

## **AR 1311**

### **Uniform Complaints**

This Administrative Regulation governs Berkeley Unified School District (“the District”)’s procedures for resolving Uniform Complaints filed with the District brought pursuant to Board Policy 1311. Except as the Governing Board may otherwise specifically provide in other District policies, these general uniform complaint procedures shall be used to investigate and resolve the complaints specified in BP 1311.

This AR also does not govern *Williams* complaints; allegations of child abuse; health and safety concerns regarding a Child Development Program; or allegations of fraud. The procedures for resolving such complaints are contained in other District policies and regulations.

Allegations by a District employee about or against another District employee shall be referred and responded to by the District’s Human Resources department. The contact point for employee-employee complaints is the Director for Human Resources, 2020 Bonar Street, 2<sup>nd</sup> Floor, Berkeley, CA 94702. The Human Resources department will conduct a review following the same procedures as in this Administrative Regulation, except that no provision in these regulations is intended to supersede any provision of a collective bargaining agreement to which the District is a party.

### **Definitions**

A “complaint” is a written and signed statement submitted on, or attached to, the proper District form, and filed with the District. (See Form XXX)

Pursuant to BP 1311, the following are not considered “complaints”: informal or formal requests for information; informal or formal incident reports; informal requests for resolution of a particular concern or problem; concerns expressed orally or in e-mail to a District employee. As described below, relevant staff shall be trained to assist a complainant in the filing of a formal complaint if the complainant wishes to do so.

A “uniform complaint” is a complaint regarding one or more of the following:

- a. Any complaint alleging unlawful discrimination in District programs and activities against any person based on his/her actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55, or based on his/her association with a person or group with one or more of these actual or perceived characteristics. Unlawful discrimination includes, but is not limited to, discriminatory bullying, discriminatory intimidation, and sexual harassment. (5 CCR 4610)

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- b. Any complaint alleging retaliation against a complainant or other participant in the complaint process or anyone who has acted to uncover or report a violation subject to this policy.
- c. Any complaint alleging district violation of applicable state or federal law or regulations governing adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, and/or special education programs. (5 CCR 4610)
- d. Any complaint alleging district violation of the prohibition against requiring students to pay fees, deposits, or other charges for participation in educational activities. (5 CCR 4610)
- e. Any complaint alleging that the district has not complied with legal requirements related to the implementation of the local control and accountability plan (LCAP). (Education Code 52075)
- f. Any complaint against district policies, practices, procedures or employees, including any complaint alleging non-discriminatory bullying by any student or employee.

“Statutory uniform complaints” are those complaints brought pursuant to subsection (a)-(e) above. These are complaints for which an appeal from the District’s decision is appealable to the California Department of Education (CDE). They are called “statutory” uniform complaints because they are mandated to be treated as uniform complaints under California law.

“Non-statutory uniform complaints” are those complaints brought pursuant to subsection (f) above. These are complaints that the District investigates and resolves pursuant to its uniform complaint procedures, but for these complaints, the District’s resolution is appealable to the Superintendent, not to the CDE.

“Uniform Complaint Procedures” means the procedures used to investigate and resolve uniform complaints.

“Day” means a calendar day, unless otherwise indicated.

“School day” means a day in which the schools of the District are in session.

“Complainant” means a person who has filed a complaint.

“Respondent” means a person or entity whose actions are the subject of a complaint.

**Compliance Officers**

The District designates the individual(s) identified below as the employee(s) responsible for coordinating the District's response to complaints and for complying with state and federal civil rights laws. The individual(s) shall receive and coordinate the investigation of complaints and ensure District compliance with the law.

Dana Clark  
Compliance Officer and Title IX Coordinator  
2020 Bonar Street, Room ???  
Berkeley, CA 94702  
(510) 486-9338  
danaclark@berkeley.net

The District Compliance Officer (DCO) may assign a designee to perform all or part of any investigation or complaint response. However, in no instance shall a designee be assigned to investigate a complaint if he/she/they are mentioned in the complaint, has a conflict of interest that would prohibit him/her/they from fairly investigating or resolving the complaint, or is not properly trained to investigate and resolve the complaint given the nature of the specific allegations in the complaint. Any complaint filed against or implicating a compliance officer may be filed with the Superintendent, who may review the complaint or assign a designee to do so.

The Superintendent or designee shall ensure that employees assigned to review and resolve complaints receive training and are knowledgeable about the policies, laws and programs at issue in the complaints to which they are assigned. Such employees shall receive training to support their resolution of the complaints, including training in applicable state and federal laws and regulations; processes for investigating and resolving complaints, including those involving alleged discrimination; standards for reaching decisions on complaints; trauma-informed intake skills; support for complainants during investigation; confidentiality; and appropriate remedial measures. Designated employees may have access to legal counsel as determined by the Superintendent or designee.

