; may use institutional bulletin boards, mailboxes, and other means of communication and may use district facilities at reasonable times for the purpose of meetings. (Government Code 3543.1)

However, employee organizations shall not use district funds, services, supplies or equipment, such as the district mail system, to urge the passage or defeat of any ballot measure or candidate, including any candidate for election to the Board. (Education Code 7054)

Access to district communication channels shall be limited in cases where such access would be disruptive to district operations.

In the event of a concerted action or work stoppage, political activities by employee organizations and individual employees shall be restricted to peaceful informational picketing and other activities allowed by law.

All Personnel

BP 4119.41(a)

4219.41

EMPLOYEES WITH INFECTIOUS DISEASE

4319.41

The Board of Trustees desires to promote the health of district students and staff in order to reduce absenteeism and enhance employee and student performance. The Superintendent or designee shall develop strategies to prevent the outbreak or spread of infectious diseases at district schools.

An *infectious disease* is one that is caused by a microorganism and is potentially transmittable to another individual, whether through airborne transmission, bloodborne transmission, skin-to-skin contact, foodborne transmission, or other casual or noncasual means. A *communicable infectious disease*, such as influenza or chicken pox, is contagious and can be readily transmitted by infectious bacteria or viral organisms.

In accordance with law, job applicants shall be required to provide evidence that they are free of tuberculosis or any other communicable infectious disease prior to beginning employment.

To prevent the outbreak or spread of infectious diseases, the Superintendent or designee may provide infection prevention supplies and information to employees, including information about recommended vaccinations. Employees also shall observe universal precautions to avoid contact with potentially infectious blood or other bodily fluids.

Plans for addressing a communicable infectious disease outbreak, including, but not limited to, plans for addressing employee shortages during such an outbreak, shall be included in the district's emergency preparedness plan.

The Superintendent or designee shall immediately report to the local health officer the presence or suspected presence of any communicable infectious disease. In addition, a school nurse or other health care provider who knows of or is in attendance on a case or suspected case of any of the diseases or conditions listed in 17 CCR 2500 shall make a report to the local health officer. If no health care provider is in attendance, any individual having knowledge of a person who is suspected to be suffering from one of the specified diseases or conditions may make a report to the local health officer. (17 CCR 2500, 2508)

Nondiscrimination/Reasonable Accommodation

The district shall not discriminate against any employee or job applicant who has an infectious disease that meets the federal or state definition of a disability under the Americans with Disabilities Act, California Fair Employment and Housing Act, or Section 504 of the Federal Rehabilitation Act. (Government Code 12900-12996; 29 USC 794; 42 USC 12101-12213)

BP 4119.41(b)
4219.41
4319.41

EMPLOYEES WITH INFECTIOUS DISEASE (continued)

Upon request, any qualified person with a disability shall be provided reasonable accommodation to perform the essential duties of his/her position in accordance with the criteria and processes described in AR 4032 - Reasonable Accommodation.

Legal Reference:

EDUCATION CODE

44839 *Medical certificate; periodic medical examination*

44839.5 *Requirements for employment of retirant*

49406 *Examination for tuberculosis (employees)*

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

7293.5-7294.2 *Discrimination based on disability*

CODE OF REGULATIONS, TITLE 5

5502-5504 *Medical certification*

CODE OF REGULATIONS, TITLE 17

2500 *Reportable diseases and conditions*

2508 *Reporting of communicable diseases; duty of schools*

UNITED STATES CODE, TITLE 29

794 *Section 504 of the Rehabilitation Act of 1973*

UNITED STATES CODE, TITLE 42

12101-12213 *Americans with Disabilities Act*

COURT DECISIONS

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

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

All Personnel

BP 4119.42

4219.42

EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS

4319.42

As part of its commitment to provide a safe and healthful work environment, the Board of Trustees 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).

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.

Universal precautions shall be observed throughout the district to protect employees in the work place from contact with potentially infectious blood or other body fluids.

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

All Personnel

BP 4119.43

4219.43

UNIVERSAL PRECAUTIONS

4319.43

In order to protect employees from contact with potentially infectious blood or other body fluids, the Board of Trustees 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.

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

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

STAFF DEVELOPMENT

The Board of Trustees believes that, in order to maximize student learning and achievement, certificated staff members must be continuously learning and improving their skills. The Superintendent or designee shall develop a program of ongoing professional development which includes opportunities for teachers to enhance their instructional and classroom management skills and become informed about changes in pedagogy and subject matter.

The Superintendent or designee shall involve teachers, site and district administrators, and others, as appropriate, in the development of the district's staff development program. He/she shall ensure that the district's staff development program is aligned with district priorities for student achievement, school improvement objectives, the local control and accountability plan, and other district and school plans.

The district's staff development program shall assist certificated staff in developing knowledge and skills, including, but not limited to:

1. Mastery of subject-matter knowledge, including current state and district academic standards
2. Use of effective, subject-specific teaching methods, strategies, and skills
3. Use of technologies to enhance instruction
4. Sensitivity to and ability to meet the needs of diverse student populations, including, but not limited to, students of various racial and ethnic groups, students with disabilities, English language learners, economically disadvantaged students, foster youth, gifted and talented students, and at-risk students
5. Understanding of how academic and career technical instruction can be integrated and implemented to increase student learning
6. Knowledge of strategies that encourage parents/guardians to participate fully and effectively in their children's education
7. Effective classroom management skills and strategies for establishing a climate that promotes respect, fairness, tolerance, and discipline, including conflict resolution and hatred prevention
8. Ability to relate to students, understand their various stages of growth and development, and motivate them to learn
9. Ability to interpret and use data and assessment results to guide instruction
10. Knowledge of topics related to student health, safety, and welfare
11. Knowledge of topics related to employee health, safety, and security

STAFF DEVELOPMENT (continued)

The district's staff evaluation process may be used to recommend additional staff development for individual employees.

The Board may budget funds for actual and reasonable expenses incurred by staff who participate in staff development activities.

The Superintendent or designee shall provide a means for continual evaluation of the benefit of staff development activities to both staff and students and shall regularly report to the Board regarding the effectiveness of the staff development program. Based on the Superintendent's report, the Board may revise the program as necessary to ensure that the staff development program supports the district's priorities for student achievement.

