

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. Pursuant to 5 CCR 4610, districts are required to adopt a uniform system of procedures that meets specified requirements for investigating and resolving complaints alleging (1) noncompliance with state and federal laws and regulations governing educational programs; (2) noncompliance with state law prohibiting the charging of student fees; or (3) unlawful discrimination (such as discriminatory harassment, intimidation, and bullying). Although some bullying incidents may not fall within the provisions of 5 CCR 4610, BP 5131.2 - Bullying strongly recommends that districts use the UCP to investigate all bullying incidents, regardless of whether there is an allegation of discriminatory bullying, 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 bullied because of his/her actual or perceived membership in a legally protected class. After investigation, bullying incidents found to involve unlawful discrimination would then be resolved using the UCP. Districts that are concerned about the capacity of a single district compliance officer to handle a possible increase in the number of UCP complaints, or that prefer to handle certain incidents at the school site level whenever possible, may designate multiple compliance officers in accordance with the accompanying administrative regulation.

Education Code 52075 **mandates** districts to adopt policies and procedures implementing the use of the UCP to investigate and resolve complaints alleging noncompliance with requirements related to the local control and accountability plan. For plan requirements, see BP/AR 0460 - Local Control and Accountability Plan. In addition, **legislation enacted in 2015 state law** authorizes the use of the UCP to resolve complaints of noncompliance with laws related to accommodations for lactating students; educational rights of foster youth, **and** homeless students, **and former juvenile court school students;** assignment of students to courses without educational content; and physical education instructional minutes, as specified in items #3 and #6-**9-10** below. Finally, a district should adopt policies and procedures implementing the use of the UCP to investigate and resolve complaints alleging retaliation in response to a complaint.

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 Title II of the Americans with Disabilities Act (20 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). OCR has issued guidance describing federal requirements for discrimination complaint procedures. OCR requires such procedures to be "prompt and equitable." The factors OCR examines to evaluate each district's procedures are specified in the accompanying administrative regulation, including whether and how the procedures (1) provide notice of the procedures to the district's students, parents/guardians, and employees; (2) ensure adequate, reliable, and impartial investigation of complaints; (3) contain reasonably prompt timeframes for major stages of the complaint process; (4) provide notice to the complainant of the resolution of the complaint; and (5) provide an assurance that action will be taken to prevent recurrence of any discrimination found and to correct its effects.

UNIFORM COMPLAINT PROCEDURES (continued)

CSBA staff received feedback and comments from representatives of CDE and OCR regarding this policy and the accompanying administrative regulation. As a result, the sample policy and regulation have been drafted to go beyond the requirements of California's UCP laws and regulations in an attempt to address issues and concerns raised by CDE and OCR. While CDE and OCR have not approved or signed off on the samples, CSBA believes that the additional details provided herein may help school districts and county offices of education 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 early resolution of complaints whenever possible. To 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.

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

1. Any complaint alleging district violation of applicable state or federal law or regulations governing adult education programs, after school education and safety programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, special education programs, consolidated categorical aid programs, and any other district-implemented program which is listed in Education Code 64000(a) (5 CCR 4610)

(cf. 3553 - Free and Reduced Price Meals)
(cf. 3555 - Nutrition Program Compliance)
(cf. 5141.4 - Child Abuse Prevention and Reporting)
(cf. 5148 - Child Care and Development)
(cf. 5148.2 - Before/After School Programs)
(cf. 6159 - Individualized Education Program)
(cf. 6171 - Title I Programs)
(cf. 6174 - Education for English ~~Language~~ Learners)
(cf. 6175 - Migrant Education Program)
(cf. 6178 - Career Technical Education)
(cf. 6178.1 - Work-Based Learning)
(cf. 6178.2 - Regional Occupational Center/Program)
(cf. 6200 - Adult Education)

2. Any complaint alleging the occurrence of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) against any student, employee, or other person participating in district programs and activities, including, but not limited to, those programs or activities funded directly by or that receive or benefit from any state financial assistance, based on the person's actual or perceived characteristics of race or ethnicity,

color, ancestry, nationality, national origin, ethnic

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group identification, age, religion, marital, pregnancy, or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55, or based on his/her association with a person or group with one or more of these actual or perceived characteristics (5 CCR 4610)

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

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

Note: Pursuant to Education Code 222, as added by AB 302 (Ch. 690, Statutes of 2015), a district is required to provide specified accommodations to lactating students on campus, and a complaint may be filed using the UCP when any such student is denied such accommodations.

3. Any complaint alleging district noncompliance with the requirement to provide reasonable accommodation to a lactating student on school campus to express breast milk, breastfeed an infant child, or address other breastfeeding-related needs of the student (Education Code 222)

(cf. 5146 - Married/Pregnant/Parenting Students)

4. Any complaint alleging district noncompliance with the prohibition against requiring students to pay fees, deposits, or other charges for participation in educational activities (5 CCR 4610)

(cf. 3260 - Fees and Charges)

(cf. 3320 - Claims and Actions Against the District)

Note: Item #5 below is **mandated** pursuant to Education Code 52075.

