

Berkeley USD
Administrative Regulation
Uniform Complaint Procedures

AR 1312.3
Community Relations

Except as the Governing Board may otherwise specifically provide in other district policies, these general uniform complaint procedures (UCP) shall be used to investigate and resolve only the complaints specified in BP 1312.3.

(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 1312.2 - Complaints Concerning Instructional Materials)
(cf. 1312.4 - Williams Uniform Complaint Procedures)

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) also serve as the compliance officer(s) specified in AR 5145.3 - Nondiscrimination/Harassment and the Title IX Coordinator specified in AR 5145.7 - Sexual Harassment. The individual(s) shall receive and coordinate the investigation of complaints and shall ensure district compliance with law.

(cf. 5145.3 - Nondiscrimination/Harassment)
(cf. 5145.7 - Sexual Harassment)

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The compliance officer who receives a complaint may assign a designee to perform all or part of the required investigation, which shall be prompt and impartial. The compliance officer shall promptly notify the complainant who is assigned to investigate the complaint.

In no instance shall a designee be assigned to investigate a complaint if he/she is mentioned in the complaint, has a conflict of interest that would prohibit him/her 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 or designee.

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

Interim Measures

The compliance officer or, if necessary, any appropriate administrator shall determine whether interim measures are necessary 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, whichever occurs first.

Notifications

The district's UCP policy and administrative regulation shall be posted widely in all district schools and offices, including staff lounges and student government meeting rooms. (Education Code 234.1)

The Superintendent or designee shall annually provide written notification of the district's UCP to students, employees, parents/guardians, the district advisory committee, school advisory committees, appropriate private school officials or representatives, and other interested parties. (Education Code 262.3, 49013, 52075; 5 CCR 4622)

(cf. 0420 - School Plans/Site Councils)
(cf. 1220 - Citizen Advisory Committees)
(cf. 5145.6 - Parental Notifications)

The Superintendent or designee shall ensure that all students and parents/guardians, including students and parents/guardians with

limited English proficiency, have access to the relevant information provided in the district's policy, regulation, forms, and notices concerning the UCP.

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

The notice shall:

1. Identify the person(s), position(s), or unit(s) responsible for receiving complaints, including contact telephone number and email address.
2. Advise the complainant of any civil law remedies that may be available to him/her under state or federal discrimination laws, if applicable
3. Advise the complainant of the appeal process, including, if applicable, the complainant's right to take a complaint directly to the California Department of Education (CDE) or to pursue remedies before civil courts or other public agencies, such as the U.S. Department of Education's Office for Civil Rights (OCR) in cases involving unlawful discrimination.
4. Include statements that:
 - a. The district has the primary responsibility to ensure compliance with applicable state and federal laws and regulations governing educational programs.
 - b. Federal and state laws and regulations prohibit the following:
 - i. 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
 - ii. unlawful discriminatory activity, within the jurisdiction of the District, by district staff, district students, or other district representatives 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

iii. violation of the prohibition against requiring students to pay fees, deposits, or other charges for participation in educational activities

iv. violation of legal requirements related to the implementation of the local control and accountability plan

v. 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. The complaint review shall be completed within 30 calendar days of the district's receipt of the complaint, although this deadline may be extended an additional 30 calendar days with written approval of the Superintendent. This deadline may be extended beyond a total of 60 calendar days from the date of receipt of the complaint if the complainant agrees in writing to an extension of the timeline.

d. A complaint alleging retaliation or unlawful discrimination must be filed not later than six months from the date it occurred, or six months from the date the complainant first obtained knowledge of the facts of the alleged retaliation or unlawful discrimination. 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.

(cf. 0460 - Local Control and Accountability Plan)

e. The complainant has a right to appeal the district's decision to the CDE by filing a written appeal within 15 calendar days of receiving the district's decision.

f. The appeal to the CDE must include a copy of the complaint filed with the district and a copy of the district's decision.

g. Copies of the district's UCP are available free of charge.