Legal Reference:

EDUCATION CODE

41530-41533 Professional Development Block Grant

44032 Travel expense payment

44259.5 Standards for teacher preparation

44277 Professional growth programs for individual teachers

44325-44328 District interns

44450-44468 University internship program

44570-44578 Inservice training, secondary education

44580-44591 Inservice training, elementary teachers

44630-44643 Professional Development and Program Improvement Act of 1968

44700-44705 Classroom teacher instructional improvement program

45028 Salary schedule and exceptions

48980 Notification of parents/guardians: schedule of minimum days

56240-56245 Staff development; service to persons with disabilities

99200-99206 Subject matter projects

GOVERNMENT CODE

3543.2 Scope of representation of employee organization

CODE OF REGULATIONS, TITLE 5

13025-13044 Professional development and program improvement

UNITED STATES CODE, TITLE 20

6319 Highly qualified teachers

6601-6702 Preparing, Training and Recruiting High Quality Teachers and Principals

Revised: November 13, 2014

Policy
adopted: March 21, 2013

EVERGREEN SCHOOL DISTRICT
San Jose, California

All Personnel

BP 4136

4236

NONSCHOOL EMPLOYMENT

4336

In order to help maintain public trust in the integrity of district operations, the Board of Trustees expects all employees to give the responsibility of their positions precedence over any other outside employment. A district employee may receive compensation for outside activities as long as these activities are not inconsistent, incompatible, in conflict with, or inimical to his/her district duties.

An outside activity shall be considered inconsistent, incompatible, or inimical to district employment when such activity: (Government Code 1126)

1. Requires time periods that interfere with the proper, efficient discharge of the employee's duties
2. Entails compensation from an outside source for activities which are part of the employee's regular duties
3. Involves using the district's name, prestige, time, facilities, equipment, or supplies for private gain
4. Involves service which will be wholly or in part subject to the approval or control of another district employee or Board member

An employee wishing to accept outside employment that may be inconsistent, incompatible, in conflict with, or inimical to the employee's duties shall file a written request with his/her immediate supervisor describing the nature of the employment and the time required. The supervisor shall evaluate each request based on the employee's specific duties within the district and determine whether to grant authorization for such employment.

The supervisor shall inform the employee whether the outside employment is prohibited. The employee may appeal a supervisor's denial of authorization to the Superintendent or designee. An employee who continues to pursue a prohibited activity may be subject to disciplinary action.

Legal Reference:

EDUCATION CODE

35160 Authority of governing boards

35160.1 Broad authority of school districts

51520 Prohibited solicitation on school premises

GOVERNMENT CODE

1126 Incompatible activities of employees

1127 Incompatible activities; off duty work

1128 Incompatible activities, attorney

CODE OF REGULATIONS, TITLE 5

80334 Unauthorized private gain or advantage

ATTORNEY GENERAL OPINIONS

70 Ops.Cal.Atty.Gen. 157 (1987)

Policy
adopted: March 21, 2013

EVERGREEN SCHOOL DISTRICT
San Jose, California

TUTORING

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

1. A teacher may not accept any kind of remuneration for tutoring any pupil 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 make their own arrangements with the parents for the fees to be assessed.
4. A teacher should not accept tutoring employment in subject/grade levels in which the teacher is not certificated.

All Personnel

BP 4140(a)

4240

BARGAINING UNITS

4340

The Board of Trustees recognizes the right of district employees to form bargaining units, select an employee organization as their exclusive representative, and be represented by that organization in their employment relationship with the district. The Board is committed to negotiating in good faith with recognized employee organizations and respecting the rights of employees and employee organizations.

The district shall not dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. (Government Code 3543.5)

Neither the district nor the employee organization shall impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of their membership or nonmembership in an employee organization. (Government Code 3543.5, 3543.6)

Formation of Bargaining Units

Certificated and classified employees shall not be included in the same bargaining unit. (Government Code 3545)

Payment of Dues or Service Fee

Upon the written request of a recognized employee organization, the Superintendent or designee shall deduct the amount of organization dues or the fair share service fee, determined in accordance with Government Code 3546, from the wages and salary of each employee represented by that employee organization and shall pay that amount to the employee organization. (Education Code 45060, 45168; Government Code 3546)

Any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment. However, such an employee may be required to pay an amount equal to the service fee to a designated charitable fund. (Government Code 3546.3)

Each employee organization shall, within 60 days after the end of its fiscal year, provide the Board and the employees who are members of the organization with a detailed financial report consisting of a balance sheet and an operating statement. If the employee organization fails to provide the financial report, the Board may issue an order compelling the organization to provide the financial report or any employee within the organization may petition the Board for such an order. (Government Code 3546.5)

BARGAINING UNITS (continued)

The Superintendent or designee may provide an employee organization with the home address and home telephone number of employees, except any employees performing law enforcement-related functions and any employees who provide written request that the information not be disclosed for this purpose. (Government Code 6254.3)

Legal Reference:

EDUCATION CODE

45060-45061.5 Deduction of fees from salary or wage payment, certificated employees

45100.5 Senior management positions

45104.5 Abolishment of senior classified management positions

45108.5 Definitions of senior classified management employees

45108.7 Waiver of provisions of 45108.5

45168 Deduction of fees from salary or wage payment, classified employees

45220-45320 Merit system, classified employees

GOVERNMENT CODE

3540-3549.3 Educational Employment Relations Act, especially:

3540.1 Definitions

3543.4 Management position; representation

3545 Appropriateness of unit; basis

6254.3 Disclosure of employee contact information to employee organization

6503.5 Joint powers agencies

53260-53264 Employment contracts

CODE OF REGULATIONS, TITLE 8

33015-33490 Recognition of exclusive representative; proceedings

33700-33710 Severance of established unit

34020 Petition to rescind organizational security arrangement

34055 Reinstatement of organizational security arrangement

COURT DECISIONS

County of Los Angeles v. Service Employees International Union, Local 721, (2011), 192 Cal.App.4th 1409

COLLECTIVE BARGAINING AGREEMENT

Each agreement entered into by the Board of Trustees with a duly constituted exclusive representative shall constitute a commitment by the Board to the provisions of the agreement for its duration or until its amendment by an instrument in writing duly executed by both parties.

An executed copy of each written agreement between the Board and exclusive representative shall be filed with the Public Employment Relations Board within sixty (60) calendar days after execution of each such agreement.

A copy of each current employee agreement is appended to this section for reference purposes only.

In any case where a regulation or policy of the Board is in conflict with a provision of the employee agreement, the provision of the employee agreement shall be binding on the board and on all employees covered by that provision of the employee agreement.

For information on this subject see the employee agreement between the district and the Evergreen Teachers' Association.

