

Coast Community College District ADMINISTRATIVE PROCEDURE

Chapter 3 General Institution

AP 3410 Nondiscrimination

Legal References:

Education Code Sections 200, 210.2, 220, 66260.6, 66260.7, 66270, 66250 et seq., 72010 et seq., and 87100 et seq.;
Government Code Sections 11135 et seq.; 12920, 12926, 12926.1, 12940 et seq.;
Penal Code Sections 422.55 and 422.57;
Military & Veterans Code Sections 389 and 395;
Title 5 Sections 53000 et seq. and 59300 et seq.;
Title IX of the Education Amendments of 1972 (20 U.S. Code Sections 1681 et seq.; 29 Code of Federal Regulations Part 1691);
Title VI of the Civil Rights Act of 1964 (42 U.S. Code Sections 2000d-1 et seq.; 34 Code of Federal Regulations Part 100;
29 Code of Federal Regulations Part 1691);
Title VII of the Civil Rights Act of 1974 (42 U.S. Code Sections 2000e et seq.);
Genetic Information Nondiscrimination Act of 2008 (42 U.S. Code Sections 2000ff et seq.;
29 Code of Federal Regulations Part 1635);
Section 504 of the Rehabilitation Act of 1973 (29 U.S. Code Sections 794;
34 Code of Federal Regulations Part 104);
Americans with Disabilities Act (42 U.S. Code Sections 12101 et seq. and 12132 et seq.; 29 Code of Federal Regulations Part 1630);
Age Discrimination in Employment Act (42 U.S. Code Sections 6101 et. seq.;
29 Code of Federal Regulations Part 1625);
Uniformed Services Employment and Reemployment Act (38 U.S. Code Sections 4303 and 4311;
20 Code of Federal Regulations Part 1002, Subpart B);
California Code of Regulations: Title 2 Sections 7286 et seq.; and
Accreditation Standard II.B.2.c

All decisions relating to student enrollment, education, counseling/guidance, and athletics shall be made in accordance with the District's Nondiscrimination Policy (BP 3410).

All employment decisions, including but not limited to hiring, retention, assignment, transfer, evaluation, dismissal, compensation, and advancement for all position

classifications shall be based on job-related criteria as well as be responsive to the District's needs.

The District shall from time to time as necessary provide professional and staff development activities and training to promote understanding of diversity.

NOTE: *The underlined language in **red ink** is **legally required** language recommended by the League's Policy and Procedure Service to comply with the applicable legal references. This document was revised on 2-19-13 to incorporate Jack Lipton's recommendations. Governance Council reviewed this document on 5-6-13. The language in **green ink** was added during the review with James Andrews on 7-15-13.*

Date Approved:

Legal Citations for AP 3410

Education Code Sections 66250 et seq., 200 et seq., 72010 et seq., and 87100 et seq.;
Government Code Sections 11135 et seq. and 12940 et seq.;
Title 5 Section 53000 et seq. and 59300 et seq.; Accreditation Standard II.B.2.C

EDUCATION CODE SECTIONS 66250-66252

66250. This chapter shall be known, and may be cited, as the Sex Equity in **Education** Act.

66251. It is the policy of the State of California to afford all persons, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, or regardless of any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal **Code**, equal rights and opportunities in the postsecondary institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

66252. (a) All students have the right to participate fully in the educational process, free from discrimination and harassment.

(b) California's postsecondary educational institutions have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.

(c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.

(d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.

(e) There is an urgent need to teach and inform students in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase students' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in postsecondary educational institutions and in society as a means of responding to potential harassment and hate violence.

(f) It is the intent of the Legislature that each postsecondary educational institution undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of students to equal educational opportunity.

(g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government **Code**, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the **Education** Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities **Education** Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C.

Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.

EDUCATION CODE SECTIONS 200 et seq.

200. It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal **Code**, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

201. (a) All pupils have the right to participate fully in the educational process, free from discrimination and harassment.

(b) California's public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.

(c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.

(d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.

(e) There is an urgent need to teach and inform pupils in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase pupils' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in public schools and in society as a means of responding to potential harassment and hate violence.

(f) It is the intent of the Legislature that each public school undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of pupils to equal educational opportunity.

(g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government **Code**, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the **Education** Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities **Education** Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8

(commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.

EDUCATION CODE SECTIONS 72010-72014

72010. The provisions of this article are supplemental to any provision in the Constitution or laws of the United States or Constitution or laws of the State of California, relating to discrimination.

72011. Every community college district shall provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex.

72012. Every community college shall comply with Sections 221.5, 221.7, and 66016, relating to sex discrimination.

72013. With respect to access to community college district services, classes, and programs, and with respect to all references within this division, "handicap" and "disability" shall have the same meaning.

72014. No funds under the control of a community college district shall ever be used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin. This section does not apply to any public funds which have been paid to an individual officer or employee of the district as salary, or to any funds which are used directly or indirectly for the benefit of student organizations.

Education Code Sections 87100 et seq.

87100. (a) The Legislature finds and declares all of the following:

(1) In fulfilling its mission within California's system of public higher **education**, the California Community Colleges are committed to academic excellence and to providing all students with the opportunity to succeed in their chosen educational pursuits.

(2) Academic excellence can best be sustained in a climate of acceptance and with the inclusion of persons from a wide variety of backgrounds and preparations to provide service to an increasingly diverse student population.

(3) A work force that is continually responsive to the needs of a diverse student population may be achieved by ensuring that all persons receive an equal opportunity to compete for employment and promotion within the community college districts and by eliminating barriers to equal employment opportunity.

(b) It is the intent of the Legislature to establish and maintain within the California Community College districts a policy of equal opportunity in employment for all persons, and to prohibit discrimination or preferential treatment based on ethnic group identification, or on any basis listed in

subdivision (a) of Section 12940 of the Government **Code**, as those bases are defined in Sections 12926 and 12926.1 of the Government **Code**, except as otherwise provided in Section 12940 of the Government **Code**. Every aspect of personnel policy and practice in the community college districts should advance the realization of inclusion through a continuing program of equal employment opportunity.

(c) The Legislature recognizes that it is not enough to proclaim that community college districts must not discriminate and must not grant preferential treatment on impermissible bases. The Legislature declares that efforts must also be made to build a community in which nondiscrimination and equal opportunity are realized. It is the intent of the Legislature to require community college districts to adopt and implement programs and plans for ensuring equal employment opportunity in their employment practices.

87101. For the purposes of this article:

(a) "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and fully enjoy the benefits of employment by a community college district. Ensuring equal employment opportunity is advanced in an inclusive environment that fosters cooperation, acceptance, democracy, and the free expression of ideas. An inclusive environment is welcoming to men and women, persons with disabilities, individuals from all ethnic groups, and individuals from all other groups protected from discrimination by this article.

(b) "Equal employment opportunity plan" means a document that includes specific procedures for achieving equal employment opportunity.

(c) "Equal employment opportunity program" means all the various methods by which equal employment opportunity is ensured. These methods include, but are not necessarily limited to, actively recruiting, using nondiscriminatory employment practices, and monitoring employment practices to ensure equality of opportunity. Each district employer shall commit to sustained action to devise recruiting, training, and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees.