District Responsibilities

All UCP-related complaints shall be investigated and resolved within 30 calendar days of the district's receipt of the complaint, although this deadline may be extended an additional 30 calendar days with written approval of the Superintendent. This deadline may be extended beyond a total of 60 calendar days if the complainant agrees in writing to an extension. (5 CCR 4631)

The compliance officer shall maintain a record of each complaint and subsequent related actions, including steps taken during the investigation and all information required for compliance with 5 CCR 4631 and 4633.

All parties involved in the allegations shall be notified when a complaint is filed and when a decision or ruling is made. For complaints or allegations of retaliation or unlawful discrimination, the compliance officer and any designee shall conduct each investigation in a manner that maintains the integrity of the process and protects the confidentiality of the parties except when disclosure is necessary to carry out the investigation, take subsequent corrective action, conduct ongoing monitoring. (5 CCR 4630, 4964)

Filing of Complaint

The complaint shall be presented to the compliance officer who shall maintain a log of complaints received, providing each with a code number and a date stamp.

All complaints shall be filed in accordance with the following:

1. 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. (5 CCR 4630)
2. 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. (Education Code 49013, 52075)
3. A complaint alleging unlawful discrimination may be filed only by a person who alleges that he/she personally suffered retaliation or

unlawful discrimination or by a person who believes that an individual or any specific class of individuals has been subjected to it. The complaint shall be initiated no later than six months from the date when the alleged retaliation or unlawful discrimination occurred, or six months from the date when the complainant first obtained knowledge of the facts of the alleged retaliation or unlawful discrimination. 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. (5 CCR 4630)

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

5. When the complainant or alleged victim of unlawful discrimination requests confidentiality, the compliance officer or designee shall inform him/her that the request may limit the district's ability to investigate or resolve the conduct or take other necessary action. When honoring a request for confidentiality, the district will nevertheless take all reasonable steps to respond to and resolve the complaint consistent with the request and take all reasonable steps to protect the safety and well-being of students.

6. If a complainant is unable to put a complaint in writing due to conditions such as a disability or illiteracy, district staff shall assist him/her in the filing of the complaint. If a complainant requires translation, district staff shall assist him/her in the filing of the complaint. Notwithstanding any timeline in this policy, a complaint shall not be deemed to be filed late because of the need for such accommodations. (5 CCR 4600)

Mediation and Restorative Conferencing

After receipt of the complaint, the compliance officer or designee may informally discuss with all the parties the possibility of using mediation or restorative conferencing, which shall be conducted by an appropriately trained facilitator. Due to the implicit power imbalance between adults and students, ADR may only be offered to resolve complaints that involve both students and adults on a voluntary basis and with the determination by the Compliance Officer that ADR would be appropriate. Neither mediation nor restorative conferencing shall be offered or used to resolve any complaint involving an allegation of a sexual assault or a sexual battery, or where there is a reasonable risk that a party to the mediation or restorative conferencing would feel compelled to participate.

Additionally, the use of mediation or restorative conferencing to resolve any complaint of sexual harassment requires the approval of the Title IX Coordinator. If the parties agree to mediation or a restorative conference, the compliance officer or designee shall make all arrangements for this process.

Before initiating the mediation or restorative conference of a complaint alleging retaliation or unlawful discrimination, the compliance officer or designee shall ensure that all parties agree to make the facilitator a party to relevant confidential information. The compliance officer or designee shall also notify all parties of the right to end the informal process at any time and that, if any party refuses mediation or restorative conference, such refusal will not affect the conduct or outcome of the investigation or the steps the district may take to offer appropriate protections to the complainant before or after the investigation is completed.

If the mediation or restorative conference process does not resolve the problem within the parameters of law, the compliance officer or designee shall proceed with his/her investigation of the complaint.

The use of mediation or restorative conferencing shall not extend the district's timelines for investigating and resolving the complaint unless the complainant agrees in writing to such an extension of time. If mediation or restorative conference is successful and the complaint is withdrawn, then the district shall take only the actions agreed to through the mediation. If mediation or restorative conferencing is unsuccessful, the district shall then continue with subsequent steps specified in this administrative regulation.

