

# CSBA Sample Board Policy

Community Relations

BP 1312.3(a)

## UNIFORM COMPLAINT PROCEDURES

Note: To address prohibited discrimination and violations of state and federal laws governing educational programs, 5 CCR 4621 **mandates** districts to adopt uniform complaint procedures (UCP) consistent with the state's complaint procedures specified in 5 CCR 4600-4670. **Additionally, Education Code 52075 mandates districts to adopt policies and procedures implementing the use of UCP to investigate and resolve complaints alleging noncompliance with requirements related to the local control and accountability plan, and Education Code 8212, as renumbered by AB 131 (Ch. 116, Statutes of 2021) mandates districts to adopt policies and procedures for resolving complaints regarding specified health and safety issues in license-exempt California State Preschool Programs (CSPP). Furthermore, a number of federal civil rights statutes and their implementing regulations mandate districts to adopt policies and procedures for the prompt and equitable resolution of complaints of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying). For example, districts are mandated pursuant to 28 CFR 35.107 to adopt policy and procedures to address discrimination on the basis of disability, while districts that receive federal financial assistance are mandated pursuant to 34 CFR 106.8 and 34 CFR 110.25 to adopt policies and procedures to address discrimination on the basis of sex and age. See the section "~~Complaints Subject to UCP~~" below for **The following policy contains** a list of programs and activities subject to these procedures pursuant to state law; ~~See the section "Complaints Subject to UCP", below.~~**

The California Department of Education (CDE) monitors district programs and operations for compliance with these requirements through its Federal Program Monitoring (FPM) process. The FPM consists of a review of (1) written district policies and procedures for required statements, including prohibition of discrimination (such as discriminatory harassment, intimidation, and bullying) against students pursuant to Education Code 234.1; and (2) records of required activities, such as annual notification provided to students, parents/guardians, employees, and other school community members.

The U.S. Department of Education's Office for Civil Rights (OCR) enforces federal anti-discrimination laws, including Title II of the Americans with Disabilities Act (42 USC 12101-12213), Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000e-17), Title IX of the Education Amendments Act of 1972 (20 USC 1681-1688), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and the Age Discrimination Act of 1975 (42 USC 6101-6107). Whether a complaint of sexual harassment is addressed through the UCP or the federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, is dependent on whether the alleged conduct meets the more stringent federal definition or the state definition of sexual harassment. See the **section "Non-UCP Complaints" below, the** accompanying administrative regulation, BP/AR **5145.7 5147** - Sexual Harassment, and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

The following policy and accompanying administrative regulation reflect all components required by law, 5 CCR 4600-4670, as amended by Register 2020, No. 21, and the **2021-22 2020-21** FPM instrument. Additional details provided herein may help districts during a compliance check by CDE or in the event that a CDE or OCR investigation occurs.

The Governing Board recognizes that the district has the primary responsibility to ensure compliance with applicable state and federal laws and regulations governing educational programs. The Board encourages **the** early resolution of complaints whenever possible. To

## UNIFORM COMPLAINT PROCEDURES (continued)

resolve complaints which may require a more formal process, the Board adopts the uniform system of complaint processes specified in 5 CCR 4600-4670 and the accompanying administrative regulation.

### Complaints Subject to UCP

Note: The FPM process includes a review of a district's policies and procedures to determine whether all district programs and activities that are subject to the UCP, as listed in the FPM instrument, are addressed. Items #1-23 list all programs and activities identified in the FPM instrument. According to CDE, the district's policy must list all such programs and activities and, at the district's discretion, may add a paragraph below the list stating the UCP programs and activities that are implemented in the district.

For further information regarding requirements for the following programs and activities, see the **law cited and/or** related CSBA policy and/or administrative regulation.

The district's uniform complaint procedures (UCP) shall be used to investigate and resolve complaints regarding the following programs and activities:

1. Accommodations for pregnant and parenting students (Education Code 46015)  
*(cf. 5146 - Married/Pregnant/Parenting Students)*
2. Adult education programs (Education Code 8500-8538, 52334.7, 52500-52617)  
*(cf. 6200 - Adult Education)*
3. After School Education and Safety programs (Education Code 8482-8484.65)  
*(cf. 5148.2 - Before/After School Programs)*
4. Agricultural career technical education (Education Code 52460-52462)
5. Career technical and technical education and career technical and technical training programs (Education Code 52300-52462)  
*(cf. 6178 - Career Technical Education)*  
*(cf. 6178.1 - Work-Based Learning)*
6. Child care and development programs (Education Code 8200-**8488 8498**)  
*(cf. 5148 - Child Care and Development)*
7. Compensatory education (Education Code 54400)  
*(cf. 6171 - Title I Programs)*

**UNIFORM COMPLAINT PROCEDURES** (continued)

8. Consolidated categorical aid programs (Education Code 33315; 34 CFR 299.10-299.12)
9. Course periods without educational content, ~~when students in grades 9-12 are assigned to such courses more than one week in any semester or in a course the student has previously satisfactorily completed, unless specified conditions are met~~ (Education Code 51228.1-51228.3)

*(cf. 6152 - Class Assignment)*

10. Discrimination, harassment, intimidation, or bullying in district programs and activities, including in those programs or activities funded directly by or that receive or benefit from any state financial assistance, based on **a the** person's actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, immigration status, ethnic group identification, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, 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 the person's association with a person or group with one or more of these actual or perceived characteristics (5 CCR 4610)

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*

*(cf. 5145.3 - Nondiscrimination/Harassment)*

*(cf. 5145.7 - Sexual Harassment)*

*(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)*

11. Educational and graduation requirements for students in foster care, homeless students, students from military families, **and** students formerly in a juvenile court school, ~~migrant students, and immigrant students participating in a newcomer program~~ (Education Code 48645.7, 48853, 48853.5, 49069.5, 51225.1, 51225.2)

*(cf. 6173 - Education for Homeless Children)*

*(cf. 6173.1 - Education for Foster Youth)*

*(cf. 6173.2 - Education of Children of Military Families)*

*(cf. 6173.3 - Education for Juvenile Court School Students)*

12. Every Student Succeeds Act (Education Code 52059.5; 20 USC 6301 et seq.)

13. Local control and accountability plan (Education Code 52075)

*(cf. 0460 - Local Control and Accountability Plan)*

14. Migrant education (Education Code 54440-54445)

*(cf. 6175 - Migrant Education Program)*

**UNIFORM COMPLAINT PROCEDURES** (continued)

15. Physical education instructional minutes (Education Code 51210, 51222, 51223)

*(cf. 6142.7 - Physical Education and Activity)*

16. Student fees (Education Code 49010-49013)

*(cf. 3260 - Fees and Charges)*

17. Reasonable accommodations to a lactating student (Education Code 222)

18. Regional occupational centers and programs (Education Code 52300-52334.7)

*(cf. 6178.2 - Regional Occupational Center/Program)*

19. School plans for student achievement as required for the consolidated application for specified federal and/or state categorical funding (Education Code 64001)

*(cf. 0420 - School Plans/Site Councils)*

20. School safety plans (Education Code 32280-32289)

*(cf. 0450 - Comprehensive Safety Plan)*

21. School site councils as required for the consolidated application for specified federal and/or state categorical funding (Education Code 65000)

*(cf. 0420 - School Plans/Site Councils)*

22. State preschool programs (Education Code ~~8207-8225~~ ~~8235-8239.1~~)

*(cf. 5148.3 - Preschool/Early Childhood Education)*

Note: Pursuant to Education Code ~~8235.5~~ **8212**, as renumbered by **AB 131**, and CDE's **2021-22** ~~2020-21~~ FPM instrument, the district must use the UCP, with modifications as necessary, to resolve complaints alleging deficiencies **related to health and safety issues** in license-exempt **CSPPs California State Preschool Programs related to health and safety issues**.

Pursuant to 5 CCR 4610, such complaints must be addressed through the procedures described in 5 CCR 4690-4694, as added by Register 2020, No. 21. See the section "Health and Safety Complaints in License-Exempt Preschool Programs" in the accompanying administrative regulations.

23. State preschool health and safety issues in license-exempt programs (Education Code **8212** ~~8235.5~~)

## UNIFORM COMPLAINT PROCEDURES (continued)

Note: 5 CCR 4621 **mandates** that district policy ensure that complainants are protected from retaliation as specified in item #24 below.

24. 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
25. Any other state or federal educational program the Superintendent of Public Instruction or designee deems appropriate

Note: 5 CCR 4631 authorizes the district to utilize alternative dispute resolution (ADR) methods, including mediation, to resolve complaints before initiating a formal investigation. However, the district should ensure that any ADR it uses, particularly "in-person ADR," is appropriate for the particular situation. For example, in some instances (e.g., sexual assault), face-to-face mediation should not be used, even if all parties voluntarily agree, given the risk that a student might feel pressured to "voluntarily" agree to it. **Districts may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student; see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.**

The following **optional** paragraph provides for a neutral mediator and should be revised to reflect district practice.

The Board recognizes that alternative dispute resolution (ADR) can, depending on the nature of the allegations, offer a process for resolving a complaint in a manner that is acceptable to all parties. An ADR process such as mediation may be offered to resolve complaints that involve more than one student and no adult. However, mediation shall not be offered or used to resolve any complaint involving sexual assault or where there is a reasonable risk that a party to the mediation would feel compelled to participate. The Superintendent or designee shall ensure that the use of ADR is consistent with state and federal laws and regulations.

Note: The following paragraph is **mandated** pursuant to 5 CCR 4621. Appropriate disclosure will vary in each case depending on the facts and circumstances.

The district shall protect all complainants from retaliation. In investigating complaints, the confidentiality of the parties involved shall be protected as required by law. For any complaint alleging retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the Superintendent or designee shall keep the identity of the complainant, and/or the subject of the complaint if different from the complainant, confidential when appropriate and as long as the integrity of the complaint process is maintained.

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*  
*(cf. 5125 - Student Records)*  
*(cf. 9011 - Disclosure of Confidential/Privileged Information)*

## UNIFORM COMPLAINT PROCEDURES (continued)

When an allegation that is not subject to UCP is included in a UCP complaint, the district shall refer the non-UCP allegation to the appropriate staff or agency and shall investigate and, if appropriate, resolve the UCP-related allegation(s) through the district's UCP.

The Superintendent or designee shall provide training to district staff to ensure awareness and knowledge of current law and requirements related to UCP, including the steps and timelines specified in this policy and the accompanying administrative regulation.

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

Note: It is important to maintain records of all UCP complaints and the investigations of those complaints. If the district is investigated by OCR or CDE, these are important documents in demonstrating that the district has complied with federal law, state law, and its own policies and regulations.

The Superintendent or designee 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.