87102. (a) As a condition for the receipt of funds pursuant to Section 87107, the governing board of community college district that opts to participate under the article shall periodically submit to the board of governors an affirmation of compliance with this article. Each participating district's equal employment opportunity program shall ensure participation in, and commitment to, the program by district personnel. Each participating district's equal employment opportunity plan shall include steps that the district will take in eliminating improper discrimination or preferences in its hiring and employment practices. Each plan shall address how the district will make progress in achieving the ratio of full-time to part-time faculty hiring, as indicated in Section 87482.6, while still ensuring equal employment opportunity.

(b) Each participating district's equal employment opportunity plan is a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government **Code**).

87103. The board of governors shall render assistance in developing and implementing equal employment opportunity programs in the community college districts.

87105. The board of governors shall adopt all necessary regulations to carry out the intent of this article and to ensure that each participating

community college district implements processes for ensuring equal employment opportunities. Nothing in this act shall be construed to require any community college to incur any costs in excess of the funds allocated by the state for the purposes of this act.

Title 5 SECTIONS 53000 et seq.

5 CCR § 53000

Cal. Admin. Code tit. 5, § 53000

TITLE 5. EDUCATION
DIVISION 6. CALIFORNIA COMMUNITY COLLEGES
CHAPTER 4. EMPLOYEES
SUBCHAPTER 1. EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS
ARTICLE 1. GENERAL

§ 53000. Scope and Intent.

(a) This subchapter implements and should be read in conjunction with Government Code sections 11135-11139.5, Education Code sections 66010.2, 66030, and Chapter 4.5 of Part 40 of Title 3, commencing with section 66250; Title VI of the Civil Rights Act of 1964 (42 U.S.C. s 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. s 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. s 794), the Americans with Disabilities Act of 1990 (42 U.S.C. s 12100 et seq.) and the Age Discrimination Act (42 U.S.C. s 6101). Nothing in this subchapter shall be construed to conflict with or be inconsistent with the provisions of article 1, section 31 of the California Constitution or to authorize conduct that is in conflict with or is inconsistent with such provisions.

(b) The regulations in this subchapter require steps to promote faculty and staff equal employment opportunity which are in addition to and consistent with the nondiscrimination requirements of state or federal law. Therefore, compliance with these regulations or approval of the district's equal employment opportunity plan pursuant to section 53003 does not imply and should not be construed to mean that a district has necessarily complied with its obligations under any other applicable laws or regulations. The Chancellor shall assist districts in identifying other applicable state or federal laws which may affect district equal employment opportunity or nondiscrimination policies.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; Sections 11135-11139.5, Government Code; Title 20, United States Code, Section 1681; Title 29, United States Code, Section 794; and Title 42, United States Code, Sections 2000d, 6101 and 12100, et seq.

5 CCR § 53001

Cal. Admin. Code tit. 5, § 53001

TITLE 5. EDUCATION
DIVISION 6. CALIFORNIA COMMUNITY COLLEGES
CHAPTER 4. EMPLOYEES
SUBCHAPTER 1. EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS
ARTICLE 1. GENERAL

§ 53001. Definitions.

As used in this subchapter:

(a) Adverse Impact. "Adverse impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on any group defined in terms of ethnic group identification, gender, or disability. A disparity identified in a given selection process will not be considered to constitute adverse impact if the numbers involved are too small to permit a meaningful comparison.

(b) Business Necessity. "Business necessity" means circumstances which justify an exception to the requirements of section 53021(b)(1) because compliance with that section would result in substantial additional financial cost to the district or pose a significant threat to human life or safety. Business necessity requires greater financial cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.

(c) Equal Employment Opportunity. "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and to enjoy the benefits of employment with the district. Equal employment opportunity should exist at all levels and in all job categories listed in section 53004(a). Ensuring equal employment opportunity also involves creating an environment which fosters cooperation, acceptance, democracy, and free expression of ideas and is welcoming to men and women, persons with disabilities, and individuals from all ethnic and other groups protected from discrimination by this subchapter.

(d) Equal Employment Opportunity Plan. An "equal employment opportunity plan" is a written document in which a district's work force is analyzed and specific plans and procedures are set forth for ensuring equal employment opportunity.

(e) Equal Employment Opportunity Programs. "Equal employment opportunity programs" means all the various methods by which equal employment opportunity is ensured. Such methods include, but are not limited to, using nondiscriminatory employment practices, actively recruiting, monitoring and taking additional steps consistent with the requirements of section 53006.

(f)(1) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks/African-Americans, and Hispanics/Latinos.

(2) Ethnic Group Identification. "Ethnic group identification" means an individual's identification in one or more of the ethnic groups reported to the Chancellor pursuant to section 53004. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.

(g) Goals for Persons with Disabilities. "Goals for persons with disabilities" means a statement that the district will strive to attract and hire additional qualified persons with a disability in order to achieve the level of projected representation for that group by a target date established by taking into account the expected turnover in the work force and the availability of persons with disabilities who are qualified to perform a particular job. Goals are not "quotas" or rigid proportions.

(h) In-house or Promotional Only Hiring. "In-house or promotional only" hiring means that only existing district employees are allowed to apply for a position.

(i) Monitored Group. "Monitored group" means those groups identified in section 53004(b) for which monitoring and reporting is required pursuant to section 53004(a).

(j) Person with a Disability. "Person with a disability" means any person who (1) has a physical or mental impairment as defined in Government Code section 12926 which limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A person with a disability is "limited" if the condition makes the achievement of the major life activity difficult.

(k) Projected Representation. "Projected representation" means the percentage of persons from a monitored group determined by the Chancellor to be available and qualified to perform the work in question.

(l) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the district to remove artificial or real barriers which prevent or limit the employment and upward mobility of persons with disabilities. "Reasonable accommodations" may include the items designated in section 53025.

(m) Screening or Selection Procedure. "Screening or selection procedure" means any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques, including but not limited to, traditional paper and pencil tests, performance tests, and physical, educational, and work experience requirements, interviews, and review of application forms.

(n) Significantly Underrepresented Group. "Significantly underrepresented group" means any monitored group for which the percentage of persons from that group employed by the district in any job category listed in section 53004(a) is below eighty percent (80%) of the projected representation for that group in the job category in question.

(o) Target Date. "Target date" means a point in time by which the district plans to meet an established goal for persons with disabilities and thereby achieve projected representation in a particular job category.

(p) Timetable. "Timetable" means a set of specific annual hiring objectives that will lead to meeting a

goal for persons with a disability by a projected target date.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; Sections 11135-11139.5, 11092 and 12926, Government Code; 29 C.F.R. 1602.48 (1981); 29 C.F.R. 1607; 29 U.S.C. 793; 41 C.F.R. 60-741.2 (1980).

5 CCR § 53002

Cal. Admin. Code tit. 5, § 53002

TITLE 5. EDUCATION
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SUBCHAPTER 1. EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS
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§ 53002. Policy Statement.