### **Deadline to Resolve Complaints**

All uniform complaints shall be reviewed and resolved within 60 calendar days of the DCO's receipt of the complaint. This deadline may be extended beyond 60 calendar days if the complainant agrees in writing to an extension.

### **Filing and Intake of Complaints**

Pursuant to BP 1311, unless otherwise permitted by law, complaints shall be filed only after attempts to resolve problems informally at the school site level have been unsuccessful. If a complainant has raised a concern about a practice at a particular school site with a site administrator (principal or vice-principal) and is dissatisfied with the response (or lack thereof), he or she may file a complaint at the District level pursuant to these regulations. One exception

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is that a complaint about a principal may be filed directly with the DCO without first raising it at the site level.

Complaints shall be filed no later than six months from the date the alleged violation occurred, or six months from the date the complainant first obtained knowledge of the alleged violation. Complaints filed after this time frame may be dismissed as untimely.

For complaints alleging unlawful discrimination or retaliation, the time for filing may be extended for up to 90 calendar days by the Superintendent or designee for good cause upon written request by the complainant setting forth the reasons for the extension.

The Superintendent or designee shall ensure that administrators and front office personnel are trained in the intake, confidentiality, and processing of formal complaints. Administrators and front office personnel should facilitate access to the complaint process by, for example:

- directing potential complainants to the section of the District website that describes the complaint process, or referring them to the DCO;
- directing potential complainants to appropriate forms, which are available at school sites as well as online and the District office;
- explaining to potential complainants that only complaints filed in writing (preferably on or attached to the proper District form) will be treated as complaints;
- if the potential complainant is unable to put the complaint in writing due to disability or language barriers or illiteracy, assisting the complainant in filing the complaint, including providing translation if necessary;
- informing those whose attempts to resolve problems informally at the school site level have been unsuccessful of their ability to file a complaint at the District level; and
- immediately, but no later than the close of business on the day after a complaint is filed, transmitting the complaint to the DCO.

Subsequent to receiving a complaint, the DCO or designee shall:

- log the complaint, including date of receipt, in a complaint case management system;
- assign the complaint a complaint tracking number;
- acknowledge receipt of the complaint, provide the complainant with the complaint tracking number, and explain the timeline for responding to the complaint;
- determine whether an immediate safety issue is raised in the complaint and if so, take all necessary interim steps to address a safety issue raised in the complaint;
- determine who will investigate the complaint; and
- notify all relevant parties involved that a complaint has been filed, and provide the complaint (redacted if necessary) to the respondent.

A complaint alleging district violation of applicable state or federal law or regulations governing adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs,

child nutrition programs, and special education programs may be filed by any individual, public agency, or organization.

Any complaint alleging noncompliance with law regarding the prohibition against requiring students to pay student fees, deposits, and charges or any requirement related to the LCAP may be filed anonymously if the complaint provides evidence, or information leading to evidence, to support an allegation of noncompliance.

### **Review and Resolution of Complaint**

The DCO will evaluate a complaint to determine whether it is timely, whether there has been an attempt to resolve the concern at the site level, and whether an investigation is warranted, and if so, what the investigation should entail. If the DCO determines that an investigation is warranted, the DCO or designee shall provide the complainant and the respondent (and/or his/her/their representatives) with an opportunity to present information relevant to the complaint.

The compliance officer or, if necessary, any appropriate administrator shall determine whether interim measures are necessary to ensure safety during and pending the results of an investigation. If interim measures are determined to be necessary, the compliance officer or the administrator shall consult with the Superintendent, the Superintendent's designee, or, if appropriate, the site principal to implement, if possible, one or more of the interim measures. The interim measures may remain in place until the compliance officer determines that they are no longer necessary or until the district issues its final written decision.

When conducting an investigation, the DCO or designee shall collect and review relevant documents (including electronic documents and audio or video evidence) related to the complaint; interview all relevant witnesses; and may visit any reasonably accessible relevant location.

Consistent with the relevant collective bargaining agreement, concerns from community members about a teacher shall be referred to the principal of the school site for an attempt to resolve the matter short of the filing of a Uniform Complaint. If any concern or complaint could affect the performance review of a teacher, a copy of the complaint, redacted as necessary, shall be provided to the teacher. If a formal Uniform Complaint is filed with the DCO against a teacher, a copy of the complaint shall be provided to the teacher. The DCO or designee may also meet privately with the teacher and representative, if desired, regarding the complaint.