*(cf. 3580 - District Records)*

### Non-UCP Complaints

The following complaints shall not be subject to the district's UCP but shall be investigated and resolved by the specified agency or through an alternative process:

1. Any complaint alleging child abuse or neglect shall be referred to the County Department of Social Services Protective Services Division or the appropriate law enforcement agency. (5 CCR 4611)

*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

2. Any complaint alleging health and safety violations by a child development program shall, for licensed facilities, be referred to Department of Social Services. (5 CCR 4611)
3. **Any complaint alleging that a student, while in an education program or activity in which the district exercises substantial control over the context and respondent, was subjected to sexual harassment as defined in 34 CFR 106.30 shall be addressed through the federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as specified in AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.**

**UNIFORM COMPLAINT PROCEDURES** (continued)

Note: Complaints of employment discrimination are not subject to the UCP. Instead, pursuant to 2 CCR 11023, the district must establish an impartial and prompt process for addressing such complaints. In addition, 5 CCR 4611 requires that employment discrimination complaints be referred to the Department of Fair Employment and Housing (DFEH). See AR 4030 - Nondiscrimination in Employment for applicable complaint procedures.

43. Any complaint alleging employment discrimination or harassment shall be investigated and resolved by the district in accordance with the procedures specified in AR 4030 - Nondiscrimination in Employment, including the right to file the complaint with the California Department of Fair Employment and Housing.

Note: 5 CCR 4610, as amended by Register 2020, No. 21, limits the applicability of the UCP for complaints regarding special education and child nutrition, as provided in ~~items #4-6~~ **Items #5-7** below.

54. Any complaint alleging a violation of a state or federal law or regulation related to special education, a settlement agreement related to the provision of a free appropriate public education (FAPE), ~~or failure or refusal to implement~~ a due process hearing order **to which the district is subject, or a physical safety concern that interferes with the district's provision of FAPE** shall be submitted to the California Department of Education (CDE) in accordance with AR 6159.1 - Procedural Safeguards and Complaints for Special Education. (5 CCR 3200-3205)

*(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)*

65. Any complaint alleging noncompliance of the district's food service program with laws regarding meal counting and claiming, reimbursable meals, eligibility of children or adults, or use of cafeteria funds and allowable expenses shall be filed with or referred to CDE in accordance with BP 3555 - Nutrition Program Compliance. (5 CCR 15580-15584)
76. Any allegation of discrimination based on race, color, national origin, sex, age, or disability in the district's food service program shall be filed with or referred to the U.S. Department of Agriculture in accordance with BP 3555 - Nutrition Program Compliance. (5 CCR 15582)

Note: Education Code 35186 requires the district to use UCP, with modifications, to investigate and resolve complaints related to the issues stated in the following paragraph (i.e., "Williams complaints"). Because Education Code 35186 sets forth different timelines for investigation and resolution of these kinds of complaints than the timelines specified in law for other uniform complaints, CDE has created a separate uniform complaint process for the Williams complaints. See AR 1312.4 - Williams Uniform Complaint Procedures for the separate procedure.

87. Any complaint related to sufficiency of textbooks or instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of

**UNIFORM COMPLAINT PROCEDURES** (continued)

students or staff, or teacher vacancies and misassignments shall be investigated and resolved in accordance with AR 1312.4 - Williams Uniform Complaint Procedures. (Education Code 35186)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

*Legal Reference:*

EDUCATION CODE

200-262.4 Prohibition of discrimination

8200-8488 8498 Child care and development programs

8500-8538 Adult basic education

18100-18203 School libraries

32280-32289.5 School safety plan, uniform complaint procedures

35186 Williams uniform complaint procedures

46015 Parental leave for students

48645.7 Juvenile court schools

48853-48853.5 Foster youth

48985 Notices in language other than English

49010-49014 Student fees

49060-49079 Student records, especially:

49069.5 Records of foster youth

49490-49590 Child nutrition programs

49701 Interstate Compact on Educational Opportunity for Military Children

51210 Courses of study grades 1-6

51222 Physical education, secondary schools

51223 Physical education, elementary schools

51225.1-51225.2 Foster youth, homeless children, former juvenile court school students, military-connected students, migrant students, and newly arrived immigrant students; course credits; graduation requirements

51226-51226.1 Career technical education

51228.1-51228.3 Course periods without educational content

52059.5 Statewide system of support

52060-52077 Local control and accountability plan, especially:

52075 Complaint for lack of compliance with local control and accountability plan requirements

52300-52462 Career technical education

52500-52617 52616.24 Adult schools

54400-54425 Compensatory education programs

54440-54445 Migrant education

54460-54529 Compensatory education programs

59000-59300 Special schools and centers

64000-64001 Consolidated application process; school plan for student achievement

65000-65001 School site councils

GOVERNMENT CODE

11135 Nondiscrimination in programs or activities funded by state

12900-12996 Fair Employment and Housing Act

*Legal Reference continued: (see next page)*

**UNIFORM COMPLAINT PROCEDURES (continued)***Legal Reference: (continued)*HEALTH AND SAFETY CODE

1596.792 California Child Day Care Act; general provisions and definitions

1596.7925 California Child Day Care Act; health and safety regulations

PENAL CODE

422.55 Hate crime; definition

422.6 Interference with constitutional right or privilege

CODE OF REGULATIONS, TITLE 2

11023 Harassment and discrimination prevention and correction

CODE OF REGULATIONS, TITLE 5

3200-3205 Special education compliance complaints

4600-4670 Uniform complaint procedures

4680-4687 Williams uniform complaint procedures

4690-4694 Complaints regarding health and safety issues in license-exempt preschool programs

4900-4965 Nondiscrimination in elementary and secondary education programs

15580-15584 Child nutrition programs complaint procedures

UNITED STATES CODE, TITLE 20

1221 Application of laws

1232g Family Educational Rights and Privacy Act

1681-1688 Title IX of the Education Amendments of 1972

6301-6576 Title I Improving the Academic Achievement of the Disadvantaged

6801-7014 Title III language instruction for limited English proficient English Learners and immigrant students

UNITED STATES CODE, TITLE 29

794 Section 504 of Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

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

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

6101-6107 Age Discrimination Act of 1975

11431-11435 McKinney-Vento Homeless Assistance Act

12101-12213 Title II equal opportunity for individuals with disabilities

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 Family Educational Rights and Privacy Act

100.3 Prohibition of discrimination on basis of race, color or national origin

104.7 Designation of responsible employee for Section 504

106.1-106.82 Nondiscrimination on the basis of sex in education programs, especially:

106.8 Designation of responsible employee and adoption of grievance procedures for Title IX

106.9 Notification of nondiscrimination on basis of sex

106.30 Definitions

106.44 Response to notice of sexual harassment

106.45 Title IX sexual harassment complaint procedures

110.25 Notification of nondiscrimination on the basis of age

*Management Resources: (see next page)*

## UNIFORM COMPLAINT PROCEDURES (continued)

### Management Resources:

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Sample UCP Board Policies and Procedures

Uniform Complaint Procedure 2021-22 2020-21 Program Instrument

Sample UCP Board Policies and Procedures

#### U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Questions and Answers on the Title IX Regulations on Sexual Harassment, July 2021

Part I: Questions and Answers Regarding the Department's Title IX Regulations, January 2021

Dear Colleague Letter, September 22, 2017

Dear Colleague Letter: Title IX Coordinators, April 2015

Dear Colleague Letter: Responding to Bullying of Students with Disabilities, October 2014

Dear Colleague Letter: Harassment and Bullying, October 2010

#### U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

#### U.S. DEPARTMENT OF JUSTICE PUBLICATIONS

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 2007 2002

#### WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

California Department of Fair Employment and Housing: <https://www.dfeh.ca.gov>

California Department of Social Services: <https://www.cdss.ca.gov>

Student Privacy Policy Office: <http://www2.ed.gov/about/offices/list/opepd/sppo>

U.S. Department of Agriculture: <https://www.usda.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/ocr>

U.S. Department of Justice: <http://www.justice.gov>

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# CSBA Sample Administrative Regulation

Community Relations

AR 1312.3(a)

## UNIFORM COMPLAINT PROCEDURES

Note: 5 CCR 4621 **mandates** that the district's uniform complaint procedures (UCP) be consistent with the procedures of 5 CCR 4600-4670. Additionally, Education Code 52075 **mandates** districts to adopt policies and procedures implementing the use of UCP to investigate and resolve complaints alleging noncompliance with requirements related to the local control and accountability plan (LCAP), and Education Code **8235.5 8212, as renumbered by AB 131 (Ch. 116, Statutes of 2021)** **mandates** districts to adopt policies and procedures for resolving complaints regarding specified health and safety issues in license-exempt California State Preschool Programs (CSPP). Furthermore, a number of federal civil rights statutes and their implementing regulations **mandate** districts to adopt policies and procedures for the prompt and equitable resolution of complaints of unlawful discrimination, harassment, intimidation, or bullying. For example, all districts are **mandated** pursuant to 28 CFR 35.107 to adopt policy and procedures to address discrimination on the basis of disability, while districts that receive federal financial assistance are **mandated** pursuant to 34 CFR 106.8 and 34 CFR 110.25 to adopt policies and procedures to address discrimination on the basis of sex and age. Some of the factors considered by the U.S. Department of Education's Office for Civil Rights (OCR) when determining whether a district's procedures are "prompt and equitable" are addressed throughout the following administrative regulation.

Apart from these mandates, state law authorizes the use of UCP to resolve complaints of noncompliance with laws related to the development of a school plan for student achievement and the establishment of school site councils; accommodations for pregnant and parenting students; prohibition against the charging of student fees; educational rights of foster youth, homeless students, former juvenile court school students, children of military families, migrant students, and students participating in a newcomer program for newly arrived immigrants; assignment of students to courses without educational content; and physical education instructional minutes. See the section "Complaints Subject to UCP" in the accompanying Board policy.

Except as **the Governing Board** may otherwise **be** specifically provided **d** in other district policies, these uniform complaint procedures (UCP) shall be used to investigate and resolve only the complaints specified in the accompanying Board policy.

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 1312.2 - Complaints Concerning Instructional Materials)*

*(cf. 1312.4 - Williams Uniform Complaint Procedures)*

*(cf. 4030 - Nondiscrimination in Employment)*

## Compliance Officers

Note: 5 CCR 4621 **mandates** the district to identify in its policies and procedures the person(s), position(s), or unit(s) responsible for ensuring compliance with applicable state and federal laws and regulations governing educational programs, including the receiving and investigating of complaints alleging unlawful discrimination, harassment, intimidation, or bullying and retaliation. During its Federal Program Monitoring (FPM) process, California Department of Education (CDE) staff will check to ensure that the district's procedures list the specific title(s) of the employee(s) responsible for receiving and investigating complaints. Districts should identify the specific title(s) of the compliance officer(s) in the space provided below. If a district identifies multiple compliance officers, it is recommended that one be designated the lead compliance officer.

**UNIFORM COMPLAINT PROCEDURES** (continued)

The following paragraph specifies that the compliance officer will be the same person designated to serve as the Title IX Coordinator for addressing complaints of sexual harassment pursuant to AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. Districts may modify this regulation to designate different district employees to serve these functions.