The governing board of each community college district shall adopt a policy statement setting forth the district's commitment to an equal employment opportunity program. This statement may also incorporate the nondiscrimination policy statement required pursuant to section 59300 and other similar nondiscrimination or equal employment opportunity statements which may be required under other provisions of state and federal law.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.1, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135-11139.5, Government Code.

5 CCR § 53003

Cal. Admin. Code tit. 5, § 53003

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§ 53003. District Plan.

(a) The governing board of each community college district shall develop and adopt a district-wide written equal employment opportunity plan to implement its equal employment opportunity program. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) Such plans shall be reviewed at least every three years and, if necessary, revised and submitted to the Chancellor's Office for approval. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its plan.

(c) In particular, the plan shall include all of the following:

(1) the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this subchapter pursuant to section 53020;

(2) the procedure for filing complaints pursuant to section 53026 and the person with whom such complaints are to be filed;

(3) a process for notifying all district employees of the provisions of the plan and the policy statement required under section 53002;

(4) a process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this subchapter and of state and federal nondiscrimination laws;

(5) a process for providing annual written notice to appropriate community-based and professional organizations concerning the district's plan and the need for assistance from the community and such organizations in identifying qualified applicants;

(6) an analysis of the number of persons from monitored groups who are employed in the district's work force and those who have applied for employment in each of the job categories listed in section 53004(a);

(7) an analysis of the degree to which monitored groups are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each such job category and whether or not the underrepresentation is significant;

(8) methods for addressing any underrepresentation identified pursuant to subparagraph (7)

(9) additional steps consistent with section 53006 to remedy any significant underrepresentation identified in the plan; and

(10) any other measures necessary to further equal employment opportunity throughout the district.

(d) The plan shall include any goals for hiring persons with disabilities that are required by section 53025.

(e) The plans submitted to the Chancellor shall be public records.

(f) Each community college district shall make a continuous good faith effort to comply with the requirements of the plan required under this section.

(g) In developing the availability data called for in subsection (c)(7), the Chancellor shall work through the established Consultation Process.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and sections 11135-11139.5, Government Code.

5 CCR § 53004

Cal. Admin. Code tit. 5, § 53004

TITLE 5. EDUCATION
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§ 53004. District Evaluation and Report to Chancellor.

(a) Each district shall annually survey its employees and shall monitor applicants for employment on an ongoing basis in order to evaluate the implementation of its equal employment opportunity plan and to provide data needed for the analyses required by sections 53003, 53006, 53023, and 53024. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of

its annual survey of employees at each college in the district. Each employee shall be reported so that he or she may be identified as belonging to one of the following seven job categories:

(1) executive/administrative/managerial;

(2) faculty and other instructional staff;

(3) professional nonfaculty;

(4) secretarial/clerical;

(5) technical and paraprofessional;

(6) skilled crafts; and

(7) service and maintenance.

(b) For purposes of the survey and report required pursuant to subsection (a) of this section, each applicant or employee shall be afforded the opportunity to identify his or her gender, ethnic group identification and, if applicable, his or her disability. A person may designate multiple ethnic groups with which he or she identifies, but shall be counted in only one ethnic group for reporting purposes. Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part of the Asian/Pacific Islander group as well as in separate subcategories. However, in determining whether additional steps are necessary to ensure that monitored groups have not been excluded on an impermissible basis, analysis of the separate subgroups is not necessary.

Note: Authority cited: Sections 66271.1, 66700, 70901 and 87105, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 8310.5 and 11135-11139.5, Government Code.

5 CCR § 53005

Cal. Admin. Code tit. 5, § 53005

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§ 53005. Advisory Committee.

Each community college district shall establish an Equal Employment Opportunity Advisory Committee to assist the district in developing and implementing the plan required under section 53003. This advisory committee shall include a diverse membership whenever possible.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135-11139.5, Government Code.

5 CCR § 53006

Cal. Admin. Code tit. 5, § 53006

TITLE 5. EDUCATION
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§ 53006. Additional Steps to Ensure Equal Employment Opportunity.

(a) If a district determines that a particular monitored group is significantly underrepresented with respect to one or more job categories, the district shall take additional steps consistent with this section. At a minimum, the district shall:

(1) review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group;

(2) consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective;

(3) determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in (1) and (2) have been in place a reasonable period of

time; and

(4) if significant underrepresentation persists, the staffing rate for the significantly underrepresented group in the specified job category or categories shall be monitored on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question.

(b) If a reasonable period of time passes and significant underrepresentation persists for a particular group in the job category in question, the district shall:

(1) review each locally established "required," "desired" or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job-related and consistent with business necessity through a process meeting the requirements of federal law or is among those qualifications which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system;

(2) discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in paragraph (1) of this subdivision; and

(3) continue using qualification standards meeting the requirements of paragraph (1) only where no alternative qualification standard is reasonably available which would select for the same characteristics, meet the requirements of paragraph (1) and be expected to have a less exclusionary effect.

(c) For purposes of this section, "a reasonable period of time" means three years, or such longer period as the Chancellor may approve, upon the request of the equal employment opportunity advisory committee and the chief executive officer, where the district has not filled enough positions to appreciably affect its work force in the job category in question.

(d) Nothing in this subchapter shall be construed to prohibit a district from taking any other steps it concludes are necessary to ensure equal employment opportunity, provided that such actions are consistent with the requirements of federal and state constitutional and statutory nondiscrimination law.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135-11139.5, Government Code.

5 CCR § 53010

Cal. Admin. Code tit. 5, § 53010

TITLE 5. EDUCATION
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§ 53010. Assistance.

Note: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87103, Education Code.

5 CCR § 59300

Cal. Admin. Code tit. 5, § 59300

TITLE 5. EDUCATION
DIVISION 6. CALIFORNIA COMMUNITY COLLEGES
CHAPTER 10. COMMUNITY COLLEGE ADMINISTRATION
SUBCHAPTER 5. NONDISCRIMINATION IN PROGRAMS RECEIVING STATE FINANCIAL ASSISTANCE THROUGH THE CHANCELLOR OR BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES
ARTICLE 1. GENERAL

§ 59300. Purpose.

The purpose of this subchapter is to implement the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code s 66250 et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. s 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. s 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. s 794), the Americans with Disabilities Act of 1990 (42 U.S.C. s 12100 et seq.) and the Age Discrimination Act (42 U.S.C. s 6101), to the end that no person in the State of California shall, in whole or in part, on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability, or on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under any program or activity that is administered by, funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; Sections 11135-11139.5, Government Code; Sections 422.6 and 422.55, Penal Code; Title 20, United States Code, Section 1681; Title 29, United States Code, Section 794; and Title 42, United States Code, Sections 2000d, 6101 and 12100, et seq.

5 CCR § 59301

Cal. Admin. Code tit. 5, § 59301

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§ 59301. Prohibited Discrimination.

Note: Authority cited: Section 11138, Government Code; and Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

5 CCR § 59302

Cal. Admin. Code tit. 5, § 59302

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§ 59302. Academic Requirements.

Nothing in this subchapter shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Section 11135, Government Code.

