



# SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 7.1

**Meeting Date:** February 4, 2021

**Subject:** Public Hearing: Second Reading of Proposed Board Policy 4033,  
Lactation Accommodation

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: \_\_\_\_\_)
- Conference/Action
- Action
- Public Hearing

**Division:** Legal Services

**Recommendation:** Approve adoption of Board Policy 4033.

**Background/Rationale:** The District has not adopted an employee lactation accommodation policy. Under California Labor Code sections 1030-1033, all California employers, including schools, are required to provide specific lactation accommodations to employees. Such proposed policy includes language in the CSBA Gamut model policy.

**Documents Attached:**

1. Executive Summary
2. BP 4033 (Proposed)

<p><b>Estimated Time of Presentation:</b> 5 Minutes <b>Submitted by:</b> Raoul Bozio, In House Counsel <b>Approved by:</b> Jorge A. Aguilar, Superintendent</p>
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# Board of Education Executive Summary

## Department

Board Policy (BP) 4033: Lactation Accommodation

February 4, 2021



### I. Overview/History of Department or Program

The District must provide a workplace in compliance with applicable labor laws, including those that provide rights to employees. Pursuant to Labor Code Section 1030, every employer, including schools, must provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The employer shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section.

Labor Code section 1034 requires employers to develop and implement a policy regarding lactation accommodation.

### II. Driving Governance:

Pursuant to Labor Code section 1030, "[e]very employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child each time the employee has need to express milk. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission shall be unpaid."

Under Labor Code section 1034, employers are required to develop and implement a policy regarding lactation accommodation that includes the following:

- (1) A statement about an employee's right to request lactation accommodation.
- (2) The process by which the employee makes the request described in paragraph (1).
- (3) An employer's obligation to respond to the request described in paragraph (1) as outlined in subdivision (d).
- (4) A statement about an employee's right to file a complaint with the Labor Commissioner for any violation of a right under this chapter.
  - (b) The employer shall include the policy described in subdivision (a) in an employee handbook or set of policies that the employer makes available to employees.
  - (c) The employer shall distribute the policy described in subdivision (a) to new employees upon hiring and when an employee makes an inquiry about or requests parental leave.
  - (d) If an employer cannot provide break time or a location that complies with the policy described in subdivision (a), the employer shall provide a written response

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to the employee.

Pursuant to Board Policy 4030, District employees shall not be subject to unlawful discrimination, intimidation, bullying against, and/or harassment “on the basis of actual or perceived race, color, national origin, nationality, ancestry, ethnicity, ethnic group identification, religious creed, religion, age, marital status, pregnancy, physical or mental disability, disability, medical condition, veteran status, gender, gender identity, gender expression, sex, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics at any district site and/or activity. The Board also prohibits retaliation against any district employee or job applicant who complains, testifies or in any way participates in the district's complaint procedures instituted pursuant to this policy.”

### III. Budget:

The proposed policy is intended to create practices that ensure compliance with all state and federal laws.

### IV. Goals, Objectives and Measures:

The goal is to provide lactation accommodations free from discrimination, intimidation, bullying, and/or harassment of employees on – among other protected characteristics – the basis of actual or perceived pregnancy, physical or mental disability, gender identity, gender expression, sex, or sexual orientation.

### V. Major Initiatives:

This lactation accommodation policy is critical to provide compliant workplace ensuring employees’ rights.

### VI. Results:

Adoption of an employee lactation accommodation policy. Ensure compliance with Labor Code section 1030 *et seq.* in the workplace.

### VII. Lessons Learned/Next Steps:

Next Steps include adopting an employee lactation accommodation policy. Information and correspondences concerning this matter have previously been shared with the District. Further updates will be provided as necessary.