The district designates the individual(s), position(s), or unit(s) identified below as responsible for **receiving, coordinating, and investigating the district's response to** complaints and for complying with state and federal civil rights laws. The individual(s), position(s), or unit(s) also serve as the compliance officer(s) specified in AR 5145.3 - Nondiscrimination/Harassment responsible for handling complaints regarding unlawful discrimination, harassment, intimidation, or bullying and in AR 5145.7 - Sexual Harassment for handling complaints regarding sexual harassment. **The compliance officer(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)

(cf. 5145.71 - Title IX Sexual Harassment Complaints Procedures)

Superintendent  
 (title or position)

District Office  
 (unit or office)

624 Everett Mem. Hwy Mt. Shasta CA 96067  
 (address)

530-926-3006  
 (telephone number)

\_\_\_\_\_  
 (email)

Note: The following paragraph is for use by districts that have designated more than one compliance officer.

The compliance officer who receives a complaint may assign another compliance officer to investigate and resolve the complaint. The compliance officer shall promptly notify the complainant and respondent if another compliance officer is assigned to the complaint.

In no instance shall a compliance officer be assigned to a complaint in which the compliance officer has a bias or conflict of interest that would prohibit the fair investigation or resolution of the complaint. Any complaint against a compliance officer or that raises a concern about the compliance officer's ability to investigate the complaint fairly and without bias shall be filed with the Superintendent or designee who shall determine how the complaint will be investigated.

**UNIFORM COMPLAINT PROCEDURES** (continued)

Note: 5 CCR 4621 mandates that the district's policy requires employees responsible for compliance and/or for investigating and resolving complaints to be knowledgeable about the laws and programs at issue in the complaints they are assigned. ~~OCR requires that the compliance officer(s) involved in implementing discrimination complaint procedures be knowledgeable about the procedures and be able to explain them to parents/guardians and students.~~ Compliance officers must also have training or experience in handling discrimination complaints, including appropriate investigative techniques and understanding of the applicable legal standards.

The Superintendent or designee shall ensure that employees assigned to investigate and resolve complaints receive training and are knowledgeable about the laws and programs at issue in the complaints to which they are assigned. Training provided to such employees shall cover current state and federal laws and regulations governing the program; applicable processes for investigating and resolving complaints, including those alleging unlawful discrimination, harassment, intimidation, or bullying; applicable standards for reaching decisions on complaints; and appropriate corrective measures. Assigned employees may have access to legal counsel as determined by the Superintendent or designee.

*(cf. 4331 - Staff Development)*  
*(cf. 9124 - Attorney)*

The compliance officer or, if necessary, an appropriate administrator shall determine whether interim measures are necessary during an investigation and while the result is pending. 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 one or more interim measures. The interim measures shall 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 in all district schools and offices, including staff lounges and student government meeting rooms. (Education Code 234.1)

Note: During the FPM process, CDE staff will check to ensure that the district's policy contains a statement ensuring annual dissemination of notice of the district's UCP to the persons specified below.

In addition, the Superintendent or designee shall annually provide written notification of the district's UCP to students, employees, parents/guardians of district students, district advisory committee members, school advisory committee members, appropriate private school officials or representatives, and other interested parties. (5 CCR 4622)

*(cf. 0420 - School Plans/Site Councils)*  
*(cf. 1220 - Citizen Advisory Committees)*  
*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

## UNIFORM COMPLAINT PROCEDURES (continued)

*(cf. 5145.6 - Parental Notifications)*

Note: 5 CCR 4622 requires the district to include specified information in its annual UCP notice to students, parents/guardians, employees, and others. The following list reflects those required components and additional content of the notice listed in CDE's FPM instrument.

A sample of the annual notice is available through CDE's web site. It is the district's responsibility to update the notice as necessary to reflect new law.

The notice shall include:

1. A statement that the district is primarily responsible for compliance with federal and state laws and regulations, including those related to prohibition of unlawful discrimination, harassment, intimidation, or bullying against any protected group, and a list of all programs and activities that are subject to UCP as identified in the section "Complaints Subject to UCP" in the accompanying Board policy
2. The title of the position responsible for processing complaints, the identity of the person(s) currently occupying that position if known, and a statement that such persons will be knowledgeable about the laws and programs that they are assigned to investigate
3. A statement that a UCP complaint, except a complaint alleging unlawful discrimination, harassment, intimidation, or bullying, must be filed no later than one year from the date the alleged violation occurred
4. A statement that a UCP complaint alleging unlawful discrimination, harassment, intimidation, or bullying must be filed no later than six months from the date of the alleged conduct or the date the complainant first obtained knowledge of the facts of the alleged conduct
5. A statement that a student enrolled in a public school shall not be required to pay a fee for participation in an educational activity that constitutes an integral fundamental part of the district's educational program, including curricular and extracurricular activities

*(cf. 3260 - Fees and Charges)*

6. A statement that a complaint regarding student fees or the local control and accountability plan (LCAP) may be filed anonymously if the complainant provides evidence or information leading to evidence to support the complaint

*(cf. 0460 - Local Control and Accountability Plan)*

*(cf. 3260 - Fees and Charges)*

## UNIFORM COMPLAINT PROCEDURES (continued)

7. A statement that the district will post a standardized notice of the educational **and graduation requirements** rights of foster youth, homeless students, **children of military families, and** former juvenile court school students now enrolled in the district, ~~children of military families, migrant students, and immigrant students enrolled in a newcomer program,~~ as specified in Education Code **48645.7**, 48853, 48853.5, 49069.5, 51225.1, and 51225.2, and the complaint process

*(cf. 6173 - Education for Homeless Children)*

*(cf. 6173.1 - Education for Foster Youth)*

*(cf. 6173.2 - Education of Children of Military Families)*

*(cf. 6173.3 - Education for Juvenile Court School Students)*

*(cf. 6175 - Migrant Education Program)*

8. A statement that complaints will be investigated in accordance with the district's UCP and a written decision will be sent to the complainant within 60 days from the receipt of the complaint, unless this time period is extended by written agreement of the complainant
9. A statement that, for programs within the scope of the UCP as specified in the accompanying Board policy, the complainant has a right to appeal the district's investigation report to the California Department of Education (CDE) by filing a written appeal, including a copy of the original complaint and the district's decision, within 30 calendar days of receiving the district's decision
10. A statement advising the complainant of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal laws prohibiting discrimination, harassment, intimidation, or bullying, if applicable
11. A statement that copies of the district's UCP are available free of charge

Note: The following paragraph may be modified to reflect district practice. Pursuant to Education Code 221.61, **a districts and district school** are required to post information related to Title IX on their web sites, including specified information about complaint procedures under Title IX. See AR 5145.3 - Nondiscrimination/Harassment. A **school or** district that does not maintain a web site may comply by posting the information on the web site of its **district or** county office of education (COE), **however a school, district, or COE is not required to establish a web site if it does not maintain one.** A comprehensive list of rights based on the provisions of the federal regulations implementing Title IX can be found in Education Code 221.8. ~~In addition, in its April 2015 Dear Colleague Letter: Title IX Coordinators, OCR recommends that districts use web posting and social media to disseminate their nondiscrimination notices, policies, and procedures and communicate current compliance officer(s)' contact information to students, parents/guardians, and employees.~~

## UNIFORM COMPLAINT PROCEDURES (continued)

The annual notification, complete contact information of the compliance officer(s), and information related to Title IX as required pursuant to Education Code 221.6 shall be posted on the district **and district school** web sites and may be provided through district-supported social media, if available.

*(cf. 1113 - District and School Web Sites)*

*(cf. 1114 - District-Sponsored Social Media)*

Note: Both federal and state laws contain requirements for translation of certain information and documents. Title VI of the Civil Rights Act of 1964 requires districts to ensure meaningful access to their programs and activities by persons with limited English proficiency. OCR has interpreted this to require that, whenever information is provided to parents/guardians, districts must notify limited-English-proficient (LEP) parents/guardians in a language other than English in order to be adequate. OCR enforces this requirement consistent with the Department of Justice's **2007 2002** Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. Under the Guidance, a recipient of federal funds has an obligation to provide language assistance to LEP individuals based on the balancing of four factors: (1) the number or proportion of LEP individuals likely to encounter the program, (2) the frequency with which LEP individuals come in contact with the program, (3) the nature and importance of the services provided by the program, and (4) the resources available to the recipient. State law is more specific than federal law: Education Code 48985 requires translation of certain information and documents if 15 percent or more of students enrolled in the school speak a single primary language other than English.

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 UCP policy, regulation, forms, and notices 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.

### Filing of Complaints

Note: Complaints filed under UCP may be filed directly with a compliance officer or with any site administrator not designated as a compliance officer. For example, acts of unlawful discrimination, harassment, intimidation, or bullying may initially be reported to a principal. See AR 5145.3 - Nondiscrimination/Harassment and AR 5145.7 - Sexual Harassment. If a site administrator not designated as a compliance officer receives a UCP complaint, the site administrator must notify a compliance officer. A district may also establish a site-level process for receiving informal reports about incidents for which a UCP complaint may be filed and notifying students and parents/guardians of their right to file a UCP complaint. Any site-level process established by a district should be in writing and distributed in the same manner as the grievance procedures listed herein with an explanation of how it interacts with the UCP complaint process.

**UNIFORM COMPLAINT PROCEDURES** (continued)

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. **If a site administrator not designated as a compliance officer receives a complaint, the site administrator shall notify the compliance officer.**

All complaints shall be filed in writing and signed by the complainant. If a complainant is unable to put a complaint in writing due to conditions such as a disability or illiteracy, district staff shall assist in the filing of the complaint. (5 CCR 4600)

Complaints shall also be filed in accordance with the following rules, as applicable:

1. A complaint alleging district violation of applicable state or federal law or regulations governing the programs specified in the accompanying Board policy may be filed by any individual, public agency, or organization. (5 CCR **4600 4630**)

Note: Education Code 49013 and 52075 **mandate** districts to adopt procedures that allow for anonymous complaints to be filed when a district allegedly violates the prohibition against the charging of student fees or violates any requirement related to the LCAP.

2. Any complaint alleging noncompliance with law regarding the prohibition against 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. A complaint about a violation of the prohibition against the charging of unlawful student fees may be filed with the principal of the school or with the Superintendent or designee.

Note: Pursuant to 5 CCR 4630, complaints related to the LCAP must be filed within a year of the date that the **County Superintendent of Schools, the reviewing authority for districts,** approves the district's LCAP. Pursuant to Education Code 52070, ~~the County Superintendent of Schools is the reviewing authority for district LCAPs.~~

3. A UCP complaint, except for a UCP complaint alleging unlawful discrimination, harassment, intimidation, or bullying, shall be filed no later than one year from the date the alleged violation occurred. For complaints related to the LCAP, the date of the alleged violation is the date when the County Superintendent of Schools approves the LCAP that was adopted by the **Governing** Board. (5 CCR 4630)
4. A complaint alleging unlawful discrimination, harassment, intimidation, or bullying may be filed only by a person who alleges having personally suffered unlawful discrimination, a person who believes that any specific class of individuals has been subjected to unlawful discrimination, or a duly authorized representative who alleges that an individual student has been subjected to discrimination, harassment, intimidation, or bullying. (5 CCR 4630)

**UNIFORM COMPLAINT PROCEDURES** (continued)

5. A complaint alleging unlawful discrimination, harassment, intimidation, or bullying shall be initiated no later than six months from the date that the alleged unlawful discrimination occurred, or six months from the date that the complainant first obtained knowledge of the facts of the alleged unlawful discrimination. The time for filing may be extended for up to 90 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)
6. When a complaint alleging unlawful discrimination, harassment, intimidation, or bullying is filed anonymously, the compliance officer shall pursue an investigation or other response as appropriate, depending on the specificity and reliability of the information provided and the seriousness of the allegation.