5 CCR § 59303

Cal. Admin. Code tit. 5, § 59303

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§ 59303. Delegation of Authority.

Note: Authority cited: Section 11138, Government Code; and Sections 70901 and 71090, Education Code. Reference: Sections 11135 and 11138, Government Code.

5 CCR § 59304

Cal. Admin. Code tit. 5, § 59304

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§ 59304. Intent.

It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination that may exist in their programs and activities and in meeting the requirements of this subchapter. Punitive action authorized by this subchapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135, 11137 and 11139, Government Code.

5 CCR § 59305

Cal. Admin. Code tit. 5, § 59305

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§ 59305. Operative Date.

Note: Authority cited: Section 11138, Government Code; and Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

5 CCR § 59306

Cal. Admin. Code tit. 5, § 59306

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§ 59306. Visitor Parking for Persons with Disabilities.

(a) Each community college district shall, consistent with the requirements of Education Code section 67301, provide visitor parking at each of its colleges or centers at no charge to persons with disabilities or to those providing transportation for such persons.

(b) For purposes of this section only, "persons with disabilities" are those who:

(1) qualify as disabled persons pursuant to section 22511.5 of the Vehicle Code; or

(2) if they were students, would be entitled to special parking provided to students with disabilities pursuant to subchapter 1 (commencing with section 56000) of chapter 7 of this division.

(c) Parking at no charge shall be available to persons with disabilities who are visitors, and to those providing transportation to such persons, in those parking facilities which are most accessible to administrative offices, libraries, and other facilities which the district finds are most used by visitors.

(d) Each community college district shall post in conspicuous places notice that parking is available without charge to persons with disabilities who are visitors and to those providing transportation for such persons.

(e) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for persons with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in the operation of the gate or by any other effective means deemed appropriate by the district.

(f) Parking fees collected pursuant to Education Code section 76360 shall be used to offset any costs resulting from compliance with the requirements of this section.

Note: Authority cited: Sections 66271.1, 66700, 67301 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq., 67301, 72011 and 76360, Education Code; and Section 22511.5, Vehicle Code.

5 CCR § 59307

Cal. Admin. Code tit. 5, § 59307

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§ 59307. Sexual Harassment and Sex Discrimination.

Note: Authority cited: Sections 232 and 70901, Education Code; and Section 11135, Government

Code. Reference: Sections 200 et seq., Education Code.

GOVERNMENT CODE SECTION 12926.1

12926.1. The Legislature finds and declares as follows:

(a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (Public Law 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to passage of the federal act, afforded additional protections.

(b) The law of this state contains broad definitions of physical disability, mental disability, and medical condition. It is the intent of the Legislature that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.

(c) Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of "physical disability" and "mental disability" under the law of this state require a "limitation" upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a "substantial limitation." This distinction is intended to result in broader coverage under the law of this state than under that federal act. Under the law of this state, whether a condition limits a major life activity shall be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the Americans with Disabilities Act of 1990. Further, under the law of this state, "working" is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employments.

(d) Notwithstanding any interpretation of law in *Cassista v. Community Foods* (1993) 5 Cal.4th 1050, the Legislature intends (1) for state law to be independent of the Americans with Disabilities Act of 1990, (2) to require a "limitation" rather than a "substantial limitation" of a major life activity, and (3) by enacting paragraph (4) of subdivision (i) and paragraph (4) of subdivision (k) of Section **12926**, to provide protection when an individual is erroneously or mistakenly believed to have any physical or mental condition that limits a major life activity.

(e) The Legislature affirms the importance of the interactive process between the applicant or employee and the employer in determining a reasonable accommodation, as this requirement has been articulated by the Equal Employment Opportunity Commission in its interpretive guidance of the Americans with Disabilities Act of 1990.

PENAL CODE SECTIONS 422.56 and 422.57

422.56. For purposes of this title, the following definitions shall apply:

(a) "Association with a person or group with these actual or perceived characteristics" includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of "hate crime" under paragraphs 1 to 6, inclusive, of subdivision (a) of Section 422.55.

(b) "Disability" includes mental disability and physical disability as defined in Section 12926 of the Government Code.

(c) "Gender" means sex, and includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

(d) "In whole or in part because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic. This subdivision does not constitute a change in, but is declaratory of, existing law under in re M.S.(1995) 10 Cal. 4th 698 and People v. Superior Court (Aishman) (1995) 10 Cal. 4th 735.

(e) "Nationality" includes citizenship, country of origin, and national origin.

(f) "Race or ethnicity" includes ancestry, color, and ethnic background.

(g) "Religion" includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

(h) "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.

(i) "Victim" includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense.

422.57. For purposes this code, unless an explicit provision of law or the context clearly requires a different meaning, "gender" has the same meaning as in Section 422.56.

GOVERNMENT CODE SECTIONS 11135-11139.7

11135. (a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding Section 11000, this section applies to the California State University.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and

the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) (1) As used in this section, "disability" means any mental or physical disability, as defined in Section 12926.

(2) The Legislature finds and declares that the amendments made to this act are declarative of existing law. The Legislature further finds and declares that in enacting Senate Bill 105 of the 2001-02 Regular Session (Chapter 1102 of the Statutes of 2002), it was the intention of the Legislature to apply subdivision (d) to the California State University in the same manner that subdivisions (a), (b), and (c) already applied to the California State University, notwithstanding Section 11000. In clarifying that the California State University is subject to paragraph (2) of subdivision (d), it is not the intention of the Legislature to increase the cost of developing or procuring electronic and information technology. The California State University shall, however, in determining the cost of developing or procuring electronic or information technology, consider whether technology that meets the standards applicable pursuant to paragraph (2) of subdivision (d) will reduce the long-term cost incurred by the California State University in providing access or accommodations to future users of this technology who are persons with disabilities, as required by existing law, including this section, Title II of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 and following), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794).

(d) (1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the federal Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal **Code** of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

(e) As used in this section, "sex" and "sexual orientation" have the same meanings as those terms are defined in subdivisions (q) and (r) of Section 12926.

(f) As used in this section, "race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability" includes a perception that a person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(g) As used in this section, "genetic information" has the same definition as in paragraph (2) of subdivision (e) of Section 51 of the Civil **Code**.

11136. Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section **11135**, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section **11135**, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section **11135**, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation has occurred.

11137. If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.

11138. Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars (\$100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article.

11139. The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies.

11139.3. (a) It is the policy of this state and the purpose of this section to facilitate and support the development and operation of housing for homeless youth.

(b) The provision of housing for homeless youth is hereby authorized and shall not be considered unlawful age discrimination, notwithstanding any other provision of law, including, but not limited to, Sections 51, 51.2, and 51.10 of the Civil **Code**, Sections

11135, 12920, and 12955 of this **code**, Chapter 11.5 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety **Code**, and local housing or age discrimination ordinances.

(c) This section shall not be construed to permit discrimination against families with children.

(d) This section shall occupy the field of regulation of housing for homeless youth by any local public entity, including, but not limited to, a city, county, and city and county.