Investigation of Complaint

Within 1 business day of receiving the complaint, the compliance officer or designee shall determine whether an immediate safety issue is raised in the complaint. If the compliance officer or designee determines that an immediate safety issue is raised in the complaint, the compliance officer shall take all necessary interim steps to address the safety issue raised in the complaint.

Within 5 business days after the compliance officer receives the complaint, the compliance officer shall determine who will investigate the complaint and shall notify the complainant that the complaint has been received. When feasible, the compliance officer or designee shall begin an investigation into the complaint within 5 business days after the compliance officer receives the complaint, but in all instances shall begin an investigation into the complaint within 10 business days after the compliance officer receives the complaint.

Upon initiating the investigation, the compliance officer or designee shall provide the complainant and/or his/her representative with the opportunity to present the information contained in complaint to the compliance officer or designee and shall notify the complainant and/or his/her representative of the opportunity to present the compliance officer or designee with any evidence, or information leading to evidence, to support the allegations in the complaint. Such evidence or information may be presented at any time during the investigation.

In conducting the investigation, the compliance officer or designee shall collect all available documents and review all available hardcopy or electronic records, notes, or statements related to the complaint, including any additional evidence or information received from the parties during the course of the investigation, shall individually interview all available witnesses with information pertinent to the complaint, and may visit any reasonably accessible location where the relevant actions are alleged to have taken place. To investigate a complaint alleging retaliation or unlawful discrimination, the compliance officer or designee shall interview the alleged victim(s), any alleged offenders, and other relevant witnesses privately, separately, and in a confidential manner. As necessary, additional staff or legal counsel may conduct or support the investigation.

The compliance officer or designee may interview a student without the presence of a parent, guardian, or representative as part of an investigation. If this occurs, the compliance office or designee shall notify the parent or guardian within 24 hours of the interview by phone and email that the interview occurred unless the student has requested that the parent/legal guardian not be contacted and/or the Compliance Officer (not the designee) has determined that not contacting the parent/legal guardian would be appropriate and compliant with law.

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 other obstruction of the investigation may result in the dismissal of the complaint because of a lack of evidence to support the allegation. (5 CCR 4631)

In accordance with law, the district shall provide the compliance officer 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. Failure or refusal of the district to cooperate in the investigation may result in a finding based on evidence collected that a violation has occurred and in the imposition of a remedy in favor of the complainant. (5 CCR 4631)

The complaint shall be decided using 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.

Report of Findings

Unless extended by written agreement with the complainant, the compliance officer shall prepare and send to the complainant a written report of the district's investigation and decision, as described in the section "Final Written Decision" below, within 60 calendar days of the district's receipt of the complaint. (5 CCR 4631)

The Superintendent shall notify the Board of the Final Written Decision within 5 business days of when the complainant is notified of the Final Written Decision.

Final Written Decision

The district's decision on how it will resolve the complaint shall be in writing and shall be sent to the complainant and the accused. The decision shall be sent via email or, if no email address is available, via US Mail next day delivery. (5 CCR 4631)

In consultation with district legal counsel, information about the relevant part of a decision may be communicated to a victim who is not the complainant and to other parties that may be involved in implementing the decision or affected by the complaint, as long as the privacy of the parties is protected.

If the complaint involves a limited-English-proficient student or parent/guardian and the student involved attends a school at which 15 percent or more of the students speak a single primary language other than English, then the decision shall also be translated into that language.

In other all other instances, the district shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

For all complaints, the decision shall include: (5 CCR 4631)

1. The findings of fact based on the evidence gathered. In reaching a factual determination, the following factors may be taken into account:

- a. Statements made by any witnesses
- b. The relative credibility of the individuals involved
- c. How the complaining individual reacted to the incident
- d. Any documentary or other evidence relating to the alleged conduct
- e. Past instances of similar conduct by any alleged offenders
- f. Past false allegations made by the complainant
2. The conclusion(s) of law
3. Disposition of the complaint
4. Rationale for such disposition

For complaints of retaliation or unlawful discrimination the disposition of the complaint shall include a determination for each allegation as to whether retaliation or unlawful discrimination has occurred.