Complaints will be handled with discretion and sensitivity to all parties. The DCO and any designee shall conduct each review, inquiry and investigation in an impartial manner that maintains the integrity of the process and protects the privacy of the parties except when disclosure is necessary to carry out the investigation, take subsequent corrective action, or conduct ongoing monitoring. To investigate a complaint alleging retaliation or unlawful discrimination, the DCO or designee shall interview the alleged victim(s), any alleged offenders, and other relevant witnesses privately, separately, and in a confidential manner.

Complainants, witnesses, and all other participants are protected by law from retaliation for their participation in the complaint investigation process.

The DCO will coordinate the response to formal complaints. District employees, including site administrators, may conduct or support the review and investigation of complaints. As necessary, legal counsel may also be retained to conduct or support an investigation. District employees may interview a student without the presence of a parent, guardian, or representative as part of an investigation.

A complainant's refusal to provide documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or engagement in any obstruction of the investigation may result in the dismissal of the complaint.

In accordance with law, the Superintendent or designee shall provide the DCO or designee with access to records and other information related to the allegation in the complaint and shall not in any way obstruct the investigation.

When a complaint alleging unlawful discrimination is filed anonymously, the DCO or designee shall pursue a review, investigation, resolution, or other response as appropriate, depending on the specificity and reliability of the information provided and the seriousness of the allegation.

The DCO/designee shall apply a “preponderance of the evidence” standard in determining the veracity of the factual allegations in a complaint. This standard is met if the allegation is more likely to be true than not.

The DCO or designee may discuss with the parties the possibility of using mediation or restorative conferencing to address and resolve the concerns articulated in the complaint, where the DCO determines that such alternative resolution processes may be appropriate. If the parties agree to mediation or a restorative process, the DCO or designee shall make arrangements for this process using an appropriately trained facilitator. The DCO or designee shall notify all parties that they have a right to end the alternative resolution process at any time, and that if any party refuses mediation or a restorative conference, it shall not proceed. If the mediation or restorative process does not resolve the problem, the DCO or designee shall proceed with the investigation of the complaint.

The use of mediation or restorative conferencing shall not extend the District’s timelines for responding to the complaint unless the complainant agrees in writing to an extension of time. If mediation or restorative conferencing is successful and the complaint is withdrawn, then the District will take the actions agreed to through the mediation or conferencing.

### **Final Written Decision**

The District will issue a decision based on the evidence. The District’s decision will be in writing and sent to the complainant within 60 days of the DCO’s receipt of the complaint, unless the

complainant agrees in writing to an extension of time. The decision shall be sent via email and/or via US Mail and shall be translated, if necessary, according to law and District practice.

In consultation with district legal counsel, information about the relevant part of a decision may be communicated to other parties who may be involved in implementing the decision or affected by the complaint, while seeking to protect the privacy of the parties. This notification shall be provided as soon as practical following notification of the decision to the complainant. For all complaints, the decision shall include:

1. Findings of fact based on the evidence gathered;
2. Conclusion(s) of law or policy;
3. Disposition of the complaint;
4. Rationale for such disposition;
5. Corrective action(s), if any are warranted;
6. Notice of the right to appeal and procedures for doing so.

### **Corrective Actions**

When a complaint is found to have merit, the DCO or designee shall adopt any appropriate corrective action permitted by law.

Appropriate corrective actions that focus on the school or District may include, but are not limited to: actions to reinforce District policies; training for faculty, staff, and students; revisions to District policies; school climate surveys; or other appropriate remedies.

Appropriate corrective actions that focus on the complainant may include, but are not limited to, some or all of the following, depending on the circumstances: counseling; academic support; health services; assignment of an escort to ensure that the complainant can move safely about campus; information about how to report other incidents, or retaliation for having filed a complaint; separation of the complainant and parties responsible for policy violations, provided the separation does not penalize the complainant; development of a safety plan; restorative justice; mediation; and/or follow-up inquiries to ensure that the conduct has stopped and there has been no retaliation.

Appropriate corrective actions that focus on a student found responsible for policy violations may include, but are not limited to, some or all of the following, depending on the circumstances: transfer from a class or school as permitted by law; parent/guardian conference; education regarding the impact of the conduct on others and/or regarding the underlying issues (for example, further training on sexual harassment); positive behavior support; referral to a student success team; counseling; denial of participation in extracurricular or co-curricular

activities or other privileges as permitted by law; no-contact orders; adherence to the terms of a safety plan; restorative justice; and/or disciplinary action, such as suspension or expulsion, as permitted by law, and in accordance with the District's discipline policies and processes.