Note: OCR's Revised Sexual Harassment Guidance indicates that if a complainant in a sexual harassment case requests that the complainant's name or that of the victim not be revealed to the alleged perpetrator or asks that the complaint not be pursued, the district should first inform the complainant that honoring the request may limit its ability to respond and pursue disciplinary action against the alleged perpetrator. The OCR publication acknowledges that situations may exist in which a district cannot honor a student's request for confidentiality, but cautions that, in all instances, the district must still continue to ensure that it provides a safe and nondiscriminatory environment for all students. Districts should consult legal counsel before honoring a confidentiality request to withhold the victim's name from the alleged perpetrator, especially in the case of alleged sexual assault, as this may affect the district's ability to conduct a thorough investigation or provide supportive measures to the victim. In OCR's Part 1: Questions and Answers Regarding the Department's Title IX Regulations, it is stated that, "Title IX regulations balance a complainant's desire for confidentiality (in terms of, for instance, the complainant's identity not being disclosed to the respondent) with a school's discretion to pursue an investigation where factual circumstances warrant an investigation even though the complainant does not desire to file a formal complaint or participate in a grievance process."

These guiding principles would also apply to harassment on the basis of race, gender, disability, or other protected characteristic.

7. When a complainant of unlawful discrimination, harassment, intimidation, or bullying or the alleged victim, when not the complainant, requests confidentiality, the compliance officer shall inform the complainant or victim that the request may limit the district's ability to investigate the conduct or take other necessary action. When honoring a request for confidentiality, the district shall nevertheless take all reasonable steps to investigate and resolve/respond to the complaint consistent with the request.

**Mediation**

Note: The following section should be used only by those districts that have decided to establish procedures for attempting to resolve complaints through alternative dispute resolution (ADR) procedures such as mediation; see the accompanying Board policy. **The following section may be modified to specify the ADR method and timelines used within the district.**

**UNIFORM COMPLAINT PROCEDURES** (continued)

Districts may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student; see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Within three business days after receiving the complaint, the compliance officer may informally discuss with all the parties the possibility of using mediation to resolve the complaint. Mediation shall be offered to resolve complaints that involve more than one student and no adult. However, mediation shall not be offered or used to resolve any complaint involving an allegation of sexual assault or where there is a reasonable risk that a party to the mediation would feel compelled to participate. If the parties agree to mediation, the compliance officer shall make all arrangements for this process.

Before initiating the mediation of a complaint alleging retaliation or unlawful discrimination, harassment, intimidation, or bullying, the compliance officer shall ensure that all parties agree to permit the mediator access to all relevant confidential information. The compliance officer shall also notify all parties of the right to end the informal process at any time.

If the mediation process does not resolve the problem within the parameters of law, the compliance officer shall proceed with an investigation of the complaint.

The use of mediation 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 is successful and the complaint is withdrawn, then the district shall take only the actions agreed upon through the mediation. If mediation is unsuccessful, the district shall then continue with subsequent steps specified in this administrative regulation.

**Investigation of Complaint**

Note: 5 CCR 4631, which requires the district to provide the complainant with the opportunity to present relevant information, does not provide any timeline. Thus, **the timeline specified below may be modified to reflect district practice.**

Within 10 business days after the compliance officer receives the complaint, the compliance officer shall begin an investigation into the complaint.

Within one business day of initiating the investigation, the compliance officer shall provide the complainant and/or the complainant's representative with the opportunity to present the information contained in the complaint to the compliance officer and shall notify the complainant and/or representative of the opportunity to present the compliance officer 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.

**UNIFORM COMPLAINT PROCEDURES** (continued)

Note: **During** the investigation, the compliance officer should consider all relevant circumstances, such as how the alleged misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; the identity, age, and sex of the individuals involved in and impacted by the conduct and the relationship between them; the number of persons engaged in the conduct and at whom the conduct was directed; the size of the school, location of the incidents, and context in which they occurred; and other incidents at the school involving different individuals.

In conducting the investigation, the compliance officer shall collect all available documents and review all available records, notes, or statements related to the complaint, including any additional evidence or information received from the parties during the course of the investigation. The compliance officer 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. At appropriate intervals, the compliance officer shall inform the parties of the status of the investigation.

To investigate a complaint alleging retaliation or unlawful discrimination, harassment, intimidation, or bullying, the compliance officer shall interview the alleged victim(s), any alleged offender(s), and other relevant witnesses privately, separately, and in a confidential manner. As necessary, additional staff or legal counsel may conduct or support the investigation.

Note: 5 CCR 4631 allows the district to dismiss a complaint when the complainant refuses to provide the investigator with relevant documents or otherwise obstructs the investigation. 5 CCR 4631 also provides that, if the district refuses to provide the investigator with access to records or other documents, the investigator may issue a finding in favor of the complainant. During the FPM process, CDE staff will check to ensure that both of these statements regarding the provision of access to information are included in the district's policy or procedures, as specified below.

A complainant's refusal to provide the district's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or any other obstruction of the investigation may result in the dismissal of the complaint because of a lack of evidence to support the allegation. Refusal by the district to provide the investigator with access to records and/or information related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or any other obstruction of 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)

**Timeline for Investigation Report**

Note: Pursuant to 5 CCR 4631, the district's investigation report must be sent to the complainant within 60 calendar days of receiving the complaint. Option 1 below is for districts that do not allow complainants to appeal the compliance officer's decision to the Governing Board. Option 2 is for districts that allow appeals to the Board, and it requires the compliance officer's decision within 30 calendar days so that the Board's decision can still be given within the 60-day time limit.

**UNIFORM COMPLAINT PROCEDURES (continued)**

Pursuant to 5 CCR 4631, only a complainant has the right to receive the investigation report and to file a complaint with the Board if dissatisfied with the compliance officer's decision. **However, under certain circumstances, some of the same rights should be extended to a respondent in order to make the process equitable. For example, since the respondent to a complaint alleging unlawful discrimination, harassment, intimidation, or bullying is usually an individual, the respondent should be notified when the complainant has agreed to an extension of timelines. However, OCR has recommended that the same rights be extended to a respondent to a complaint alleging unlawful discrimination to ensure the process is equitable for all involved. Furthermore, OCR recommends notifying the respondent in such a complaint whenever the complainant approves an extension of the timeline. Options 1 and 2 reflect these recommendations and may be modified to reflect district practice. When questions arise as to what rights to provide to a respondent, the district should consult legal counsel accordingly.**

Pursuant to 5 CCR 4640, when a UCP complaint is erroneously sent to CDE without first being filed with the district, the 60-day period specified in 5 CCR 4631 begins when the district receives the complaint.

**OPTION 1: (Districts that do not allow complainants to appeal to the Board)**

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

For any complaint alleging unlawful discrimination, harassment, intimidation, and bullying, the respondent shall be informed of any extension of the timeline agreed to by the complainant. **The respondent also shall be sent the investigation report at the same time it is provided to the complainant.**

**OPTION 2: (Districts that allow complainants to appeal to the Board)**

Note: The remainder of this section is for use by districts that select Option 2.

Unless extended by written agreement with the complainant, the investigation report shall be sent to the complainant within 60 calendar days of the district's receipt of the complaint.

Within 30 calendar days of receiving the complaint, the compliance officer shall prepare and send to the complainant a written report, as described in the section "Investigation Report" below. If the complainant is dissatisfied with the compliance officer's decision, the complainant may, within five business days, file the complaint in writing with the Board.

The Board may consider the matter at its next regular Board meeting or at a special Board meeting convened in order to meet the 60-day time limit within which the complaint must be answered. When required by law, the matter shall be considered in closed session. The Board may decide not to hear the complaint, in which case the compliance officer's decision shall be final.

**UNIFORM COMPLAINT PROCEDURES** (continued)

*(cf. 9321 - Closed Session)*

If the Board hears the complaint, the compliance officer shall send the Board's decision to the complainant within 60 calendar days of the district's initial receipt of the complaint or within the time period that has been specified in a written agreement with the complainant. (5 CCR 4631)

For any complaint alleging unlawful discrimination, harassment, intimidation, and bullying, the respondent shall be informed of any extension of the timeline agreed to by the complainant, shall be sent the district's investigation report, and, in the same manner as the complainant, may file a complaint with the Board if dissatisfied with the decision.

**Investigation Report**

Note: 5 CCR 4631 specifies components that are required to be part of the district's investigation report. Inclusion of these items will help protect the district's position in case of an appeal to CDE, a complaint submitted to OCR, or if litigation is filed.

For all complaints, the district's investigation report shall include: (5 CCR 4631)

1. The findings of fact based on the evidence gathered
2. A conclusion providing a clear determination for each allegation as to whether the district is in compliance with the relevant law
3. Corrective action(s) whenever the district finds merit in the complaint, including, when required by law, a remedy to all affected students and parents/guardians and, for a student fees complaint, a remedy that complies with Education Code 49013 and 5 CCR 4600
4. Notice of the complainant's right to appeal the district's investigation report to CDE, except when the district has used the UCP to address a complaint not specified in 5 CCR 4610
5. Procedures to be followed for initiating an appeal to CDE

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

Note: The Family Educational Rights and Privacy Act (FERPA) (20 USC 1232g; 34 CFR 99.1-99.67) protects student privacy, including student records containing details of the actions taken in response to a UCP complaint. However, pursuant to 20 USC 1221, FERPA may not "be construed to affect the applicability of Title VI of the Civil Rights Act of 1964, Title IX of Education Amendments of 1972, Title

**UNIFORM COMPLAINT PROCEDURES (continued)**

V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." In February 2015, the Family Policy Compliance Office (FPCO), now the Student Privacy Policy Protection Office, released a letter concluding that FERPA permits a district to disclose to a student who was subjected to unlawful discrimination certain information about the sanctions imposed upon the respondent when the sanctions directly relate to that student. Thus, if properly remedying the impact of discrimination would require disclosing to the alleged victim certain information on how the district disciplined the respondent (e.g., an order that the respondent stay away from the alleged victim), FPCO interprets FERPA as allowing the district to disclose that information.

Given the potential liability from improperly disclosing such information, districts are advised to consult with legal counsel when presented with a situation where a victim of unlawful discrimination requests information about sanctions imposed upon the respondent.