# Sacramento City USD

## Board Policy

### Lactation Accommodation

BP 4033

#### Board Policy

The Governing Board recognizes the immediate and long-term health advantages of breastfeeding for infants and desires to provide a supportive environment for any district employee to express milk for her infant child upon her return to work following the birth of the child. The Board prohibits discrimination, harassment, and/or retaliation against any district employee who chooses to express breast milk for her infant child while at work.

(cf. 4030 – Nondiscrimination in Employment)

(cf. 4031 – Complaints Concerning Discrimination in Employment)

The district shall provide a reasonable amount of break time to accommodate an employee each time she has a need to express breast milk for her infant child. (Labor Code 1030)

To the extent possible, such break time shall run concurrently with the break time already provided to the employee. Any additional break time used by a non-exempt employee for this purpose shall be unpaid. (Labor Code 1030; 29 USC 207)

The employee shall be provided a private location, other than a restroom, which is in close proximity to her work area and meets the requirements of Labor Code 1031 and 29 USC 207, as applicable.

Employees are encouraged to notify their supervisor or other appropriate personnel in advance of their intent to make use of the accommodations offered for employees who are nursing persons. As needed, the supervisor shall work with the employee to address arrangements and scheduling in order to ensure that the employees' essential job duties are covered during the break time.

Lactation accommodations may be denied only in limited circumstances in accordance with law. (Labor Code 1032; 29 USC 207)

Before an employee's supervisor makes a determination to deny lactation accommodations, he/she shall consult the Superintendent or designee. In any case in which lactation accommodations are denied, the Superintendent or designee shall document the options that were considered and the reasons for denying the accommodations.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex CIVIL CODE

43.3 Right of mothers to breastfeed in any public or private location GOVERNMENT CODE

12940 Discriminatory employment practices

12945 Discrimination based on pregnancy, childbirth, or related medical conditions LABOR CODE

1030-1033 Lactation accommodation CODE OF REGULATIONS, TITLE 2

7291.2-7291.16 Sex discrimination; pregnancy and related medical conditions UNITED STATES CODE, TITLE 29

207 Fair Labor Standards Act; lactation accommodation

FAIR EMPLOYMENT AND HOUSING COMMISSION DECISIONS

Department of Fair Employment and Housing v. Acosta Tacos (Chavez), FEHC Precedential Decision 09-03P, 2009

Management Resources:

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS PUBLICATIONS

Rest Periods/Lactation Accommodation, Frequently Asked Questions CALIFORNIA

DEPARTMENT OF PUBLIC HEALTH PUBLICATIONS

Minimum Requirements of the California Lactation Accommodation Law CENTERS FOR DISEASE CONTROL AND PREVENTION PUBLICATIONS

Lactation Support Program Toolkit FEDERAL REGISTER

Reasonable Break Time for Nursing Mothers, December 21, 2010, Vol. 75, No. 244, pages 80073-

80079

OFFICE OF THE SURGEON GENERAL PUBLICATIONS

The Surgeon General's Call to Action to Support Breastfeeding, 2011 HEALTH

RESOURCES AND SERVICES ADMINISTRATION PUBLICATIONS

The Business Case for Breastfeeding: Steps for Creating a Breastfeeding Friendly Worksite, Toolkit, 2008

U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION, PUBLICATIONS

Fact Sheet #3: Break Time for Nursing Mothers under the FLSA, rev. December 2010 WEB SITES

California Department of Industrial Relations, Division of Labor and Standards Enforcement: <http://www.dir.ca.gov/dlse>

California Department of Public Health: <http://www.cdph.ca.gov> California Women, Infants and Children: <http://www.wicworks.ca.gov> Centers for Disease Control and Prevention:

<http://www.cdc.gov> Health Resources and Services Administration: <http://www.hrsa.gov> Office of the Surgeon General: <http://www.surgeongeneral.gov>

U.S. Department of Labor, Wage and Hour Division, Break Time for Nursing Mothers: <http://www.dol.gov/whd/nursingmothers>

Policy SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

adopted:

Sacramento, California