(e) For purposes of this section, the following definitions shall apply:

(1) "At risk of becoming homeless" means facing eviction or termination of one's current housing situation.

(2) "Homeless youth" means either of the following:

(A) A person who is not older than 24 years of age, and meets one of the following conditions:

(i) Is homeless or at risk of becoming homeless.

(ii) Is no longer eligible for foster care on the basis of age.

(iii) Has run away from home.

(B) A person who is less than 18 years of age who is emancipated pursuant to Part 6 (commencing with Section 7000) of Division 1 of the Family **Code** and who is homeless or at risk of becoming homeless.

(3) "Housing for homeless youth" means emergency, transitional, or permanent housing tied to supportive services that assist homeless youth in stabilizing their lives and developing the skills and resources they need to make a successful transition to independent, self-sufficient adulthood.

11139.5. The Secretary of the Health and Welfare Agency, with the advice and concurrence of the Fair Employment and Housing Commission, shall establish standards for determining which persons are protected by this article and standards for determining what practices are discriminatory. The secretary, with the cooperation of the Fair Employment and Housing Commission, shall assist state agencies in coordinating their programs and activities and shall consult with such agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of the provisions of the article.

11139.5. The Secretary of California Health and Human Services, with the advice and concurrence of the Fair Employment and Housing Council of the Department of Fair Employment and Housing, shall establish standards for determining which persons are protected by this article and standards for determining what practices are discriminatory. The secretary, with the cooperation of the Fair Employment and Housing Council of the Department of Fair Employment and Housing, shall assist state agencies in coordinating their programs and activities and shall consult with such agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of the provisions of the article.

11139.6. (a) (1) The Legislature finds and declares that subdivision (a) of Section 31 of Article I of the California Constitution prohibits state and local **government** agencies from

discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, and public contracting. The Legislature finds that this prohibition does not prevent governmental agencies from engaging in inclusive public sector outreach and recruitment programs that, as a component of general recruitment, may include, but not be limited to, focused outreach and recruitment of minority groups and women if any group is underrepresented in entry level positions of a public sector employer.

(2) The Legislature also finds and declares that increasing the number of businesses that participate in the bidding process in public contracting results in more vigorous competition, and thus assists state and local agencies in obtaining the desired quality of work at a lower cost.

(3) It is the intent of this section that all governmental agencies shall engage in general recruitment and outreach programs to all individuals, including persons who are economically disadvantaged.

(b) For purposes of this section, underrepresentation shall be determined by comparing the minority group or the number of women at the governmental agency with that group's representation in the current civilian labor force in the jurisdiction of the governmental agency.

(c) State **government** employment shall use current state civilian labor force data to implement this section.

(d) It is the intent of this section to allow public sector employers to conduct outreach efforts with a goal of supplementing word-of-mouth recruitment that should result in increasing diversity of the public sector workforce.

(e) The type of recruitment activities allowed would include, but not be limited to, placement of job announcements in the following media instruments:

(1) General circulation newspapers, general circulation publications, and general market radio and television stations, including electronic media.

(2) Local and regional community newspapers.

(3) Newspapers, publications, and radio and television stations that provide information in languages other than English and whose primary audience is residents of minority and low-income communities.

(4) Publications, including electronic media, that are distributed to the general market and to newspapers, publications, and radio and television stations whose primary audience is comprised of minority groups or women.

(5) Recruitment booths at job fairs or conferences oriented to both the general market and the economically disadvantaged as well as those events drawing a significant participation by minorities or women.

11139.7. (a) The Governor's Task Force on Diversity and Outreach, in its August 1, 2000, report, concluded that data on minority business participation is not currently available, and that lack of useful data on minority business participation in state contracting is an overarching issue to be addressed.

(b) In contracting for and procuring goods, services, information technology, construction, architecture, and engineering consulting,

and other consulting services, state and local departments and agencies are authorized to engage in focused outreach activities in addition to general outreach, for purposes of increasing participation by California's small business sector and increasing diversity in the state's contracting and procurement activities.

(c) Outreach activities may include, but are not limited to, the following:

(1) Invitations to bid distributed by state and local departments and agencies to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including professional minority, women, and disabled veteran-owned business and professional groups and associations, as appropriate.

(2) Publication of advertising concerning state and local contracting and procurement opportunities in trade papers and other publications focusing on small business enterprises, including publications and newspapers in languages other than English and those whose primary readership is minority, women, or disabled veteran-owned businesses.

(3) Outreach by small business advocates in each state or local **government** department or agency to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including professional minority, women, and disabled veteran-owned business and professional groups and associations, as appropriate.

GOVERNMENT CODE SECTIONS 12940-12951

12940. It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the

health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic

information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, where the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal **Code** that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under

this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, or persons providing services pursuant to a contract in the workplace, where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(l) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

12940.1. For the purposes of paragraph (1) of subdivision (a) of Section **12940**, it shall be presumed that an individual with heart trouble, as referred to in Section 3212 of the Labor **Code**, applying for either a firefighter position or participation in an apprenticeship training program leading to employment in that position, where the actual duties require physical, active fire suppression, or a law enforcement position, the principal duties of which clearly consist of active law enforcement, could not perform his or her duties in a manner which would not endanger his or her health or safety or the health or safety of others. This presumption

may be overcome by the applicant or the department proving, by a preponderance of the evidence, that the applicant would be able to safely perform the job. Law enforcement, for the purposes of this section, means police officer, deputy sheriff, or sheriff whose principal duties consist of active law enforcement service.

12940.3. Prior to January 1, 1996, a study or survey of the costs, including litigation and reasonable accommodation expenses and other impacts on California employers of 15 or more employees, resulting from compliance with Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336), shall be undertaken jointly by the California Chamber of Commerce, the Department of Fair Employment and Housing, Protection and Advocacy, Inc., and the State Department of Rehabilitation. The study shall also include an analysis of the benefits of the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) to persons with disabilities. The results of the study shall be submitted to the Commission on Special Education for their review and recommendations. The study shall provide a basis for a recommendation to the Legislature and the Governor concerning whether the hardships imposed upon businesses outweigh the benefits to persons with disabilities when the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) are extended to California employers of 5 to 14, inclusive, employees by amending the Fair Employment and Housing Act to include people with mental disabilities as a protected class. In conducting the study and making a recommendation, the parties shall consider whether the additional requirements or consequences of being subject to the additional requirements will impose a significant hardship on employers of 5 to 14, inclusive, employees.

It is the intent to the Legislature that if, at the conclusion of the study and report to the Legislature, it is determined that employers of between 5 and 14 employees would not have a significant hardship in implementing the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336), legislation should be introduced to require that employers with between 5 and 14 employees are covered by the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336).

The Legislature intends that all employers, including employers of 5 to 14, inclusive, employees, voluntarily comply with the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) so that persons with mental disabilities can participate fully in the employment opportunities provided to all Californians. However, it is the intent of the Legislature that existing employment discrimination provisions covering employers of 5 to 14, inclusive, employees shall not be altered by amendments to this part that become effective on January 1, 1993.