In consultation with district legal counsel, information about the relevant part of an investigation report may be communicated to a victim who is not the complainant and to other parties who may be involved in implementing the investigation report or are affected by the complaint, as long as the privacy of the parties is protected. In a complaint alleging unlawful discrimination, harassment, intimidation, and bullying, notice of the investigation report to the alleged victim shall include information about any sanction to be imposed upon the respondent that relates directly to the alleged victim.

Note: Education Code 48985 requires that reports sent to parents/guardians be written in their primary language when 15 percent or more of a school's enrolled students speak a single primary language other than English. During the FPM process, CDE staff will check to ensure that UCP complaint procedures pertaining to CSPP health and safety issues include a statement that the district response and the investigation report must, whenever Education Code 48985 is applicable, be written in English and the primary language in which the complaint was filed; see the section "Health and Safety Complaints in License-Exempt Preschool Programs" below. The following paragraph extends this provision to all types of complaints to ensure compliance with Education Code 48985. In addition, based on Title VI of the Civil Rights Act of 1964, OCR requires districts to ensure meaningful access to all relevant UCP information for parents/guardians with limited English proficiency.

If the complaint involves a limited-English-proficient **(LEP)** student or parent/guardian, then the district's response, if requested by the complainant, and the investigation report shall be written in English and the primary language in which the complaint was filed.

Note: During the FPM process, CDE staff will expect to see a statement detailing a complainant's right to pursue civil law remedies (i.e., action in a court of law) in addition to or in conjunction with the right to pursue administrative remedies from CDE.

For complaints alleging unlawful discrimination, harassment, intimidation, and bullying based on state law, the investigation report shall also include a notice to the complainant that:

1. The complainant may pursue available civil law remedies outside of the district's complaint procedures, including, **but not limited to, injunctions, restraining orders**

**UNIFORM COMPLAINT PROCEDURES** (continued)

~~or other remedies or orders, seeking assistance from mediation centers or public/private interest attorneys,~~ 60 calendar days after the filing of an appeal with CDE. (Education Code 262.3)

2. The 60 days 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 discrimination based on race, color, national origin, sex, gender, disability, or age may also be filed with the U.S. Department of Education, Office for Civil Rights at [www.ed.gov/ocr](http://www.ed.gov/ocr) within 180 days of the alleged discrimination.

**Corrective Actions**

Note: The following section may be revised to reflect district practice.

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.

*(cf. 5137 - Positive School Climate)*

For complaints involving retaliation or unlawful discrimination, harassment, intimidation, or bullying, appropriate remedies that may be offered to the victim but not communicated to the respondent may include, but are not limited to, the following:

1. Counseling

*(cf. 6164.2 - Guidance/Counseling Services)*

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

**UNIFORM COMPLAINT PROCEDURES** (continued)

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

For complaints of retaliation or unlawful discrimination, harassment, intimidation, or bullying involving a student as the respondent, appropriate corrective actions that may be provided to the student 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

*(cf. 6164.5 - Student Success Teams)*

6. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law

*(cf. 6145 - Extracurricular and Cocurricular Activities)*

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

*(cf. 5144 - Discipline)*

*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

When an employee is found to have committed retaliation or unlawful discrimination, harassment, intimidation, or bullying, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

**UNIFORM COMPLAINT PROCEDURES** (continued)

The district may also consider training and other interventions for the larger school community to ensure that students, staff, and parents/guardians understand the types of behavior that constitute unlawful discrimination, harassment, intimidation, or bullying, that the district does not tolerate it, and how to report and respond to it.

Note: Generally, when a complaint is found to have merit, an appropriate remedy is provided to the complainant or other affected person. However, in certain instances, the law may require a remedy to be provided to all affected persons, not just the complainant or subject of the complaint. For example, pursuant to Education Code 49013 and 5 CCR 4600, if the district, or CDE on appeal, finds merit in the complaint alleging noncompliance with the law regarding student fees and charges, the district is required to provide a remedy to all affected students and parents/guardians, as specified below. The same requirement applies to allegations of noncompliance with ~~the LCAP requirements pursuant to Education Code 52075,~~ required instructional minutes for physical education pursuant to Education Code 51222 and 51223, ~~and~~ course periods without educational content pursuant to Education Code 51228.3, **and the LCAP requirements pursuant to Education Code 52075.** Districts that do not maintain elementary schools should delete the reference to physical education below.

When a complaint is found to have merit, an appropriate remedy shall be provided to the complainant or other affected person.

However, if a complaint alleging noncompliance with the law regarding student fees, deposits, and other charges, physical education instructional minutes, courses without educational content, 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 subject to procedures established by regulation of the State Board of Education. (Education Code 49013, 51222, 51223, 51228.3, 52075)

For complaints alleging noncompliance with the law regarding student fees, the district, by engaging in reasonable efforts, shall attempt in good faith to identify and fully reimburse all affected students and parents/guardians who paid the unlawful student fees within one year prior to the filing of the complaint. (Education Code 49013; 5 CCR 4600)

**Appeals to the California Department of Education**

Any complainant who is dissatisfied with the district's investigation report on a complaint regarding any specified federal or state educational program subject to UCP may file an appeal in writing with CDE within 30 calendar days of receiving the district's investigation report. (5 CCR 4632)

The appeal shall be sent to CDE with a copy of the original locally filed complaint and a copy of the district's investigation report for that complaint. The complainant shall specify and explain the basis for the appeal, including at least one of the following: (5 CCR 4632)

1. The district failed to follow its complaint procedures.

**UNIFORM COMPLAINT PROCEDURES (continued)**

2. Relative to the allegations of the complaint, the district's investigation report lacks material findings of fact necessary to reach a conclusion of law.
3. The material findings of fact in the district's investigation report are not supported by substantial evidence.
4. The legal conclusion in the district's investigation report is inconsistent with the law.
5. In a case in which the district found noncompliance, the corrective actions fail to provide a proper remedy.

Note: 5 CCR 4633 requires the district to submit the following documents to CDE within 10 days after the district has been notified that an appeal has been filed. The district's failure to provide a timely and complete response may result in CDE ruling on the appeal without considering information from the district.

Upon notification by CDE that the district's investigation report has been appealed, the Superintendent or designee shall forward the following documents to CDE within 10 days of the date of notification: (5 CCR 4633)

1. A copy of the original complaint
2. A copy of the district's investigation report
3. A copy of the investigation file including, but not limited to, all notes, interviews, and documents submitted by the parties and gathered by the investigator
4. A report of any action taken to resolve the complaint
5. A copy of the district's UCP
6. Other relevant information requested by CDE

If notified by CDE that the district's investigation report failed to address allegation(s) raised by the complaint, the district shall, within 20 days of the notification, provide CDE and the appellant with an amended investigation report that addresses the allegation(s) that were not addressed in the original investigation report. The amended report shall also inform the appellant of the right to separately appeal the amended report with respect to the allegation(s) that were not addressed in the original report. (5 CCR 4632)

Note: Pursuant to 5 CCR 4633, CDE is required to issue a written decision regarding the appeal within 60 days of CDE's receipt of the appeal, unless extended by written agreement with the appellant or documentation by CDE of exceptional circumstances. Pursuant to 5 CCR 4635, if CDE's decision was issued based on evidence in the investigation file CDE received from the district or evidence

## UNIFORM COMPLAINT PROCEDURES (continued)

uncovered after further investigation of the allegations that were the basis of the appeal, either party may request reconsideration by the Superintendent of Public Instruction or designee within 30 days of the appeal decision, either party may request reconsideration by the Superintendent of Public Instruction or designee.

Pursuant to 5 CCR 4650, CDE may directly intervene in a complaint without waiting for action by the district when certain conditions exist, including the following: (1) the complaint alleges failure to comply with the UCP, including failure to follow the required timelines and failure to implement the final investigation report; (2) the complainant requests requires anonymity due to the possibility of retaliation and would suffer immediate and irreparable harm if a complaint was filed and the complainant was named; or (3) the complainant would suffer immediate and irreparable harm as a result of an application of a districtwide policy that is in conflict with state or federal law and that filing a complaint would be futile.

### Health and Safety Complaints in License-Exempt Preschool Programs

Note: The following section is for use by districts that operate any license-exempt CSPP program. Education Code ~~8235.5~~ 8212, as renumbered by AB 131 (Ch. 116, Statutes of 2021), mandates districts to adopt policies and procedures for resolving complaints regarding specified health and safety issues in a license-exempt CSPP program. Pursuant to Education Code ~~8235.5~~ 8212, the district must use the UCP, with modifications as necessary, to resolve such complaints. Pursuant to 5 CCR 4610, such complaints must be addressed through the procedures described in 5 CCR 4690-4694.

See the accompanying exhibits for a sample classroom notice and complaint form.

Any complaint regarding health or safety issues in a license-exempt **California State Preschool Program (CSPP) program** shall be addressed through the procedures described in 5 CCR 4690-4694.

In order to identify appropriate subjects of CSPP health and safety issues pursuant to Health and Safety Code 1596.7925, a notice shall be posted in each license-exempt CSPP classroom in the district notifying parents/guardians, students, and teachers of the health and safety requirements of Title 5 regulations that apply to CSPP programs pursuant to Health and Safety Code 1596.7925 and the location at which to obtain a form to file any complaint alleging noncompliance with those requirements. For this purpose, the Superintendent or designee may download and post a notice available from the CDE web site. (Education Code ~~8212~~ ~~8235.5~~; 5 CCR 4691)

The district's annual UCP notification distributed pursuant to 5 CCR 4622 shall clearly indicate which of its CSPP programs are operating as exempt from licensing and which CSPP programs are operating pursuant to requirements under Title 22 of the Code of Regulations. (5 CCR 4691)

Any complaint regarding specified health or safety issues in a license-exempt CSPP program shall be filed with the preschool program administrator or designee, and may be filed anonymously. The complaint form shall specify the location for filing the complaint, contain

## UNIFORM COMPLAINT PROCEDURES (continued)

a space to indicate whether the complainant desires a response to the complaint, and allow a complainant to add as much text as desired to explain the complaint. (Education Code **8212 8235.5**; 5 CCR 4690)

If it is determined that the complaint is beyond the authority of the preschool program administrator, the matter shall be forwarded to the Superintendent or designee in a timely manner, not to exceed 10 working days, for resolution. The preschool administrator or the Superintendent or designee shall make all reasonable efforts to investigate any complaint within their authority. (Education Code **8212 8235.5**; 5 CCR 4692)

Investigation of a complaint regarding health or safety issues in a license-exempt CSPP program shall begin within 10 days of receipt of the complaint. (Education Code **8212 8235.5**; 5 CCR 4692)

The preschool administrator or designee shall remedy a valid complaint within a reasonable time period not to exceed 30 working days from the date the complaint was received. If the complainant has indicated on the complaint form a desire to receive a response to the complaint, the preschool administrator or Superintendent's designee shall, within 45 working days of the initial filing of the complaint, report the resolution of the complaint to the complainant and CDE's assigned field consultant. If the preschool administrator makes this report, the information shall be reported at the same time to the Superintendent or designee. (Education Code **8212 8235.5**; 5 CCR 4692)

Note: Education Code 48985 requires that reports sent to parents/guardians be written in their primary language when 15 percent or more of a school's enrolled students speak a single primary language other than English. During the FPM process, CDE staff will check to ensure compliance with this requirement. Based on Title VI of the Civil Rights Act of 1964, OCR requires districts to ensure meaningful access to all relevant UCP information for parents/guardians with limited English proficiency.