Legal Reference:

EDUCATION CODE

35035 *Additional powers and duties of superintendent, transfer authority*

35036 *Voluntary transfers*

35160 *Authority of governing boards*

35160.1 *Broad authority of school districts*

45220-45320 *Merit system, classified employees*

GOVERNMENT CODE

3540-3549.3 *Educational Employment Relations Act*

CODE OF REGULATIONS, TITLE 8

31001-32997 *Regulations of employee relations boards*

CONCERTED ACTION/WORK STOPPAGE

The Board of Trustees recognizes the importance of maintaining ongoing positive relations with employees and engaging in fair, respectful negotiations with employee organizations. The Board desires to reach agreement on employment contracts in a manner that does not disrupt school operations or impact student achievement.

The Board recognizes that advance planning is necessary to ensure that students receive the education to which they are entitled in the event of a work slowdown, sickout, strike, or other concerted activity by employees. The Superintendent or designee shall develop a written plan which shall include strategies for the provision of internal and external communications, preservation of student and staff safety, maintenance of district operations, and appropriate student instruction and supervision during a work slowdown or stoppage.

The Board recognizes that even the best laid plans cannot address all possible situations, and the Superintendent is empowered to take whatever steps are, in the Superintendent's opinion, necessary and within the law, to accomplish the above.

Legal Reference:

EDUCATION CODE

35204 *Contract with attorney in private practice*

35205 *Contract for legal services*

37200-37202 *Instructional days*

GOVERNMENT CODE

3540-3549.3 *Educational Employment Relations Act, especially:*

3543.5-3543.6 *Unfair labor practices*

3548-3548.8 *Impasse procedures*

INSURANCE CODE

10116 *Employee continuation of insurance coverage*

UNITED STATES CODE, TITLE 29

1161-1169 *Continuation coverage and additional standards for group health plan*

PUBLIC EMPLOYMENT RELATIONS BOARD DECISIONS

Fresno Unified School District, 1982, PERB Dec. No. 208, 6 PERC 13110

Konocti Unified School District, 1982, PERB Dec. No. 217, 6 PERC 13152

NEGOTIATIONS/CONSULTATION

The Board of Trustees recognizes its responsibility to represent the public's interests in the collective bargaining process. In negotiating agreements on employee contracts, the Board shall balance the needs of staff and the priorities of the district in order to provide students with a high-quality instructional program based on a sound, realistic budget.

The Board shall negotiate in good faith with exclusive employee representatives on wages, hours of employment, and other terms and conditions of employment identified in law as being within the scope of representation. (Government Code 3543.2)

The Board believes that effective negotiations require the input of all levels of the administration. The Board shall designate a chief negotiator to establish a bargaining team to assist in analyzing contract provisions and conducting contract negotiations.

The Board and Superintendent shall provide its negotiator(s) with expected outcomes and clear parameters for acceptable contract provisions which promote the realization of district goals and priorities.

In consultation with the Superintendent and employee organization, the Board shall determine the collective bargaining approach or method to be used.

The Board with its bargaining team shall establish standards of conduct pertaining to the negotiations process for individual Board members and members of the bargaining team. Certain meetings related to negotiations shall be held in closed session in accordance with Government Code 3549.1 when not required by state open meeting laws (the Brown Act) to be held in public. Matters discussed in these meetings shall be kept in strict confidence.

The Board and its negotiator(s) shall not knowingly provide the employee organization with inaccurate information regarding the financial resources of the district. (Government Code 3543.5)

The Board shall closely monitor the progress of negotiations and carefully consider how proposed contract provisions would affect the district's short- and long-term fiscal, programmatic, instructional, and personnel goals.

The Board and/or Superintendent shall keep the public informed about the progress of negotiations and the ways in which negotiations may affect district goals.

Whenever the district has a qualified or negative certification on an interim fiscal report, it shall allow the county office of education at least 10 working days to review and comment on any proposed agreement with exclusive representatives of employees. The district shall provide the County Superintendent of Schools with all information relevant to gain an understanding of the financial impact of any final collective bargaining agreement. (Government Code 3540.2)

NEGOTIATIONS/CONSULTATION (continued)

Once the final terms of the agreement have been ratified by the membership of the employee organization, the contract shall be presented to the Board at a public meeting for acceptance. Any agreement adopted by the Board may be for a term not to exceed three years. (Government Code 3540.1)

In the event of an impasse in negotiations, the Board shall participate in good faith in state mediation and fact-finding procedures pursuant to Government Code 3548-3548.8. (Government Code 3543.5)

Following adoption of the collective bargaining agreement, any subsequent amendments shall be executed in writing by the Board and the employees' exclusive representative.

Legal Reference:

GOVERNMENT CODE
3540-3549.3 Educational Employment Relations Act

PUBLIC NOTICE

The Board of Education, pursuant to the collective bargaining law of the State, declares its intent to establish the means by which the public shall be made aware of, and provides an opportunity for input to the negotiations process.

1. Presentation of Employee Organization Proposals

Initial collective bargaining proposals of the employee organization or the employer shall be presented at the Board of Education's regularly scheduled public Board meeting. The Board may schedule a public hearing at the regularly scheduled Board meeting following the presentations of the initial proposal(s) in order to receive public input.

2. Availability of Initial Proposals to the Public

The initial proposals of both the employee organizations and the Board shall be made available to the public not later than the second work day following the regularly scheduled Board meeting at which they were presented. Copies of the full initial proposal shall be available to the public at each school site and at the District Office.

3. Availability of Initial Proposal to Interested Organizations or Citizens

Organizations and individual residents of the district may register with the district Office for the purpose of receiving copies of the initial proposals. The registrants must state the name and mailing address of the person who is to receive the copy of the proposals. The district shall mail a copy of both the employee organizations' and the district's initial proposals to all groups or residents so registered subject to the district's policy concerning reimbursement to the district for making copies of the documents.

4. Public Hearing

Each citizen commenting on a proposal shall be required to identify himself/herself. Length of comment may be limited per Board policy re public input. The Board shall not take any action to adopt or to modify its initial proposal until after it has had an opportunity to receive public comment on the proposal. Interested individuals or groups not wishing to make a formal presentation may respond in writing to be received by the Board not later than mid-week of the week preceding the public hearing. After the public hearing, the board may adopt its initial proposal, including modifications, if any.

PUBLIC NOTICE - PERSONNEL NEGOTIATIONS (continued)

5. Notification of New Subjects of Bargaining

The proposals on new subjects of bargaining not included in the initial proposal of either the employee organization or the Board shall be made public within 24 hours. Not later than two work days following the presentation of the new subject at the Board meeting, the initial proposal(s) regarding the new subject(s) shall be available at each school site and at the district office. Interested organizations or residents of the district may register with the district office for the purpose of being notified about new subjects of bargaining. The district shall notify by mail each organization or resident so registered concerning any new subject which has been proposed, subject to the district's policy concerning reimbursement to the district for making copies of documents.