12941. The Legislature hereby declares its rejection of the court of appeal opinion in *Marks v. Loral Corp.* (1997) 57 Cal.App.4th 30, and states that the opinion does not affect existing law in any way, including, but not limited to, the law pertaining to disparate treatment. The Legislature declares its intent that the use of salary as the basis for differentiating between employees when terminating employment may be found to constitute age discrimination if use of

that criterion adversely impacts older workers as a group, and further declares its intent that the disparate impact theory of proof may be used in claims of age discrimination. The Legislature further reaffirms and declares its intent that the courts interpret the state's statutes prohibiting age discrimination in employment broadly and vigorously, in a manner comparable to prohibitions against sex and race discrimination, and with the goal of not only protecting older workers as individuals, but also of protecting older workers as a group, since they face unique obstacles in the later phases of their careers. Nothing in this section shall limit the affirmative defenses traditionally available in employment discrimination cases including, but not limited to, those set forth in Section 7286.7 of Title 2 of the California **Code** of Regulations.

12942. (a) Every employer in this state shall permit any employee who indicates in writing a desire in a reasonable time and can demonstrate the ability to do so, to continue his or her employment beyond any retirement date contained in any private pension or retirement plan.

This employment shall continue so long as the employee demonstrates his or her ability to perform the functions of the job adequately and the employer is satisfied with the quality of work performed.

(b) Any employee indicating this desire and continuing the employment shall give the employer written notice in reasonable time, of intent to retire or terminate when the retirement or termination occurs after the employee's retirement date.

(c) Nothing in this section or Section 12941 shall be construed to prohibit any of the following:

(1) To prohibit an institution of higher education, as defined by Section 1001 of Title 20 of the United States **Code**, from imposing a retirement policy for tenured faculty members, provided that the institution has a policy permitting reemployment of these individuals on a year-to-year basis.

(2) To prohibit compulsory retirement of any employee who has attained 70 years of age and is a physician employed by a professional medical corporation, the articles or bylaws of which provide for compulsory retirement.

(3) To prohibit compulsory retirement of any employee who has attained 65 years of age and who for the two-year period immediately before retirement was employed in a bona fide executive or a high policymaking position, if that employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer for the employee, which equals in the aggregate at least twenty-seven thousand dollars (\$27,000).

12943. It shall be an unlawful employment practice unless based upon a bona fide occupational qualification:

(a) For the governing board of any school district, because of the pregnancy of any female person, to refuse to hire or employ her, or to refuse to select her for a training program leading to employment, or to bar or to discharge her from employment or from a training program leading to employment, or to discriminate against her in compensation or in terms, conditions, or privileges of employment.

(b) For the governing board of any school district to terminate any employee who is temporarily disabled, pursuant to or on the basis of an employment policy under which insufficient or no leave is available, if the policy has a disparate impact on employees of one sex and is not justified by necessity of the public schools.

12944. (a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, gender, gender identity, gender expression, age, medical condition, genetic information, physical disability, mental disability, or sexual orientation, unless the practice can be demonstrated to be job related.

Where the commission, after hearing, determines that an examination is unlawful under this subdivision, the licensing board may continue to use and rely on the examination until such time as judicial review by the superior court of the determination is exhausted.

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal, or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by the examination or by a license issued in reliance on the examination or qualification.

(b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual's mental or physical disability or medical condition.

(c) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, sex, gender, gender identity, gender expression, age, or sexual orientation or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for. Nothing in this subdivision shall prohibit any licensing board, in connection with prospective examinations, licensure, or certification, from inviting individuals with physical or mental disabilities to request reasonable accommodations or from making inquiries related to reasonable accommodations.

(d) It is unlawful for a licensing board to discriminate against any person because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(e) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date of receipt of the applications.

(f) As used in this section, "licensing board" means any state

board, agency, or authority in the State and Consumer Services Agency that has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

12944. (a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, gender, gender identity, gender expression, age, medical condition, genetic information, physical disability, mental disability, or sexual orientation, unless the practice can be demonstrated to be job related.

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal, or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by the examination or by a license issued in reliance on the examination or qualification.

(b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual's mental or physical disability or medical condition.

(c) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the council, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, sex, gender, gender identity, gender expression, age, or sexual orientation or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for. Nothing in this subdivision shall prohibit any licensing board, in connection with prospective examinations, licensure, or certification, from inviting individuals with physical or mental disabilities to request reasonable accommodations or from making inquiries related to reasonable accommodations.

(d) It is unlawful for a licensing board to discriminate against any person because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(e) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date of receipt of the applications.

(f) As used in this section, "licensing board" means any state board, agency, or authority in the State and Consumer Services Agency that has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

12945. (a) In addition to the provisions that govern pregnancy, childbirth, or a related medical condition in Sections 12926 and

12940, each of the following shall be an unlawful employment practice, unless based upon a bona fide occupational qualification:

(1) For an employer to refuse to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as set forth in the commission's regulations. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the female employee is disabled on account of pregnancy, childbirth, or a related medical condition.

An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.

(2) (A) For an employer to refuse to maintain and pay for coverage for an eligible female employee who takes leave pursuant to paragraph (1) under a group health plan, as defined in Section 5000 (b)(1) of the Internal Revenue **Code** of 1986, for the duration of the leave, not to exceed four months over the course of a 12-month period, commencing on the date the leave taken under paragraph (1) begins, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in this paragraph shall preclude an employer from maintaining and paying for coverage under a group health plan beyond four months. An employer may recover from the employee the premium that the employer paid as required under this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(i) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(ii) The employee's failure to return from leave is for a reason other than one of the following:

(I) The employee taking leave under the Moore-Brown-Roberti Family Rights Act (Sections 12945.2 and 19702.3 of the **Government Code**).

(II) The continuation, recurrence, or onset of a health condition that entitles the employee to leave under paragraph (1) or other circumstance beyond the control of the employee.

(B) If the employer is a state agency, the collective bargaining agreement shall govern with respect to the continued receipt by an eligible female employee of the health care coverage specified in subparagraph (A).

(3) (A) For an employer to refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if she so requests, with the advice of her health care provider.

(B) For an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant female employee who so requests.

(C) For an employer to refuse to temporarily transfer a pregnant female employee to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated. However, no employer shall be required by this section to create additional employment that the employer would not otherwise have

created, nor shall the employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(4) For an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any other provision of this part, including subdivision (a) of Section **12940**.

12945.1. Sections 12945.2 and 19702.3 shall be known, and may be cited, as the Moore-Brown-Roberti Family Rights Act.

12945.2. (a) Except as provided in subdivision (b), it shall be an unlawful employment practice for any employer, as defined in paragraph (2) of subdivision (c), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The commission shall adopt a regulation specifying the elements of a reasonable request.

(b) Notwithstanding subdivision (a), it shall not be an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs less than 50 employees within 75 miles of the worksite where that employee is employed.

(c) For purposes of this section:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following:

- (A) Under 18 years of age.
- (B) An adult dependent child.

(2) "Employer" means either of the following:

- (A) Any person who directly employs 50 or more persons to perform services for a wage or salary.
- (B) The state, and any political or civil subdivision of the state and cities.