If a complaint regarding health or safety issues in a license-exempt CSPP program involves an **LEP limited-English-proficient** student or parent/guardian, then the district's response, if requested by the complainant, and the investigation report shall be written in English and the primary language in which the complaint was filed.

If a complainant is not satisfied with the resolution of a complaint, the complainant has the right to describe the complaint to the Board at a regularly scheduled **hearing meeting** and, within 30 days of the date of the written report, may file a written appeal of the district's decision to the Superintendent of Public Instruction in accordance with 5 CCR 4632. (Education Code **8212 8235.5**; 5 CCR 4693, 4694)

All complaints and responses are public records. (5 CCR 4690)

*(cf. 1340 - Access to District Records)*

**UNIFORM COMPLAINT PROCEDURES** (continued)

On a quarterly basis, the Superintendent or designee shall report summarized data on the nature and resolution of all CSPP health and safety complaints, including the number of complaints by general subject area with the number of resolved and unresolved complaints, to the Board at a regularly scheduled Board meeting and to the County Superintendent of Schools. (5 CCR 4693)

(12/20 6/21) 12/21

# CSBA Sample Exhibit

Community Relations

E(1) 1312.3(a)

## UNIFORM COMPLAINT PROCEDURES

Note: Education Code **8235.5 8212, as renumbered by AB 131 (Ch. 116, Statutes of 2021)**, requires that the following notice be posted in each classroom with a license-exempt California State Preschool Program (CSPP) (Education Code **8235-8239.4 8207-8225, as renumbered by AB 131**). The notice must include the health and safety requirements that apply to such CSPP programs pursuant to Health and Safety Code 1596.7925, which may be the subject of a complaint under the uniform complaint procedures.

### NOTICE TO PARENTS/GUARDIANS, STUDENTS, AND TEACHERS: PRESCHOOL COMPLAINT RIGHTS

Parents/Guardians, Students, and Teachers:

Pursuant to Education Code **8212 8235.5**, you are hereby notified that any California State Preschool Program that is exempt from licensure must have:

1. Outdoor shade that is safe and in good repair
2. Drinking water that is accessible and readily available throughout the day
3. Safe and sanitary restroom facilities with one toilet and handwashing fixture for every 15 children
4. Restroom facilities that are available only for preschoolers and kindergartners
5. Visual supervision of children at all times
6. Indoor and outdoor space that is properly contained or fenced and provides sufficient space for the number of children using the space at any given time
7. Playground equipment that is safe, in good repair, and age appropriate

Note: Education Code **8235.5 8212, as renumbered by AB 131**, requires that the notice include the location to obtain a complaint form and provides that posting a notice downloadable from the California Department of Education's web site will satisfy this requirement. The law does not require that complaint forms be placed in any specific location. The following paragraph lists locations where complaint forms may be available and should be modified to reflect district practice, including adding the school and district web site addresses.

**UNIFORM COMPLAINT PROCEDURES** (continued)

If you choose to file a complaint alleging that any of the above conditions is not being met, your complaint will be addressed through the district's uniform complaint procedures as required by law. A complaint form may be obtained at the school ~~office~~ or district office, or downloaded from the school or district web site. You may also download a copy of the California Department of Education complaint form **when available** from the following web site: <http://www.cde.ca.gov/re/cp/uc>. However, a complaint need not be filed using either the district's complaint form or the complaint form from the California Department of Education.

# CSBA Sample Exhibit

Community Relations

E(2) 1312.3(a)

## UNIFORM COMPLAINT PROCEDURES

Note: Pursuant to Education Code 8235.5 8212, as renumbered by AB 131 (Ch. 116, Statutes of 2021), uniform complaint procedures should be required to be used for complaints alleging that a license-exempt California State Preschool Program (CSPP) does not comply with any of the health and safety requirements specified in Health and Safety Code 1596.7925.

### PRESCHOOL COMPLAINT FORM: UNIFORM COMPLAINT PROCEDURES

Education Code 8235.5 8212 requires that the district's uniform complaint procedures be used for the filing of complaints concerning noncompliance with health and safety standards for license-exempt California State Preschool Programs. The complaint and response are public documents as provided by law. Complaints may be filed anonymously. However, if you wish to receive a response to your complaint, you must provide the contact information below.

Response requested?  Yes  No

Contact information: (if response is requested)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: Day: \_\_\_\_\_ Evening: \_\_\_\_\_

E-mail address, if any: \_\_\_\_\_

Date problem was observed: \_\_\_\_\_

Location of the problem that is the subject of this complaint:

School name/address: \_\_\_\_\_

Room number/name of room/location of facility: \_\_\_\_\_

Only the following issues may be the subject of this complaint process. If you wish to complain about an issue not specified below, please contact the school or district for the appropriate district complaint procedure.

Specific issue(s) of the complaint: (Please check all that apply. A complaint may contain more than one allegation.)

- The preschool does not have outdoor shade that is safe and in good repair.
- Drinking water is not accessible and/or readily available throughout the day.

**UNIFORM COMPLAINT PROCEDURES** (continued)

- The preschool does not provide safe and sanitary restroom facilities with one toilet and handwashing fixture for every 15 children.
- Restroom facilities are not available only for preschoolers and kindergartners.
- The preschool program does not provide visual supervision of children at all times.
- Indoor or outdoor space is not properly contained or fenced or does not provide sufficient space for the number of children using the space at any given time.
- Playground equipment is not safe, in good repair, or age appropriate.

Please describe the issue of your complaint in detail. You may attach additional pages and include as much text as necessary to fully describe the situation.

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Note: Education Code **8235.5 8212, as renumbered by AB 131**, requires complaints identified above to be filed with the preschool administrator or designee. Districts should specify the names and/or locations in the spaces below.

Please file this complaint at the following location:

\_\_\_\_\_ (preschool administrator or designee)

\_\_\_\_\_ (address)

Please provide a signature below. If you wish to remain anonymous, a signature is not required. However, all complaints, even anonymous ones, should be dated.

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Date)

(5/20) 12/21

# CSBA Sample Administrative Regulation

Classified Personnel

AR 4217.3(a)

## LAYOFF/REHIRE

Note: The following optional regulation is subject to collective bargaining, and may be deleted by those districts whose agreements fully cover the provisions specified below.

Education Code 45114, 45117, 45298 and 45308 establish the procedures by which the Governing Board may lay off and reemploy classified employees.

Because of the complexity of related Education Code provisions and the interaction with collective bargaining agreements, it is strongly recommended that the district consult with legal counsel before instituting layoff proceedings.

Classified employees shall be subject to layoff for lack of work or lack of funds. (Education Code 45114, 45308)

A classified employee shall not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. (Education Code 45117)

(cf. 4121 - Temporary/Substitute Personnel)

### Order of Layoff Within a Classification/Determination of Seniority

Within each class, the order of layoff shall be determined by length of service. (Education Code 45114, 45308)

Note: For any district whose average daily attendance (ADA) is under 400,000, Education Code 45308 defines "length of service" as employees' hours in paid status (Option 1 below). However, such a district may instead choose to enter into an agreement with the exclusive representative of classified employees to determine "length of service" based on an employee's date of hire (Option 2 below).

For any district with an ADA of 400,000 or higher, Education Code 45308 requires length of service to be based on the date of hire; such districts should select Option 2 below.

"Date of hire" is not defined in the law and could refer to the employee's first date of hire in the district or his/her the employee's date of hire in the classification or higher classification. Districts selecting Option 2 below may revise that the applicable paragraph to reflect the definition determined by the district or by agreement with the exclusive representative of classified employees, as applicable.

**OPTION 1: (For districts with average daily attendance (ADA) under 400,000 that do not have an agreement with the exclusive representative of classified employees to determine length of service as employee's date of hire)**

"Length of service" means all hours in paid status, whether during the school year, a holiday, recess, or during any period that school is in session or closed. However, length of service

**LAYOFF/REHIRE** (continued)

shall not include hours compensated solely on an overtime basis, as provided in Education Code 45128, and shall not include hours for any service performed prior to entering into probationary or permanent status, except for service in a restricted position pursuant to Education Code 45105. **The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first.** (Education Code 45308)

**The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first. (Education Code 45308)**

For an employee who is a member of the Military Reserve or the National Guard, length of service credit shall be granted for military leave of absence, including voluntary or involuntary active duty during a period of national emergency or war. (Education Code 45297, 45308)

*(cf. 4161.5/4261.5/4361.5 - Military Leave)*

Length of service credit may be granted for time spent on unpaid illness or maternity leave, unpaid family care leave, or unpaid industrial accident leave. Length of service credit shall not be granted for other types of unpaid leaves. (Education Code 45308)

*(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)*

*(cf. 4261.1 - Personal Illness/Injury Leave)*

*(cf. 4161.11/4261.11/4361.11 - Industrial Accident/Illness Leave)*

**OPTION 2: (For districts with ADA under 400,000 that have an agreement with the exclusive representative of classified employees to determine length of service as employee's date of hire, and for districts with ADA over 400,000)**

Length of service shall be determined by the date of hire. The employee who has been employed the shortest time by the district shall be laid off first. (Education Code 45308)

Note: The following paragraph applies to both Options 1 and 2. Pursuant to Education Code 45105 and 45259, persons employed in "restricted positions" are classified employees. However, they do not acquire permanent status or seniority credits unless they satisfy the conditions specified below.

For an employee in a "restricted position" under Education Code 45105 or 45259, the original date of employment in the restricted position shall be used to determine **his/her the** length of service, provided **he/she the employee** has completed six months of satisfactory service and has successfully passed the qualifying examination required for service in the class. (Education Code 45105)

*(cf. 4200 - Classified Personnel)*

**LAYOFF/REHIRE (continued)****Notice of Layoff and Hearing Rights**

Note: Education Code 45117 applies to both districts that have adopted the merit system and those that have not. Education Code 45117, as amended by AB 438 (Ch. 665, Statutes of 2021), specifies notice requirements and hearing rights the district must provide to permanent classified employees, as defined, who are subject to layoff due to lack of work or lack of funds, including that notice be given no later than March 15. If a permanent classified employee is not given the required notice and a right to a hearing in accordance with law, the employee is deemed reemployed for the next school year. Education Code 45117 requires that classified employees be given prior written notice when they are subject to layoff due to lack of work or lack of funds. AB 1908 (Ch. 860, Statutes of 2012) amended Education Code 45117 to extend the timeline for such notice to 60 days, as provided below.

Pursuant to Education Code 45117, as amended by AB 438, a "permanent employee" is defined as an employee who was permanent at the time the notice or right to a hearing was required and an employee who became permanent after the date of the required notice.