The determination of whether a hostile environment exists may involve consideration of the following:

- a. How the misconduct affected one or more students' education
- b. The type, frequency, and duration of the misconduct
- c. The relationship between the alleged victim(s) and offender(s)
- d. The number of persons engaged in the conduct and at whom the conduct was directed
- e. The size of the school, location of the incidents, and context in which they occurred
- f. Other incidents at the school involving different individuals
5. Corrective action(s), including any actions that have been taken or will be taken to address the allegations in the complaint and including, with respect to a student fees complaint, a remedy that comports with Education Code 49013 and 5 CCR 4600

For complaints of unlawful discrimination, the notice may, as required by law, include:

- a. The corrective actions imposed on the individual found to have engaged in the conduct that relate directly to the subject of the complaint
 - b. Individual remedies offered or provided to the subject of the complaint
 - c. Systemic measures the school has taken to eliminate a hostile environment and prevent recurrence
6. Notice of the complainant's right to appeal the district's decision within 15 calendar days to the CDE and procedures to be followed for initiating such an appeal
7. A means to contact the compliance officer with questions regarding the implementation of the decision, with concerns that the corrective action(s) are not being followed, or with information regarding any recurrence or retaliation

For complaints alleging unlawful discrimination based on state law, the decision shall also include a notice to the complainant that:

1. He/she may pursue available civil law remedies outside of the district's complaint procedures, including seeking assistance from mediation centers or public/private interest attorneys, 60 calendar days after the filing of an appeal with the CDE. (Education Code 262.3)
2. The 60 calendar day moratorium does not apply to complaints seeking injunctive relief in state courts or to discrimination complaints based on federal law. (Education Code 262.3)
3. Complaints alleging unlawful discrimination may also be filed with the U.S. Department of Education, Office for Civil Rights at www.ed.gov/ocr within 180 calendar days of the alleged unlawful discrimination.

Corrective Actions

When a complaint is found to have merit, the compliance officer shall adopt any appropriate corrective action permitted by law. Appropriate corrective actions that focus on the larger school or district environment may include, but are not limited to, actions to reinforce district policies, training for faculty, staff, and students, updates to school policies, or school climate surveys.

For complaints involving retaliation or unlawful discrimination, appropriate corrective actions that focus on the victim may include, but are not limited to, the following:

1. Counseling
2. Academic support
3. Health services
4. Assignment of an escort to allow the victim to move safely about campus
5. Information regarding available resources and how to report similar incidents or retaliation
6. Separation of the victim from any other individuals involved, provided the separation does not penalize the victim
7. Restorative justice
8. Follow-up inquiries to ensure that the conduct has stopped and there has been no retaliation
9. Determination of whether any past actions of the victim that resulted in discipline were related to the treatment the victim received and described in the complaint

For complaints involving retaliation or unlawful discrimination, appropriate corrective actions that focus on a student offender may include, but are not limited to, the following:

1. Transfer from a class or school as permitted by law
2. Parent/guardian conference
3. Education regarding the impact of the conduct on others
4. Positive behavior support
5. Referral to a student success team
6. Denial of participation in extracurricular or co-curricular activities or other privileges as permitted by law

7. Disciplinary action, such as suspension or expulsion, as permitted by law

The district may also consider training and other interventions to ensure that students, staff, and parents/guardians understand the types of behavior that constitute retaliation or unlawful discrimination that the district does not tolerate it, and how to recognize, report, and respond to it.

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. (Education Code 49013, 52075)

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. (Education Code 49013; 5 CCR 4600)

Appeals to the California Department of Education

Upon notification by the CDE that the complainant has appealed the district's decision, the Superintendent or designee shall forward the following documents to the CDE: (5 CCR 4633)

1. A copy of the original complaint
2. A copy of the written decision
3. A summary of the nature and extent of the investigation conducted by the district, if not covered by the decision
4. A copy of the investigation file including, but not limited to, all notes, interviews, and documents submitted by the parties and gathered by the compliance officer or designee
5. A report of any action taken to resolve the complaint
6. A copy of the district's uniform complaint procedures
7. Other relevant information requested by the CDE

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