The decision may also include follow-up procedures to prevent recurrence or retaliation and for reporting any subsequent problems.

If a complaint alleging noncompliance with the laws regarding student fees, deposits, and other charges or any requirement related to the LCAP is found to have merit, the District shall provide a remedy to all affected students and parents/guardians.

For complaints alleging noncompliance with the laws regarding student fees, such remedies, where applicable, shall include reasonable efforts to ensure full reimbursement to affected students and parents/guardians.

## **Appeals**

Within 15 calendar days of the receipt of the decision, a party to the complaint may appeal the DCO's determination to either the CDE or the Superintendent, depending on the nature of the underlying complaint (i.e., whether it is a statutory or non-statutory Uniform Complaint). The decision shall include an explanation of whether the complaint is a "statutory uniform complaint," in which case the complainant has the right to appeal to the California Department of Education (CDE), or whether it is a "non-statutory uniform complaint," in which case the complainant has the right to appeal to the Superintendent. If a complaint has both statutory uniform complaint elements and non-statutory uniform complaint elements, the decision shall explain that only the statutory uniform complaint elements may be appealed to the CDE, and the non-statutory elements may be appealed to the Superintendent.

For statutory uniform complaints, the decision shall contain an explanation of the complainant's right to appeal within 15 calendar days to the CDE and the procedures to be followed for initiating such an appeal. Appeals to the CDE regarding statutory uniform complaints must be in writing and must specify the basis for the appeal of the District's decision, i.e. what facts are incorrect and/or how the law was misapplied. The appeal must include copies of the complaint and the District's decision

For non-statutory uniform complaints, the decision shall contain an explanation of the complainant's right to appeal to the Superintendent within 15 calendar days of receiving the decision by notifying the DCO in writing and including a description of the basis for the appeal, as well as the specific remedy sought. Upon receipt of an appeal, the DCO shall log the appeal and forward it to the Superintendent. The appeal must identify one of the following two bases for the appeal:

- Occurrence of a serious procedural error that significantly impacted the resolution of the complaint (for example, substantiated bias, material deviation from established procedures, etc.); or

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- Discovery of specific, identified new evidence, unavailable during the original review or investigation, that could substantially impact the original finding or sanction.

The Superintendent or designee shall provide a written response to the appeal within 15 school days.

### **Privacy and Confidentiality**

The confidentiality of the parties involved and the integrity of the process shall be protected to the extent required by law in connection with the investigation of complaints.

Complainants shall be advised that while the District will make an effort to protect their privacy and confidentiality, investigation of their complaints may require disclosure of certain information to others. By filing a complaint, the complainant authorizes the District to investigate and make disclosures as may be reasonably necessary to the investigation and resolution of the complaint.

As appropriate for any complaint alleging discrimination, harassment, intimidation, or bullying, the Superintendent or designee may keep the identity of a complainant confidential to the extent that doing so does not obstruct the investigation of the complaint.

### **Reporting**

The Superintendent or designee shall report to the Governing Board annually regarding all uniform complaints filed. The annual report shall at a minimum include:

- i. The number of complaints filed during the reporting period;
- ii. A summary of issues raised in the complaints for the reporting period;
- iii. A description of actions taken, if any, in response to the filed complaints; and
- iv. Whether appeals were filed to the CDE or the Superintendent, and if so, the outcomes of those appeals.

### **Posting and Notification**

The district's uniform complaint policy (BP 1311), this administrative regulation (AR 1311), the associated complaint form, and the means of filing a complaint shall be publicized to students, parents/guardians, employees, and the general public.

The Superintendent or designee shall annually provide written notification of the District's uniform complaint procedures to students, employees, parents/guardians, the district advisory committee, school advisory committees, appropriate private school officials or representatives,

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and other interested parties. This shall be accomplished through posting on the District's website as well as publication in the District's parent-student handbooks.

If 15 percent or more of students enrolled in a particular school speak a single primary language other than English, the district's policy, regulation, forms, and notices concerning the uniform complaint procedures shall be translated into that language, in accordance with Education Code [234.1](#) and [48985](#). In all instances, the District shall ensure meaningful access to uniform complaint information for parents/guardians with limited English proficiency.

In addition to notice of the procedures for filing a complaint with the District, the District shall post information about filing a complaint of discrimination directly with the U.S. Department of Education Office of Civil Rights.

Regulation BERKELEY UNIFIED SCHOOL DISTRICT

approved: XXXX Berkeley, California