Whenever a permanent classified employee is to be laid off for lack of work or lack of funds, the Superintendent or designee shall, no later than March 15 and before the employee is given formal notice by the Governing Board, give to the employee written notice of the recommendation, shall be given to the employee informing him/her of the layoff, the reasons that the employee's services will not be required for the ensuing year, the date the layoff goes into effect, any displacement rights, and reemployment rights, and the employee's right to a hearing. The district shall adhere to the notice, hearing, and layoff procedures in Education Code 45117, Government Code 11503 and 11505, and other applicable provisions of law. ~~The notice shall be given:~~ (Education Code 45117)

An employee who is so notified may request a hearing to determine if there is cause for not reemploying the employee for the ensuing year. The request shall be in writing and shall be delivered to the person who sent notice to the employee, on or before March 15 but not less than seven days after the date the notice is served on the employee. Failure of an employee to request a hearing on or before the date specified shall constitute a waiver of the employee's right to a hearing. (Education Code 45117)

The Superintendent or designee shall serve an employee who timely requests a hearing with the District Statement of Reduction in Force documents. The employee has five calendar days from service of the District Statement of Reduction in Force documents to timely file a notice of participation with the district. The parties are entitled to discovery, if requested within 15 days of service of the District Statement of Reduction in Force documents. (Education Code 45117)

Note: Education Code 45117, as amended by AB 438, allows permanent classified employees given notice of a layoff to request a hearing before an administrative law judge. On or before May 7, the administrative judge is required to submit the proposed decision, containing a determination as to the sufficiency of the cause and a recommendation as to disposition regarding the layoff, to the Board for consideration and to affected employee(s).

**LAYOFF/REHIRE (continued)**

If a hearing is requested by a permanent classified employee, the proceeding shall be conducted and a decision made by an administrative law judge in accordance with Government Code 11500-11529. The Board shall make a final decision regarding the sufficiency of the cause and disposition of the layoff upon receipt of the administrative law judge's proposed decision. None of the findings, recommendations, or determinations in the proposed decision prepared by the administrative law judge shall be binding on the Board. (Education Code 45117)

Following the Board's decision, the Superintendent or designee shall give final notice of termination to the affected employee(s) before May 15 unless a continuance was granted after a request for hearing was made, in which case such date may be extended by the number of days of the continuance. (Education Code 45117)

Note: Pursuant to Education Code 45117, as amended by AB 438, the district may reduce classified staff due to lack of work or lack of funds when the Board determines, during the time between five days after the enactment of the Budget Act and August 15, that the district's total local control funding formula apportionment per unit of ADA for the fiscal year of the Budget Act has not increased by at least two percent.

If during the time between five days after the enactment of an annual Budget Act and August 15 of the fiscal year to which the Budget Act applies, the Board determines that the district's local control funding formula apportionment per unit of ADA for that fiscal year has not increased by at least two percent, and that it is therefore necessary to decrease the number of classified employees due to lack of work or lack of funds, the Board may issue a District Statement of Reduction in Force to those employees in accordance with a schedule of notice and hearing adopted by the Board, and layoff proceedings shall be carried out as required by law. (Education Code 45117)

1. At least 60 days prior to the effective date of the layoff, if the layoff is for lack of work resulting from a bona fide reduction or elimination of service being performed.
2. No later than April 29, if the layoff is for lack of funds due to the expiration of a specially funded program at the end of any school year. However, if the termination date of the specially funded program is other than June 30, the employee shall be given notice at least 60 days from the effective date of the layoff.

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

The district is not required to provide the 60-day notice in the event of an actual and existing financial inability to pay the salaries of classified employees or if the layoff is due to a lack of work resulting from conditions not foreseeable or preventable by the district. (Education Code 45117)

**LAYOFF/REHIRE** (continued)

**When classified positions are eliminated as a result of the expiration of a specifically funded program, the district shall give written notice to the affected employee(s) not less than 60 days prior to the effective date of the layoff informing the employee(s) of the layoff date, any displacement rights, and employment rights. (Education Code 45117)**

The district ~~also~~ is not required to provide **a layoff notice** ~~the 60-day notice~~ to any person hired as a short-term employee for a period not exceeding 60 days whose service may not be extended or renewed. (Education Code 45117)

**Additionally, the district may release probationary classified employees without notice or hearing for reasons other than lack of work or lack of funds. (Education Code 45117)**

**Reemployment**

Note: The following **optional** section specifies the rights of employees who are laid off or who take voluntary demotion or reduction in assigned time in lieu of layoff. Pursuant to Education Code 45308, laid-off classified employees have reemployment rights which are enforced in order of seniority rather than reverse order of layoff. In Tucker v. Grossmont Union High School District, a California appellate court ruled that a laid-off employee's reemployment right entitled ~~him~~ **the employee** to preference over any new applicant to available positions for which ~~he~~ **the employee** is qualified, **including positions in different classes from which the employee was laid off.**

Classified employees laid off because of lack of work or lack of funds shall be eligible for reemployment for a period of 39 months and shall be reemployed in preference to new applicants. Reemployment shall be in order of seniority. Persons so laid off also have the right to apply and establish their qualification for vacant promotional positions within the district during the 39-month period. (Education Code 45114, 45298, 45308)

Note: Pursuant to San Mateo City School District v. Public Employment Relations Board, districts may adopt procedures which implement Education Code 45113 and 45114 as long as such procedures do not replace or set aside mandatory Education Code provisions. These procedures may be adopted pursuant to Board policy and/or collective bargaining agreement.

The following **optional** paragraph should be **deleted** by districts with a collective bargaining agreement that contains reemployment procedures, unless the district also has unrepresented classified employees.

When a vacancy occurs, the district shall give the employee with the most seniority an opportunity to accept or reject the position, by first calling the employee at ~~his/her~~ **the employee's** last known telephone number to notify ~~him/her~~ **the employee** of the vacancy and then sending written notice by certified and standard mail to ~~his/her~~ **the employee's** last known address. The employee shall advise the district of ~~his/her~~ **the** decision by any means

**LAYOFF/REHIRE** (continued)

no later than 10 calendar days from the date the notice was sent. If the employee accepts, **he/she the employee** shall report to work no later than two calendar weeks from the vacancy notification date or on a later date specified by the district.

Note: The following paragraph is **optional** and may be modified to reflect district practice.

In order to be reemployed, the employee must be capable of performing the essential duties of the job with or without reasonable accommodations. When an otherwise eligible employee is unable to perform the essential duties of the job, **he/she the employee** shall be kept on the reemployment list until another opportunity becomes available or the period of reemployment eligibility expires, whichever occurs first.

(cf. 4032 - Reasonable Accommodation)

Note: An argument can be made that, absent a collective bargaining provision to the contrary, once a district has offered a laid-off classified employee a position pursuant to the employee's reemployment rights under Education Code 45298 and that employee has refused the position, the district has discharged its duty to that employee. Whether **or not** such action conflicts with an employee's statutory right to reemployment is unclear.

The following two **optional** paragraphs should be used only with the approval of the district's legal counsel; the number of refusals that will trigger the removal of the employee's name from the district's **reemployment** list should be modified accordingly.

Upon rejecting two offers of reemployment, the employee's name shall be removed from the reemployment list and **he/she the employee** will forfeit all reemployment rights to which **he/she the employee** would otherwise be entitled.

When an employee is notified of a vacancy and fails to respond or report to work within time limits specified by district procedures, **his/her the employee's** name shall be removed from the reemployment list and all reemployment rights to which **he/she the employee** would otherwise be entitled shall be forfeited.

Note: AB 2307 (Ch. 586, Statutes of 2012) amended Education Code 45298 to provide that laid-off classified employees who are reemployed in a new position but fail to complete the probationary period for the new position shall be returned to the reemployment list for the remainder of the 39-month period, as provided below.

Although Education Code 45298 applies to districts using the merit system, pursuant to Education Code 45114, other districts are also required to lay-off and reemploy classified employees in accordance with Education Code 45298.

If an employee is **reemployed** in a new position and fails to complete the probationary period in the new position, **he/she the employee** shall be returned to the reemployment list for the

**LAYOFF/REHIRE** (continued)

remainder of the 39-month period. The remaining time period shall be calculated as the time remaining in the 39-month period as of the date of reemployment. (Education Code 45114, 45298)

**Reinstatement of Benefits**

Note: The following **optional** section should be **deleted** by districts that do not reinstate laid-off employee benefits upon reemployment and those whose collective bargaining agreements address the issue.

When a laid-off employee is reemployed, all accumulated sick leave credit shall be restored.

A laid-off permanent employee shall be reemployed with all rights and benefits accorded to **him/her** at the time of layoff.

A laid-off probationary employee shall be reemployed as a probationary employee, and the previous time served toward the completion of the required probationary period shall be counted. **He/she The employee** shall also be reemployed with all rights and benefits accorded to a probationary employee at the time of layoff.

A laid-off employee, when reemployed, shall be placed on the salary step held at the time of layoff. An employee who was bumped into a lower class shall, when reinstated to the previous class, be placed on the salary step to which **he/she the employee** would have progressed had **he/she the employee** remained there. An adjusted anniversary date shall be established for step increment purposes so as to reflect the actual amount of time served in the district.

**Voluntary Demotion or Reduction of Hours**

Classified employees who take voluntary demotion or voluntary reduction in assigned time in lieu of layoff, or in order to remain in their present position rather than be reclassified or reassigned, shall be granted the same rights as employees who are laid off. In addition, such employees shall retain eligibility to be considered for reemployment in their previously held class or position with increased assigned time, for an additional period of time up to 24 months as determined by the **Governing** Board on a class-by-class basis, provided that the same test of fitness under which they qualified for appointment to that class shall still apply. (Education Code 45114, 45298)

Employees who take voluntary demotion or voluntary reduction in assigned time in lieu of layoff shall have the option of returning to a position in their former class or to positions with increased assigned time as vacancies become available and without limitation of time. If there is a valid reemployment list, they shall be ranked on that list in accordance with their proper seniority. (Education Code 45114, 45298)

**LAYOFF/REHIRE** (continued)

*Legal Reference:*

EDUCATION CODE

45101 Definitions

45103 Classified service in districts not incorporating the merit system

45105 Positions under various acts not requiring certification qualifications; classification

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

45114 Layoff and reemployment procedures; definitions

45115 Layoff; Reinstatement from service retirement

45117 Notice of layoff and hearing rights

45286 Limited term employees

45297 Right to take equivalent examination while employee in military service

45298 Reemployment of persons laid off; voluntary demotions or reductions in time; districts adopting merit system

45308 Order of layoff and reemployment; length of service

45309 Reinstatement of permanent noncertified employees after resignation

GOVERNMENT CODE

11500-11529 Administrative adjudication; formal hearings

UNITED STATES CODE, TITLE 38

4301-4307 4335 Veterans' Reemployment Rights Employment and reemployment rights of members of the uniformed services

COURT DECISIONS

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

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

*Management Resources:*

WEB SITES

California School Employees Association: <http://www.csea.com>

(11/11 11/12) 12/21

# CSBA Sample Board Policy

Students

BP 5145.9(a)

## HATE-MOTIVATED BEHAVIOR

Note: The following **optional** policy addresses prevention strategies for hate-motivated incidents and should be modified to reflect district practice. Elements of this policy may be integrated into existing district and school site plans, such as the local control and accountability plan, comprehensive school safety plan, and staff development plans.