Legal Reference:

EDUCATION CODE

42130-42134 *Financial reports and certifications*

GOVERNMENT CODE

3540.2 *Meeting and negotiating in public educational employment*

3547 *Proposals relating to representation; informing public*

3547.5 *Major provisions of agreement with exclusive representative*

CODE OF REGULATIONS, TITLE 8

32075 *PERB regional office defined*

SALARY CHECKS AND DEDUCTIONS

Association Dues

Dues only for an exclusive representative organization which has been recognized and certified will be subject to payroll deduction. Prior to such recognition and certification of an exclusive representative, all employee organizations shall have the right to have membership dues deducted as provided by law. Association members may sign and deliver to the office of the Superintendent an assignment authorizing deduction of membership dues of the association and such authorization shall continue in effect from year to year unless revoked in writing between June 1 and September 1 of a given year.

The deduction of membership dues shall be made from the pay check each month for ten (10) months beginning in September and ending in June for each year, and the Board of Trustees agrees to remit promptly to the association all monies so deducted, accompanied by a list of teachers from whom the deductions have been made.

If any such dues, assessments, or fees are deducted by the Board from the pay of any person and turned over to the association and the person does not owe the same, the association shall refund the amount paid to the person and the Board shall not be liable for any refund.

All Personnel

BP 4156.2(a)

4256.2

AWARDS AND RECOGNITION

4356.2

The Board of Trustees values its instructional and noninstructional staff and desires to recognize their outstanding service in order to increase employee morale and encourage creative and innovative performance.

The Board encourages recognition of all staff during days of significance designated by the Board, state law, or state resolution.

The Board authorizes awards to individual employees who: (Education Code 44015)

1. Propose procedures or ideas that result in eliminating or reducing district expenditures or improving district operations
2. Perform special acts or services in the public interest
3. By their superior accomplishments, make exceptional contributions to the efficiency, economy, or other improvement in district operations

As the district budget permits, the Superintendent or designee may recognize such employees by issuing service pins, certificates, plaques, and/or other mementos. In addition, he/she may recommend employees to the Board for recognition at a public Board meeting.

The Superintendent or designee shall establish procedures for the selection of individual employees to receive awards.

The Superintendent or designee may appoint one or more merit award committees consisting of Board members, district employees, and/or private citizens to review employee contributions and recommend awards.

Monetary awards to employees shall not exceed \$200 unless expressly approved by the Board. (Education Code 44015)

Legal Reference:

EDUCATION CODE

35160 Authority of governing boards

35160.1 Broad authority of school districts

35161 Powers and duties generally

37222.10 Days of significance, including Day of the Teacher

44015 Awards to employees

45460 Classified School Employee Week

Policy
adopted: March 21, 2013

EVERGREEN SCHOOL DISTRICT
San Jose, California

EMPLOYEE SAFETY

Threatening a School Employee

1. Continued willful disobedience, habitual profanity or vulgarity, open persistent defiance of the authority of the school personnel or continued abuse of school personnel, assault or battery upon school or any threat of force or violence directed toward school personnel, at any time or place, shall constitute good cause for suspension or expulsion from school; however, no pupil shall be suspended or expelled unless the conduct for which he is to be disciplined is related to school attendance.
2. Every person who, with the intent to cause, attempts to cause, or causes any officer or employee of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out, is guilty of a public offense.
3. Whenever any school district employee is attacked, assaulted, or menaced by a pupil, it is the duty of the employee and his supervisor, if he has knowledge of the incident, promptly to report the matter to the law enforcement authorities. Failure to make such a report is a misdemeanor punishable by a fine. Any employee of any school district, a county supervisor of schools, or one of his staff, or a board member who attempts directly or indirectly to dissuade a person under duty to make the above report is guilty of a misdemeanor and may be assessed a fine.
4. School Administrator's Responsibility in Case of Assault by Pupil Against School Employees.
 - a. A complete written report is to be mailed without delay to the appropriate law enforcement agency. A copy of the form should be retained in school and district office files.
 - b. The principal should make every reasonable attempt to notify the pupil's parents of all pertinent factors.

Legal Reference: (see next page)

EMPLOYEE SAFETY (continued)

Legal Reference:

EDUCATION CODE

32030-32034 Eye safety

32225-32226 Communications devices in classrooms

32280-32289 School safety plans

44984 Required rules for industrial accident and illness leave of absence

GOVERNMENT CODE

3543.2 Scope of bargaining

LABOR CODE

3300 Definitions

6305 Occupational safety and health standards; special order

6310 Retaliation for filing complaint prohibited

6400-6413.5 Responsibilities and duties of employers and employees, especially:

6401.7 Injury and illness prevention program

CODE OF REGULATIONS, TITLE 8

3203 Injury and illness prevention program

3400 Medical services and first aid

5095-5100 Control of noise exposure

CODE OF FEDERAL REGULATIONS, TITLE 29

1910.95 Noise standards

EMPLOYEE SECURITY

The Board of Trustees desires to provide a safe and orderly work environment for all employees. As part of the district's comprehensive safety plan, the Superintendent or designee shall develop strategies for protecting employees from potentially dangerous persons and situations and for providing them with necessary assistance and support when emergency situations occur.

Any employee against whom violence or any threat of violence has been directed in the workplace shall notify the Superintendent or designee immediately. The Superintendent or designee shall initiate legal and security measures to protect the employee and others in the workplace. In addition, the Superintendent or designee may initiate legal proceedings against any individual to recover damages for injury caused by the willful misconduct of that individual to the person or property of an employee or another person on district premises.

The Superintendent or designee shall ensure that employees are trained in crisis prevention and intervention techniques in order to protect themselves and students. Staff development may include training in classroom management, effective communication techniques, and crisis resolution.

An employee may use reasonable force as is necessary to protect himself/herself from attack, to protect another person or property, to quell a disturbance threatening physical injury to others, or to obtain possession of weapons or other dangerous objects upon the person or within control of a pupil.

The Superintendent or designee also shall ensure that employees are informed, in accordance with law, of crimes and offenses committed by students who may pose a danger in the classroom.

The Superintendent or designee may make available at appropriate locations, including, but not limited to, district and school offices, gyms, and classrooms, communication devices that would enable two-way communication with law enforcement and others when emergencies occur.