(3) "Family care and medical leave" means any of the following:

(A) Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.

(B) Leave to care for a parent or a spouse who has a serious health condition.

(C) Leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(4) "Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.

(5) "FMLA" means the federal Family and Medical Leave Act of 1993 (P.L. 103-3).

(6) "Health care provider" means any of the following:

(A) An individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions **Code**, an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions **Code**, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.

(B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(7) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(8) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(A) Inpatient care in a hospital, hospice, or residential health care facility.

(B) Continuing treatment or continuing supervision by a health care provider.

(d) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (e).

(e) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee's accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee's own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, or spouse with a serious health condition, unless mutually agreed to by the employer and the employee.

(f) (1) During any period that an eligible employee takes leave pursuant to subdivision (a) or takes leave that qualifies as leave taken under the FMLA, the employer shall maintain and pay for coverage under a "group health plan," as defined in Section 5000(b) (1) of the Internal Revenue **Code**, for the duration of the leave, not to exceed 12 workweeks in a 12-month period, commencing on the date leave taken under the FMLA commences, at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a "group health plan" beyond 12 workweeks. An employer may recover the premium that the employer paid as required by this subdivision for maintaining

coverage for the employee under the group health plan if both of the following conditions occur:

(A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(B) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subdivision (a) or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under paragraph (1), employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in subdivision (a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, or other similar plans, the employer may, at his or her discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall not be required to make plan payments for an employee during the leave period, and the leave period shall not be required to be counted for purposes of time accrued under the plan. However, an employee covered by a pension plan may continue to make contributions in accordance with the terms of the plan during the period of the leave.

(g) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

(h) If the employee's need for a leave pursuant to this section is foreseeable, the employee shall provide the employer with reasonable advance notice of the need for the leave.

(i) If the employee's need for leave pursuant to this section is foreseeable due to a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision.

(j) (1) An employer may require that an employee's request for leave to care for a child, a spouse, or a parent who has a serious health condition be supported by a certification issued by the health care provider of the individual requiring care. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.

(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care provider in subparagraph (C) of paragraph (1), the employer may require the employee to obtain recertification, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(k) (1) An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by his or her health care provider. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) A statement that, due to the serious health condition, the employee is unable to perform the function of his or her position.

(2) The employer may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(3) (A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under paragraph (1).

(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.

(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from his or her health care provider that the employee is able to resume work. Nothing in this paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(1) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual's giving information or testimony as to his or

her own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(m) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(n) The amendments made to this section by Chapter 827 of the Statutes of 1993 shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.

(o) This section shall be construed as separate and distinct from Section 12945.

(p) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(q) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer shall not be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the amount specified in subdivision (a).

(r) (1) Notwithstanding subdivision (a), an employer may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:

(A) The employee is a salaried employee who is among the highest paid 10 percent of the employer's employees who are employed within 75 miles of the worksite at which that employee is employed.

(B) The refusal is necessary to prevent substantial and grievous economic injury to the operations of the employer.

(C) The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary under subparagraph (B).

(2) In any case in which the leave has already commenced, the employer shall give the employee a reasonable opportunity to return to work following the notice prescribed by subparagraph (C).

(s) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.

(t) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

12945.5. It shall be an unlawful employment practice for an employer to require any employee to be sterilized as a condition of employment.

12946. It shall be an unlawful practice for employers, labor

organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken. For the purposes of this section, the State Personnel Board is exempt from the two-year retention requirement and shall instead, maintain the records and files for a period of one year. Upon notice that a verified complaint against it has been filed under this part, any such employer, labor organization, or employment agency shall maintain and preserve any and all records and files until the complaint is fully and finally disposed of and all appeals or related proceedings terminated. The commission shall adopt suitable rules, regulations, and standards to carry out the purposes of this section. Where necessary, the department, pursuant to its powers under Section 12974, may seek temporary or preliminary judicial relief to enforce this section.

12946. It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken. For the purposes of this section, the State Personnel Board is exempt from the two-year retention requirement and shall instead, maintain the records and files for a period of one year. Upon notice that a verified complaint against it has been filed under this part, any such employer, labor organization, or employment agency shall maintain and preserve any and all records and files until the complaint is fully and finally disposed of and all appeals or related proceedings terminated. The council shall adopt suitable rules, regulations, and standards to carry out the purposes of this section. Where necessary, the department, pursuant to its powers under Section 12974, may seek temporary or preliminary judicial relief to enforce this section.

12947. It shall not be an unlawful practice under this part for an employer or labor organization to provide or make financial provision for child care services of a custodial or other nature for its employees or members who are responsible for minor children.

12947.5. (a) It shall be an unlawful employment practice for an employer to refuse to permit an employee to wear pants on account of the sex of the employee.

(b) Nothing in this section shall prohibit an employer from requiring employees in a particular occupation to wear a uniform.

(c) Nothing in this section shall prohibit an employer from requiring an employee to wear a costume while that employee is portraying a specific character or dramatic role.

(d) The commission may exempt an employer from the requirements of this section for good cause shown and shall adopt standards and procedures for granting exemptions.

12947.5. (a) It shall be an unlawful employment practice for an employer to refuse to permit an employee to wear pants on account of the sex of the employee.

(b) Nothing in this section shall prohibit an employer from requiring employees in a particular occupation to wear a uniform.

(c) Nothing in this section shall prohibit an employer from requiring an employee to wear a costume while that employee is portraying a specific character or dramatic role.

(d) The council may exempt an employer from the requirements of this section for good cause shown and shall adopt standards and procedures for granting exemptions.

12948. It is an unlawful practice under this part for a person to deny or to aid, incite, or conspire in the denial of the rights created by Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of the Civil **Code**.

12949. Nothing in this part relating to gender-based discrimination affects the ability of an employer to require an employee to adhere to reasonable workplace appearance, grooming, and dress standards not precluded by other provisions of state or federal law, provided that an employer shall allow an employee to appear or dress consistently with the employee's gender identity or gender expression.

12950. In addition to employer responsibilities set forth in subdivisions (j) and (k) of Section **12940** and in rules adopted by the department and the commission, every employer shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements:

(a) The department shall amend its current poster on discrimination in employment to include information relating to the illegality of sexual harassment. This amended poster shall be distributed to employers when the supply of the current poster is exhausted. One copy of the amended poster shall be provided by the department to an employer upon request. The amended poster shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Multiple copies of the amended poster shall be made available online by the Department of Fair Employment and Housing. Each employer shall post the amended poster in a prominent and accessible location in the workplace.

(b) Each employer shall obtain from the department its information sheet on sexual harassment, which the department shall make available to employers for reproduction and distribution to employees. One copy of the information sheet shall be provided by the department to an employer upon request. The information sheets shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Multiple copies of the information sheet shall be made available online by the Department of Fair Employment and Housing.