The Governing Board is committed to providing a **respectful, inclusive, and** safe learning environment that protects students from discrimination, harassment, intimidation, bullying, **or any other type of behavior that is motivated by hate.** ~~and other behavior motivated by a person's hostility towards another person's real or perceived ethnicity, national origin, immigrant status, sex, gender, sexual orientation, religious belief, age, disability, or any other physical or cultural characteristic.~~ The Superintendent or designee shall design strategies to promote harmonious relationships among students, prevent incidents of hate motivated behavior to the extent possible, and address such incidents if they occur.

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*

*(cf. 0415 - Equity)*

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 0460 - Local Control and Accountability Plan)*

*(cf. 3515.4 - Recovery for Property Loss or Damage)*

*(cf. 5131- Conduct)*

*(cf. 5131.2 - Bullying)*

*(cf. 5131.5 - Vandalism and Graffiti)*

*(cf. 5136 - Gangs)*

*(cf. 5137 - Positive School Climate)*

*(cf. 5141.52 - Suicide Prevention)*

*(cf. 5145.3 - Nondiscrimination/Harassment)*

*(cf. 5145.7 - Sexual Harassment)*

Note: The following paragraph reflects the definition of "hate-motivated behavior" specified in the California Department of Education's (CDE) publication Bullying at School, expanded to include the categories of protected characteristics identified in state and federal law. Also see BP 0410 - Nondiscrimination in District Programs and Activities and AR 1312.3 - Uniform Complaint Procedures.

**Hate-motivated behavior** is any behavior intended to cause emotional suffering, physical injury, or property damage through intimidation, harassment, bigoted slurs or epithets, force or threat of force, or vandalism motivated in part or in whole by bias or hostility toward the victim's real or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, 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.



**HATE-MOTIVATED BEHAVIOR** (continued)

The Superintendent or designee shall design strategies to promote harmonious relationships among students, prevent incidents of hate-motivated behavior to the extent possible, and address such incidents **in a timely manner if when they occur.**

Note: Hate-motivated behavior, such as an assault, physical threat, bomb threat, destruction of property, graffiti, and ~~certain types of~~ vandalism, may constitute a crime under state or federal law. Local law enforcement agencies, ~~and human rights commissions,~~ **and community organizations** throughout the state have established countywide hate crimes networks aimed at responding to and preventing hate crimes.

Districts can identify local hate crime resources through the California Association of Human Relations Organizations, which conducts activities designed to protect human and civil rights **by creating a climate of respect and inclusion** through networks of collaborations that reduce community tension and build intergroup relationships.

~~The following optional paragraph should be revised to reflect district practice.~~

The Superintendent or designee shall collaborate with regional programs and community organizations to promote ~~safe~~ **an** environments ~~for youth~~ **where diversity is celebrated and hate-motivated behavior is not tolerated.** Such collaborative efforts shall focus on ~~ensuring an efficient use of district and community resources,~~ **developing the development of** effective prevention strategies and response plans, ~~providing~~ **provision of** assistance to students affected by hate-motivated behavior, and/or ~~educating~~ **education of** students who have perpetrated hate-motivated acts.

*(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)*

*(cf. 1700 - Relations Between Private Industry and the Schools)*

*(cf. 5148.2 - Before/After School Programs)*

The district shall provide students with age-appropriate instruction that:

1. ~~i~~**Includes the development of social-emotional learning;**
2. ~~p~~**Promotes their an understanding, awareness, appreciation, of** and respect for human rights, **human relations,** diversity, and acceptance in a multicultural society;
3. **Explains the harm and dangers of explicit and implicit biases**
4. **Discourages discriminatory attitudes and practices** ~~and~~
5. ~~p~~**Provides strategies to manage conflicts constructively;**

*(cf. 5138 - Conflict Resolution/Peer Mediation)*

*(cf. 6142.3 - Civic Education)*

*(cf. 6142.4 - Service Learning/Community Service Classes)*

*(cf. 6142.94 - History-Social Science Instruction)*



**HATE-MOTIVATED BEHAVIOR** (continued)

As necessary, the district shall provide counseling, guidance, and support to students who are victims of hate-motivated behavior and to students who exhibit such behavior.

*(cf. 6164.2 - Guidance/Counseling Services)*

**When appropriate, students who engage in hate-motivated behavior shall be disciplined.**

*(cf. 5144 - Discipline)*

*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*

~~The Superintendent or designee shall ensure that the rules prohibiting hate-motivated behavior and procedures for reporting a hate-motivated incident are provided to students and parents/guardians.~~

**Note: Education Code 218 requires CDE, by July 1, 2021, to develop and/or update resources for use in schools serving students in grades 7-12 for in-service training for the support of lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) students, and strategies to increase support for LGBTQ students which improve overall school climate. Pursuant to Education Code 218, districts that serve students in grades 7-12 are encouraged to use such resources to provide training at least once every two years to teachers and other certificated staff.**

The Superintendent or designee shall provide staff with training **that** ~~on~~:

- 1. Promotes an understanding of diversity, equity, and inclusion**
- 2. Discourages the development of discriminatory attitudes and practices**
- 3. Includes social-emotional learning and nondiscriminatory instructional and counseling methods**
- 4. Supports the prevention, recognition, recognizing and response preventing to hate-motivated behavior**
- 5. Raises the awareness and sensitivity of staff to potentially prejudicial and discriminatory behavior and on**
- 6. Includes effectively enforcement enforcing of** rules for appropriate student conduct.

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*



## HATE-MOTIVATED BEHAVIOR (continued)

**Employees who engage in hate-motivated behavior shall be subject to disciplinary action, up to and including dismissal.**

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

~~The Superintendent or designee shall ensure that the~~ Rules prohibiting hate-motivated behavior and procedures for reporting a hate-motivated incident ~~are~~ **shall be** provided to students, **staff**, and parents/guardians.

**This policy shall be posted in a prominent location on the district's web site in a manner that is readily and easily accessible to parents/guardians and students. (Education Code 234.6)**

*(cf. 1113 - District and School Web Sites)*

### **Complaints Process**

Note: Pursuant to Education Code 234.1, districts are required to adopt a process for receiving and investigating complaints involving unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) based on race or ethnicity, nationality, **disability**, gender, **gender identity**, **gender expression**, sex, sexual orientation, religion, immigration status, or any characteristic contained in the definition of hate crimes in Penal Code 422.55, **or association with a person or group with one or more of these actual or perceived characteristics**. In addition, federal regulations require districts to adopt procedures providing for the prompt and equitable resolution of complaints of discrimination on the basis of sex (34 CFR 106.8), disability (34 CFR 104.7 and 28 CFR 35.107), and age (34 CFR 110.25). Pursuant to 5 CCR 4600-4670, uniform complaint procedures (UCP) must be used for this purpose. See BP/AR 1312.3 - Uniform Complaint Procedures. **Complaints of sexual harassment that meet the federal definition of sexual harassment in 34 CFR 106.30 must be addressed through the procedures specified in 34 CFR 106.44-106.45; see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.**

Although some incidents of harassment, intimidation, or bullying may not fall within the provisions of Education Code 234.1 or federal civil rights regulations, CSBA ~~strongly~~ recommends that districts use the UCP to investigate all incidents (whether discriminatory or nondiscriminatory) to ensure consistent implementation by district staff. It is not always easy or possible for staff to know prior to an investigation whether a student was victimized because of ~~his/her~~ **an** actual or perceived membership in a legally protected class. Those incidents found to involve discrimination based on the results of the investigation would then be resolved using the UCP. When an incident is determined to be nondiscriminatory, it should be resolved through the appropriate disciplinary process.

~~A student or parent/guardian who believes the student is a victim of hate-motivated behavior is strongly encouraged to report the incident to a teacher, the principal, or other staff member.~~

Any staff member who is notified that hate-motivated behavior has occurred, observes such behavior, or otherwise becomes aware of an incident shall immediately contact the ~~principal~~



**HATE-MOTIVATED BEHAVIOR** (continued)

~~or the~~ compliance officer responsible for coordinating the district's response to complaints and complying with state and federal civil rights laws. As appropriate, ~~he/she~~ **the staff member** shall also contact law enforcement.

*(cf. 3515.3 - District Police/Security Department)*

*(cf. 5145.11 - Questioning and Apprehension by Law Enforcement)*

A student or parent/guardian who believes the student is a victim of hate-motivated behavior is ~~strongly~~ encouraged to report the incident to a teacher, the principal, **the district's compliance officer**, or other staff member.

Any complaint of hate-motivated behavior shall be investigated and, if determined to be discriminatory, shall be resolved in accordance with law and the district's uniform complaint procedures specified in AR 1312.3 - Uniform Complaint Procedures **or other applicable procedure**. If, during the investigation, it is determined that a complaint is about nondiscriminatory behavior, the principal or designee shall inform the complainant and shall take all necessary actions to resolve the complaint.

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 1312.3 - Uniform Complaint Procedures)*

*(cf. 5144 - Discipline)*

*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*

*(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)*

*Legal Reference: (see next page)*



**HATE-MOTIVATED BEHAVIOR (continued)**

*Legal Reference:*

EDUCATION CODE

200-262.4 Prohibition of discrimination

32282 School safety plans

48900.3 Suspension for hate violence

48900.4 Suspension or expulsion for ~~threats or~~ harassment, threats, or intimidation

GOVERNMENT CODE

**11135 Prohibition of discrimination in programs or activities**

PENAL CODE

422.55 Definition of hate crime

422.6 Crimes, harassment

CODE OF REGULATIONS, TITLE 5

4600-4670 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

CODE OF FEDERAL REGULATIONS, TITLE 34

100.3 Prohibition of discrimination on basis of race, color or national origin

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

**106.30 Discrimination on the basis of sex in education programs and activities; definitions**

106.44 Recipient's response to sexual harassment

**106.45 Grievance process for formal complaints of sexual harassment**

110.25 Prohibition of discrimination based on age

*Management Resources:*

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

*Bullying at School, 2003*

CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS

*Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018*

HUMAN RIGHTS CAMPAIGN FOUNDATION PUBLICATIONS

***California LGBTQ Youth Report, 2019***

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

*Dear Colleague Letter: Harassment and Bullying, October 2010*

*Dear Colleague Letter: Prohibited Disability Harassment, July 2000*

WEB SITES

CSBA: <http://www.csba.org>

California Association of Human Relations Organizations: <http://www.cahro.org>

California Department of Education: <http://www.cde.ca.gov>

California Office of the Attorney General: <http://oag.ca.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

**U.S. Department of Health and Human Services: <http://www.stopbullying.gov>**

U.S. Department of Justice: <https://www.justice.gov>

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