Legal Reference: (see next page)

EMPLOYEE SECURITY (continued)

Legal Reference:

EDUCATION CODE

32210-32212 *Willful disturbance, public schools or meetings*

32225-32226 *Communication devices*

35208 *Liability insurance*

35213 *Reimbursement for loss, destruction or damage of school property*

44014 *Report of assault by pupil against school employee*

44807 *Duty concerning conduct of students*

48201 *Transfer of student records*

48900-48926 *Suspension or expulsion*

49079 *Notification to teacher; student who has engaged in acts re: grounds suspension or expulsion*

49330-49335 *Injurious objects*

CIVIL CODE

51.7 *Freedom from violence or intimidation*

CODE OF CIVIL PROCEDURE

527.8 *Workplace violence safety*

GOVERNMENT CODE

995-996.4 *Defense of public employees*

3543.2 *Scope of representation*

PENAL CODE

71 *Threatening public officers and employees and school officials*

240-246.3 *Assault and battery, including:*

241.3 *Assault against school bus drivers*

241.6 *Assault on school employee includes board member*

243.3 *Battery against school bus drivers*

243.6 *Battery against school employee includes board member*

245.5 *Assault with deadly weapon; school employee includes board member*

290 *Registration of sex offenders*

601 *Trespass by person making credible threat*

626-626.11 *School crimes*

646.9 *Stalking*

12403.7 *Weapons approved for self defense*

WELFARE AND INSTITUTIONS CODE

827 *Juvenile court proceedings; reports; confidentiality*

828.1 *District police or security department, disclosure of juvenile records*

COURT DECISIONS

City of San Jose v. William Garbett, (2010) 190 Cal. App. 4th 526

All Personnel

BP 4161.5(a)

4261.5

MILITARY LEAVE

4361.5

Short Term Leave

Any employee of the district who is a member of the reserve corps of the armed forces of the United States or the National Guard or the naval Militia is entitled to a temporary military leave of absence while engaged on ordered military duty for purposes of active military training, etc., provided that the period of duty does not exceed 180 calendar days.

Such employee shall have the absolute right to be restored to his/her former office or position, or, if the office or position has been abolished, to a position of like seniority, status, and pay, or have the same rights he/she would have had if he/she occupied the position when it ceased to exist and had not taken temporary military leave of absence.

Such employee shall receive the same vacation, sick leave and holiday privileges, and the same rights and privileges to promotion, continuance in office, employment, reappointment to office, or reemployment that he/she would have had if not absent on military leave, provided the employee had been in the service of the district for at least one year prior to starting the military leave. All service on ordered military leave shall be counted toward seniority in service to the district.

Long Term Leave

Any employee of the district who is ordered into active duty with the armed forces for a period of more than 180 calendar days inclusive of travel time, or who resigns his/her position with the district for the purpose of joining, and does join, the armed forces of the United States during conditions of a declared national emergency, shall be placed on long-term leave of absence for military purposes.

Such employee shall retain all rights to which he/she is entitled under the Military and Veterans Code.

As soon as an employee is notified of pending military service, orders of such service are to be forwarded to the personnel office.

Legal Reference: (see next page)

MILITARY LEAVE (continued)

Legal Reference:

EDUCATION CODE

22850-22856 Pension benefits, STRS members on military leave

44018 Compensation for employees on active military duty

44800 Effect of active military service on status of employees

45059 Employee ordered to military/naval duty - computation of salary

GOVERNMENT CODE

18540 Definition of armed forces

18540.3 Recognized military service

20990-21013 Pension benefits, PERS members on military leave

MILITARY AND VETERANS CODE

146 Events justifying calling of militia into active service

389 Definitions; temporary military leave

394 Nondiscrimination based on military service

395-395.9 Military leave

UNITED STATES CODE, TITLE 38

4301-4334 Uniformed Services Employment and Reemployment Rights Act of 1994

CODE OF FEDERAL REGULATIONS, TITLE 20

1002.1-1002.314 Uniformed Services Employment and Reemployment Rights Act of 1994

COURT DECISIONS

Wright v. City of Santa Clara (1989) 213 Cal. App.3d 1503

Bowers v. San Buenaventura (1977) 75 Cal. App.3d 65

ATTORNEY GENERAL OPINIONS

77 Ops. Cal. Atty. Gen. 209 (1994)

69 Ops. Cal. Atty. Gen. 185 (1986)

63 Ops. Cal. Atty. Gen. 924 (1978)

19 Ops. Cal. Atty. Gen. 132 (1952)

18 Ops. Cal. Atty. Gen. 178 (1951)

CLASSIFIED PERSONNEL

The Board of Trustees shall fill each of its classified positions with qualified persons, consistent with position requirements. The primary role of classified personnel is to provide services that support and enhance the district's educational program.

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

Classification of Employees

The Board shall classify all employees and positions not requiring certification qualifications as the classified service, except for those employees and positions specifically exempt from classified service. (Education Code 45103)

Individuals who possess certification qualifications shall not be prohibited from being employed in a classified position. (Education Code 45104)

Assignment

Classified employees shall be assigned by their immediate supervisors with the approval of the Superintendent or designee. They shall be required to perform those duties prescribed by the Board for the position the employee holds, in accordance with applicable job descriptions and collective bargaining agreements.

Legal Reference:

EDUCATION CODE

45100-45139 Employment of classified staff

45160-45169 Salaries and differential compensation

45190-45210 Resignation and leaves of absence

45220-45320 Merit system

49406 Examination for tuberculosis

51760-51769.5 Work experience education

EVALUATION/SUPERVISION

The Board of Trustees recognizes that appropriate supervision and regular, comprehensive evaluations can help employees to continually improve in the performance of their responsibilities. Evaluations shall be made in accordance with procedures specified in negotiated contracts and based on job-specific standards of performance.

Confidential Personnel

The Superintendent or designee is authorized to develop an appropriate procedure for evaluation of confidential personnel, and to carry out evaluations in approximately the same manner and time scheduled as classified employees who have similar but non-confidential positions with the district and who are covered by provisions of an employee associated agreement.

Legal Reference:

EDUCATION CODE

45113 Rules and regulations for the classified service in districts not incorporating the merit system

45261 Subjects of rules (merit system districts)

45262 Distribution of rules

GOVERNMENT CODE

3543.2 Scope of representation

PROBATIONARY/PERMANENT STATUS

The probationary period shall be a period of six months, except that the probationary period for positions designated as executive or administrative shall be one year. Time spent on leave of absence shall not apply toward completion of the probationary period. Upon satisfactorily completing this period, they shall become permanent classified employees of the district.

Probationary employees shall receive written performance evaluations by their supervisor during the probationary period. These evaluations shall indicate whether the evaluator is satisfied or not satisfied with the employee's ability, performance, and compatibility with the job.