Each employer shall distribute this information sheet to its employees, unless the employer provides equivalent information to its employees that contains, at a minimum, components on the following:

- (1) The illegality of sexual harassment.
- (2) The definition of sexual harassment under applicable state and federal law.
- (3) A description of sexual harassment, utilizing examples.
- (4) The internal complaint process of the employer available to the employee.
- (5) The legal remedies and complaint process available through the department and the commission.
- (6) Directions on how to contact the department and the commission.
- (7) The protection against retaliation provided by Section 7287.8 of Title 2 of the California **Code** of Regulations for opposing the practices prohibited by this article or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by, the department or the commission.

(c) The information sheet or information required to be distributed to employees pursuant to subdivision (b) shall be delivered in a manner that ensures distribution to each employee, such as including the information sheet or information with an employee's pay.

(d) Notwithstanding subdivisions (j) and (k) of Section **12940**, a claim that the information sheet or information required to be distributed pursuant to this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates the requirements of this section, the commission shall issue an order requiring the employer to comply with these requirements.

12950. In addition to employer responsibilities set forth in subdivisions (j) and (k) of Section **12940** and in rules adopted by the department and the council, every employer shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements:

(a) The department shall amend its current poster on discrimination in employment to include information relating to the illegality of sexual harassment. This amended poster shall be distributed to employers when the supply of the current poster is exhausted. One copy of the amended poster shall be provided by the department to an employer upon request. The amended poster shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Multiple copies of the amended poster shall be made available online by the Department of Fair Employment and Housing. Each employer shall post the amended poster in a prominent and accessible location in the workplace.

(b) Each employer shall obtain from the department its information sheet on sexual harassment, which the department shall make available to employers for reproduction and distribution to

employees. One copy of the information sheet shall be provided by the department to an employer upon request. The information sheets shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Multiple copies of the information sheet shall be made available online by the Department of Fair Employment and Housing. Each employer shall distribute this information sheet to its employees, unless the employer provides equivalent information to its employees that contains, at a minimum, components on the following:

(1) The illegality of sexual harassment.

(2) The definition of sexual harassment under applicable state and federal law.

(3) A description of sexual harassment, utilizing examples.

(4) The internal complaint process of the employer available to the employee.

(5) The legal remedies and complaint process available through the department.

(6) Directions on how to contact the department.

(7) The protection against retaliation provided by Title 2 of the California **Code** of Regulations for opposing the practices prohibited by this article or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by, the department or the council.

(c) The information sheet or information required to be distributed to employees pursuant to subdivision (b) shall be delivered in a manner that ensures distribution to each employee, such as including the information sheet or information with an employee's pay.

(d) Notwithstanding subdivisions (j) and (k) of Section **12940**, a claim that the information sheet or information required to be distributed pursuant to this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates the requirements of this section, the department may seek an order requiring the employer to comply with these requirements.

12950.1. (a) By January 1, 2006, an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California who are employed as of July 1, 2005, and to all new supervisory employees within six months of their assumption of a supervisory position. Any employer who has provided this training and education to a supervisory employee after January 1, 2003, is not required to provide training and education by the January 1, 2006, deadline. After January 1, 2006, each employer covered by this section shall provide sexual harassment training and education to each supervisory employee in California once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and

correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

(b) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(c) For purposes of this section only, "employer" means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(d) Notwithstanding subdivisions (j) and (k) of Section **12940**, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates this section, the commission shall issue an order requiring the employer to comply with these requirements.

(f) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

12950.1. (a) By January 1, 2006, an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California who are employed as of July 1, 2005, and to all new supervisory employees within six months of their assumption of a supervisory position. Any employer who has provided this training and education to a supervisory employee after January 1, 2003, is not required to provide training and education by the January 1, 2006, deadline. After January 1, 2006, each employer covered by this section shall provide sexual harassment training and education to each supervisory employee in California once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and

expertise in the prevention of harassment, discrimination, and retaliation.

(b) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(c) For purposes of this section only, "employer" means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates this section, the department may seek an order requiring the employer to comply with these requirements.

(f) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

12951. (a) It is an unlawful employment practice for an employer, as defined in subdivision (d) of Section 12926, to adopt or enforce a policy that limits or prohibits the use of any language in any workplace, unless both of the following conditions exist:

(1) The language restriction is justified by a business necessity.

(2) The employer has notified its employees of the circumstances and the time when the language restriction is required to be observed and of the consequences for violating the language restriction.

(b) For the purposes of this section, "business necessity" means an overriding legitimate business purpose such that the language restriction is necessary to the safe and efficient operation of the business, that the language restriction effectively fulfills the business purpose it is supposed to serve, and there is no alternative practice to the language restriction that would accomplish the business purpose equally well with a lesser discriminatory impact.

Title IX, Education Amendments of 1972

(Title 20 U.S.C. Sections 1681-1688)

Section 1681. Sex

(a) Prohibition against discrimination; exceptions. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition

in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admissions

in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets

this section shall not apply to any educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices --

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association; Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences

this section shall not apply to--

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for--

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) Institutions of higher education scholarship awards in "beauty" pageants

this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance.

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, that this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) Educational institution defined.

For the purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college or department.

Section 1682. Federal administrative enforcement; report to Congressional committees

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity

for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Section 1683. Judicial Review

Any department or agency action taken pursuant to section 1682 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

Section 1684. Blindness or visual impairment; prohibition against discrimination

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity; but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

Section 1685. Authority under other laws unaffected

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

Section 1686. Interpretation with respect to living facilities

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

Section 1687. Interpretation of "program or activity"

For the purposes of this title, the term "program or activity" and "program" mean all of the operations of --

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributed such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 2854(a)(10) of this title, system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship --

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2) or (3);

any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 if this title to such operation would not be consistent with the religious tenets of such organization.

Section 1688. Neutrality with respect to abortion

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

Accreditation Standard II: Student Learning Programs and Services

B. Student Support Services

The institution recruits and admits diverse students who are able to benefit from its programs, consistent with its mission. Student support services address the identified needs of students and enhance a supportive learning environment. The entire student pathway through the institutional experience is characterized by a concern for student access, progress, learning, and success. The institution systematically assesses student support services using student learning outcomes, faculty and staff input, and other appropriate measures in order to improve the effectiveness of these services.

1. The institution assures the quality of student support services and demonstrates that these services, regardless of location or means of delivery, support student learning and enhance achievement of the mission of the institution.^{1,2}

2. The institution provides a catalog for its constituencies with precise, accurate, and current information concerning the following:

a. General Information

- Official Name, Address(es), Telephone Number(s), and Web Site Address of the Institution
- Educational Mission
- Course, Program, and Degree Offerings
- Academic Calendar and Program Length
- Academic Freedom Statement
- Available Student Financial Aid
- Available Learning Resources
- Names and Degrees of Administrators and Faculty
- Names of Governing Board Members

b. Requirements

- Admissions
- Student Fees and Other Financial Obligations
- Degree, Certificates, Graduation and Transfer

c. Major Policies Affecting Students

- Academic Regulations, including Academic Honesty
- Nondiscrimination
- Acceptance of Transfer Credits
- Grievance and Complaint Procedures
- Sexual Harassment
- Refund of Fees