The Superintendent or designee may dismiss an employee during the initial probationary period.

Permanent employees promoted to a higher classification shall be considered probationary in their new position until they have satisfactorily completed one year of service in that position.

A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional position shall be employed in the classification from which he/she was promoted. (Education Code 45113)

This policy shall be made available to classified employees and the public. (Education Code 45113)

Legal Reference:

EDUCATION CODE

45113 Rules and regulations for classified service in districts not incorporating the merit system

45240-45320 Merit system

LAYOFF/REHIRE

A need for reduction of personnel may develop when student enrollment declines, or when a particular kind of service is reduced or discontinued, or when the district lacks the necessary funds.

The Board of Trustees has the power to determine that a reduction in staff shall be made when the above conditions occur.

Legal Reference:

EDUCATION CODE

45101 *Definitions*

45103 *Classified service in districts not incorporating the merit system*

45105 *Positions under various acts not requiring certification qualifications; classification*

45113 *Rules and regulations for classified service in districts not incorporating the merit system*

45114 *Layoff and reemployment procedures; definitions*

45115 *Layoff: Reinstatement from service retirement*

45117 *Notice of layoff*

45286 *Limited term employees*

45297 *Right to take equivalent examination while employee in military service*

45298 *Reemployment and promotional examination preference of persons laid off; voluntary demotions or reductions in time*

45308 *Order of layoff and reemployment; length of service*

45309 *Reinstatement of permanent noncertified employees after resignation*

UNITED STATES CODE, TITLE 38

4301-4307 *Veterans' Reemployment Rights*

COURT DECISIONS

California School Employees Association v. The Governing Board of East Side Union High School District (2011) 193 Cal.App.4th 540

Tucker v. Grossmont Union High School District (2008) 168 Cal.App.4th 640

San Mateo City School District v. Public Employment Relations Board (1983) 33 Cal.3d 850, 866

LAYOFF/REHIRE

1. Order of Layoff and Re-Employment: Length of Service

Classified employees shall be subject to layoff for lack of work or lack of funds. Whenever a classified employee is laid off, the order of layoff within the class shall be determined by length of service. The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first. Re-employment shall be in reverse order of layoff.

2. Re-Employment Eligibility

Persons laid off because of lack of work or lack of funds are eligible for re-employment for a period of 39 months and shall be re-employed in preference to new applicants. In addition, such persons laid off have the right to make application and establish their qualification for vacant promotional positions within the district during the period of 39 months.

3. Voluntary Demotion or Voluntary Reduction of Hours

Employees who take voluntary demotions or voluntary reductions in assigned time in lieu of layoff or to remain in their present position rather than be reclassified or reassigned, shall be granted the same rights as persons laid off, and shall retain eligibility to be considered for re-employment for an additional period of up to 24 months; provided that the same tests of fitness under which they qualified for appointment to the class shall still apply. The Board of Trustees shall make determination of the specific period of eligibility for re-employment on a class-by-class basis.

Employees who take voluntary demotions or voluntary reductions in assigned time in lieu of layoff shall be, at the option of the employee, returned to a position in their former class when such position becomes available and in accordance with their district seniority.

4. Procedure for Layoff

a. Specially funded program

When a specially funded program expires and classified positions must be eliminated at the end of any school year and classified employees will be subject to layoff for lack of funds, the employees to be laid off at the end of the school year shall be given written notice on or before April 29, informing them of the layoff effective at the end of the school year and of their displacement and re-employment rights. If the termination date of the specially funded program is other than June 30, the employee shall be given notice at least 60 days from the effective date of the layoff.

LAYOFF/REHIRE (continued)

- b. Bona fide reduction or elimination of services

In the event of a bona fide reduction or elimination of service being performed by a department and classified employees shall be subject to layoff because of lack of work, affected employees shall be given notice of the layoff thirty days before the effective date, and they shall be informed of their displacement rights, if any, and re-employment rights.
 - c. Layoff due to lack of funds or unforeseeable causes

In the event that the district is unable to pay the salaries of classified employees due to an actual and existing financial inability, or if layoff is caused by conditions not foreseeable or preventable by the district, the district is not bound to provide thirty days notice, but will provide information about displacement rights, if any, and re-employment rights, to any and all employees laid off.
5. No permanent or probationary classified employee shall be laid off from any position while employees serving under substitute or short-term appointments are retained in a position in the same job classification. Short-term or substitute employees may be separated at the completion of their assignment without regard to the procedure stated above.

Revised: October 1, 2014

Regulation
approved: March 21, 2013

EVERGREEN SCHOOL DISTRICT
San Jose, California

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION

Notice of Disciplinary Action

If the Board of Trustees approves the recommendations of the superintendent for disciplinary action, including suspension or dismissal, the employee shall be notified in writing within three (3) calendar days.

Notification to the employee of dismissal or other disciplinary action approved by the governing board shall be sent to the employee at the last address of official record with the district by way of U.S. Certified mail.

The notification to the employee shall contain:

1. A statement in ordinary and concise language of the specific charges brought against the employee.
2. A statement that the employee has a right to appeal the decision and to have a hearing before the governing board on such charges.
3. A card or paper, the signing and filing of which shall constitute a demand for a hearing and a denial of all charges, provided that it is filed within five (5) working days after receipt of the notice by the employee.

No permanent classified employee shall be dismissed, suspended or demoted unless he/she is given written notice signed by the superintendent or designee, identifying the reasons for the dismissal, suspension, or demotion and the effective dates thereof.

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION

Definitions

Suspension means either temporary removal of an employee from his position with loss of pay as a disciplinary measure, or his removal preliminary to investigation of charges pending demotion or dismissal.

Demotion means reduction of an employee from a given class (or group) of similar positions combined with a common title to a class having a lower salary rate.

Dismissal means separation, discharge, or permanent removal of an employee from his position for cause in accordance with the provisions of the Education Code and these rules.

Just Cause

Suspension/Dismissal/Disciplinary Action

Any of the following causes may subject an employee to disciplinary action, including suspension and/or dismissal:

1. Incompetency or inefficiency in the performance of the duties of his/her position.
2. Insubordination (including, but not limited to, refusal to do properly assigned work).
3. Carelessness or negligence in the performance of duty or in the care of district property.
4. Discourteous, offensive or abusive language or conduct toward another employee, a pupil, or a member of the public.
5. Dishonesty.
6. Drinking alcoholic beverages on the job, or reporting for work while intoxicated.
7. Addiction to the use of narcotics.
8. Personal conduct unbecoming an employee of the district.
9. Engaging in political activity during assigned hours of employment or otherwise in violation of applicable regulations or policies of the Board.
10. Conviction of any crime involving moral turpitude.
11. Arrest for a sex offense as defined in the Education Code.

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

12. Conviction of a narcotics offense as defined in the Education Code.
13. Repeated and unexcused absence or tardiness.
14. Abuse of leave privileges.
15. Falsifying any information supplied to the school district, such as information supplied on application forms, employment records, or other district records.
16. Persistent violation of or refusal to obey safety rules and regulations made applicable to public schools by the Board or the laws and regulations of the state.
17. Offering anything of value or offering any service in exchange for special treatment in connection with the employee's job or employment, or the accepting of anything of value or any service in exchange for granting any special treatment to another employee or to any member of the public.
18. Willful or persistent violation of the Education Code or policies or regulations of this district.
19. Any willful failure of good conduct tending to injure the public service.
20. Abandonment of position.
21. Advocacy of overthrow of federal, state, or local government by force, violence or other unlawful means.
22. Membership in the Communist Party.

Hearing

Upon receipt of an appeal from intended disciplinary action, the Board will consider the appeal, and within thirty (30) days after receipt of the appeal, shall conduct a hearing as provided by law and render judgment to affirm, modify, or revoke the action being appealed.

The employee shall have the right to appear in person on his/her own behalf, with counsel or such representation as he/she considers necessary, and be heard in his/her defense.

All hearings shall be held in closed sessions of the Board unless the appealing employee requests an open hearing on his/her written appeal.

The finding and decision of the Board on the appeal shall be final and conclusive on all parties.

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

If the appeal of the employee is sustained, the Board shall order full or part of his/her compensation from the time of dismissal, suspension, demotion or other disciplinary action as it deems appropriate and shall order the employee's reinstatement.

Legal Reference:

EDUCATION CODE

35161 *Delegation of powers and duties*

44009 *Conviction of specified crimes*

44010 *Sex offense*

44011 *"Controlled substance offense" defined*

44940 *Leave of absence; employee charged with mandatory or optional leave of absence offense*

44940.5 *Compulsory leave of absence; procedures; extension; compensation; bond or security; reports*

45101 *Definitions (including "disciplinary action," "cause")*

45109 *Fixing of duties*

45113 *Rules and regulations for classified service in districts not incorporating the merit system*

45123 *Employment after conviction of sex or narcotics offense*

45302 *Demotion and removal from permanent classified service*

45303 *Additional cause for suspension or dismissal of employees in classified service*

45304 *Suspension for reasonable cause; filing of charges; employee charged with mandatory or optional leave of absence offense*

VEHICLE CODE

1808.8 *School bus drivers; dismissal for safety-related cause*

UNITED STATES CODE, TITLE 42

12101 -12213 *Americans With Disabilities Act*

COURT DECISIONS

California School Employees v. Livingston Union School District, (2007) 149 Cal.App 4th 391

CSEA v. Foothill Community College District, 52 Cal. App. 3rd 150, 155-156, 124 Cal. Rptr 830 (1975)

RULES AND REGULATIONS

1. Classified employees in the following categories will be required to wear a prescribed uniform while performing their duties, after the first sixty days of employment:
 - a. Custodian
 - b. Grounds
 - c. Maintenance
 - d. Warehouse
2. Employees required to wear uniforms will be given a basic issue upon acquiring permanent status and a replacement issue annually thereafter.
3. The basic issue will be three shirts and three trousers. The annual replacement issue will be two shirts and two trousers.
 - a. One jacket may be issued in lieu of one set of shirts and trousers for employees working outdoors.
4. Probationary employees will be furnished one shirt and one pair of trousers after sixty days of employment.
5. Upon receipt of approval of purchase request, the Business Office will issue a purchase order of uniform purchase from a designated vendor. The district will not issue cash or reimbursement for purchase of uniforms.
6. The uniform will be a dark green color with a patch over the left shirt pocket inscribed "Evergreen School District." The patch will be furnished by the district.
7. A uniform allowance will not be granted to part-time employees.

STAFF DEVELOPMENT

The Board of Trustees recognizes that classified staff does essential work that supports a healthy school environment and the educational program. Classified staff shall have opportunities to participate in staff development activities in order to improve job skills, learn best practices, retrain as appropriate in order to meet changing conditions in the district, and/or enhance personal growth.

The Superintendent or designee shall involve classified staff, site and district administrators, and others, as appropriate, in the development of the district's staff development program. He/she shall ensure that the district's staff development program is aligned with district goals, school improvement objectives, the local control and accountability plan, and other district and school plans.

Staff development may address general workplace skills and/or skills and knowledge specific to the duties of each classified position, including, but not limited to, the following topics: (Education Code 45391)

1. Student learning and achievement
 - a. How paraprofessionals can assist teachers and administrators to improve the academic achievement of students
 - b. Alignment of curriculum and instructional materials with Common Core State Standards
 - c. The management and use of state and local student data to improve student learning
 - d. Best practices in appropriate interventions and assistance to at-risk students
2. Student and campus safety
3. Education technology, including management strategies and best practices regarding the use of education technology to improve student performance
4. School facility maintenance and operations, including new research and best practices in the operation and maintenance of school facilities, such as green technology and energy efficiency, that help reduce the use and cost of energy at school sites
5. Special education, including best practices to meet the needs of special education students and to comply with any new state and federal mandates

STAFF DEVELOPMENT (continued)

6. School transportation and bus safety
7. Parent involvement, including ways to increase parent involvement at school sites
8. Food service, including new research on food preparation to provide nutritional meals and food management
9. Health, counseling, and nursing services
10. Environmental safety, including pesticides and other possibly toxic substances so that they may be safely used at school sites

For classroom instructional aides, staff development activities may also include academic content of the core curriculum, teaching strategies, classroom management, or other training designed to improve student performance, conflict resolution, and relationships among students.

The district's staff evaluation process may be used to recommend additional individualized staff development for individual employees.

The Superintendent or designee shall provide a means for continual evaluation of the benefit of staff development activities to staff and students and shall regularly report to the Board regarding the effectiveness of the staff development program.

Legal Reference:

EDUCATION CODE

41530-41533 Professional Development Block Grant

44032 Travel expense payment

45380-45387 Retraining and study leave (classified employees)

45390-45392 Professional development for classified school employees

52060-52077 Local control and accountability plan

56240-56245 Staff development; service to persons with disabilities

GOVERNMENT CODE

3543.2 Scope of representation of employee organization

DEMOTION/REASSIGNMENT

The Board of Trustees may authorize the demotion or reassignment of any administrative or supervisory employee upon the recommendation of the Superintendent or designee and when such action is determined to be in the best interest of the district.

The Superintendent or designee shall ensure that the district complies with all applicable statutory deadlines and due process procedures when an employee is to be demoted or reassigned.

Legal Reference:

EDUCATION CODE

- 35031 Senior management employee in the classified service: nonreelection*
- 44660-44665 Evaluation and assessment of performance of certificated employees*
- 44850.1 No tenure in administrative or supervisory positions*
- 44896 Transfer of administrator or supervisor to teaching position*
- 44897 Classification of administrator or supervisor to a teaching position*
- 44951 Continuation in position unless notified*
- 45101 Definitions (including disciplinary action, cause)*
- 45113 Rules for classified service in districts not incorporating the merit system*
- 52055.5 Meeting or exceeding growth requirements*
- 52055.57 Districts identified or at risk of identification for program improvement*

UNITED STATES CODE, TITLE 20

- 6316 School and district improvement*

COURT DECISIONS

- Jefferson v. Compton Unified School District, (1993) 14 Cal. App. 4th 32*
- Schultz v. Regents of the University of California, (1984) 160 Cal. App. 3d 768*
- Ellerbroek v. Saddleback Valley Unified School District, (1981) 125 Cal. App 3d 348*
- Skelly v. California Personnel Board, (1975) 15 Cal.3d 194*
- Hentschke v. Sink, (1973) 34 Cal. App. 3d 19*

DEMOTION/REASSIGNMENT

Certificated Administrative Employees

Permanent certificated management staff are not entitled to seniority rights in their administrative positions. However, such staff shall earn and/or retain any seniority earned in service as a classroom teacher or site administrator pursuant to Education Code 44893, 44894, or 44956.5.

End of Year Release/Reassignment of Certificated Administrators

By March 15, an employee shall be notified by either registered mail or in person that he/she may be released or reassigned from his/her position for the following school year. If the notice is presented to the employee in person, the district shall obtain his/her signature acknowledging receipt of the notice on the district's copy of the written notice. (Education Code 44951)

If the March 15 notice indicates that release or reassignment is only a possibility, the Board of Trustees shall take additional action to release/reassign the employee before the new school year and shall send the employee a second notice by June 30 indicating that he/she has been released or reassigned.

If the employee is to be released or reassigned to a teaching position, the Board shall give the employee, upon his/her request, a written statement of the reasons for the release/reassignment. If the reasons include incompetence as an administrator or supervisor, the district shall have completed an evaluation of the employee within the 60-day period immediately preceding the notice date. (Education Code 44896)

EVALUATION/SUPERVISION

The Board of Trustees recognizes the importance of regular and comprehensive evaluations of administrative and supervisory personnel to provide ongoing feedback for continuous improvement of employee performance. Evaluations shall be linked to the district's vision, strategic plan, school improvement goals, professional development plan, and goals for student achievement.

Certificated Administrative and Supervisory Personnel

The Superintendent shall develop objective evaluation guidelines and standards for use in the district's evaluation system for certificated administrative and supervisory personnel. Such standards may include those of the California Professional Standards for Education Leaders as well as other standards and criteria developed by the Board and Superintendent.

Each certificated administrative and supervisory employee shall be evaluated every other year. However, an employee may be evaluated every five years provided that he/she has been employed by the district for at least 10 years, his/her previous evaluation rated him/her as meeting or exceeding standards, and the evaluator and the employee agree to this schedule. Either the evaluator or the employee may withdraw consent for this schedule at any time. (Education Code 44664)

Any certificated administrative and supervisory employee who is new to a position may be evaluated each year for the first two years in the position. Evaluation is a continuous process and may occur between scheduled periods at the request of the employee, his/her supervisor, or the Superintendent or designee.

Evaluations shall be conducted within the timelines specified in law, Board policy, and administrative regulation. The evaluation process for certificated administrative and supervisory personnel shall be the same as for other certificated instructional personnel, as detailed in AR 4115 - Evaluation/Supervision.

Classified Senior Management and Supervisory Employees

Classified senior management and supervisory employees shall be evaluated in accordance with the procedures developed by the Superintendent or designee and approved by the Board.

Evaluations shall be used to recognize the exemplary skills and accomplishments of classified senior management and supervisory employees and to identify areas needing improvement.

The evaluation shall be dated and signed by the classified senior manager or supervisory employee and his/her supervisor. The manager or supervisory employee may respond in writing to the evaluation within a reasonable time after receiving a copy of the evaluation. The response shall be attached to the evaluation and placed in his/her personnel file.

EVALUATION/SUPERVISION (continued)

Legal Reference:

EDUCATION CODE

33039 *State guidelines for teacher evaluation procedures*

35171 *Availability of rules and regulations for evaluation of performance*

44660-44665 *Evaluation and assessment of performance of certificated employees*

45113 *Rules and regulations for the classified service in districts not incorporating the merit system*

GOVERNMENT CODE

3543.2 *Scope of representation*

UNITED STATES CODE, TITLE 20

6319 *Highly qualified teachers*

7801 *Definition of highly qualified teacher*

STAFF DEVELOPMENT

The Board of Trustees recognizes that professional development enhances employee effectiveness and contributes to personal growth. Staff development for administrative and supervisory personnel shall be designed to guide institutional improvement, build leadership skills, and enhance overall management efficiency.

The Superintendent or designee shall develop a plan for administrator support and development activities that is based on a systematic assessment of the needs of district students and staff and is aligned to the district's vision, goals, local control and accountability plan, and other comprehensive plans.

The district's staff development program for district and school administrators may include, but is not limited to, the following topics:

1. Personnel management, including best practices on hiring, recruitment, assignment, and retention of staff
2. Effective fiscal management and accountability practices
3. Academic standards and standards-aligned curriculum and instructional materials
4. Leadership training to improve the academic achievement of all students, including capacity building in pedagogies of learning, instructional strategies that meet the varied learning needs of students, and student motivation
5. The use of student assessments, including analysis of disaggregated assessment results to identify needs and progress of student subgroups
6. The use of technology to improve student performance and district operations
7. Creation of safe and inclusive school environments
8. Parental involvement and community collaboration
9. Employee relations
10. Effective school and district planning processes

STAFF DEVELOPMENT (continued)

The district's staff evaluation process may be used to recommend additional staff development for individual employees.

The Superintendent or designee shall evaluate the benefit to staff and students of professional development activities.

Legal Reference:

EDUCATION CODE

44681-44689.2 Administrator training and evaluation

52060-52077 Local control and accountability plan