5. Any complaint alleging district noncompliance with legal requirements related to the implementation of the local control and accountability plan (Education Code 52075)

(cf. 0460 - Local Control and Accountability Plan)

Note: Item #6 below permits the use of the UCP for resolving complaints of district noncompliance with law related to specified educational rights of a foster youth pursuant to Education Code 48853, 48853.5, 49069.5, 51225.1, and 51225.2, as amended by AB 379 (Ch. 772, Statutes of 2015). For details of the educational rights of foster youth, see BP/AR 6173.1 – Education for Foster Youth.

6. Any complaint, by or on behalf of any student who is a foster youth, alleging district noncompliance with any legal requirement applicable to the student regarding placement decisions, the responsibilities of the district's educational liaison to the

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UNIFORM COMPLAINT PROCEDURES (continued)

student, the award of credit for coursework satisfactorily completed in another school or district, school transfer, or the grant of an exemption from Board-imposed graduation requirements (Education Code 48853, 48853.5, 49069.5, 51225.1, 51225.2)

(cf. 6173.1 - Education for Foster Youth)

Note: Item #7 below permits the use of the UCP for resolving complaints of district noncompliance with law related to specified educational rights of a homeless student pursuant to Education Code 51225.1-51225.2, as amended by AB 379 (Ch. 772, Statutes of 2015). For details of the educational rights of homeless students, see BP/AR 6173 - Education for Homeless Children.

7. Any complaint, by or on behalf of a homeless student as defined in 42 USC 11434a, alleging district noncompliance with any requirement applicable to the student regarding the award of credit for coursework satisfactorily completed in another school or district or the grant of an exemption from Board-imposed graduation requirements (Education Code 51225.1, 51225.2)

(cf. 6173 - Education for Homeless Children)

Note: Item #8 below is for districts maintaining high schools. Education Code 51225.1-51225.2, as amended by AB 2306 (Ch. 464, Statutes of 2016), provide that complaints of noncompliance with specified requirements related to the educational rights of former juvenile court school students, as defined, may be filed in accordance with the UCP.

8. Any complaint, by or on behalf of a former juvenile court school student who transfers into the district after his/her second year of high school, alleging district noncompliance with any requirement applicable to the student regarding the award of credit for coursework satisfactorily completed in the juvenile court school or the grant of an exemption from Board-imposed graduation requirements (Education Code 51225.1, 51225.2)

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

Note: Item #8 below is for districts that serve grades 9-12 students. Pursuant to Education Code 51228.1 and 51228.2, as added by AB 1012 (Ch. 703, Statutes of 2015) and as specified below, a UCP complaint may be filed against a district that assigns a student to a course with no educational content for more than one week in any semester or to a course which the student has previously completed, unless the district meets specified conditions. For more information, see BP 6152 - Class Assignment.

- 8-9.** Any complaint alleging district noncompliance with the requirements of Education Code 51228.1 and 51228.2 that prohibit the assignment of a student to a course without educational content for more than one week in any semester or to a course the student has previously satisfactorily completed, without meeting specified conditions (Education Code 51228.3)

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UNIFORM COMPLAINT PROCEDURES (continued)

(cf. 6152 - Class Assignment)

Note: ~~Item #9 below is for districts maintaining elementary schools. Pursuant to Education Code 51223, as amended by AB 1391 (Ch. 706, Statutes of 2015), the UCP may be used to file a complaint when an elementary school has not complied with the requirement to offer 200 minutes of physical education instruction each 10 school days. For details of this requirement, see BP/AR 6142.7 – Physical Education and Activity.~~

- 9-10.** Any complaint alleging district noncompliance with the physical education instructional minutes requirement for students in elementary school (Education Code 51210, 51223)

(cf. 6142.7 - Physical Education and Activity)

Note: 5 CCR 4621 **mandates** that district policy ensure that complainants are protected from retaliation as specified in item **#10-11** below.

- 10-11.** 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

Note: Pursuant to 5 CCR 4610, a district may, at its discretion, use the UCP to investigate and resolve other complaints.

- 11-12.** Any other complaint as specified in a district policy

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. 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 to reach a resolution to the complaint that is acceptable to all parties. ADR 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.

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UNIFORM COMPLAINT PROCEDURES (continued)

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

When an allegation that is not subject to the 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 related requirements, 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 ever 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 records of all UCP complaints and the investigations of those complaints in accordance with applicable law and district policy.

(cf. 3580 - District Records)

Non-UCP Complaints

Note: 5 CCR 4611 details complaint issues that are not subject to the UCP. Such issues include, but are not limited to, allegations of child abuse, health and safety complaints regarding a child development program, allegations of fraud, and employment discrimination complaints. ~~For procedures related to complaints of discrimination in employment, see AR 4030 - Nondiscrimination in Employment.~~

The following complaints shall not be subject to the district's UCP but shall be referred to the specified agency: (5 CCR 4611)

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UNIFORM COMPLAINT PROCEDURES (continued)

1. Any complaint alleging child abuse or neglect shall be referred to the County Department of Social Services, the County Protective Services Division, and the appropriate law enforcement agency.
2. Any complaint alleging health and safety violations by a child development program shall, for licensed facilities, be referred to Department of Social Services and shall, for licensing-exempt facilities, be referred to the appropriate Child Development regional administrator.

Note: In addition to complying with item #3 below, a district is required to promptly investigate any allegation of discrimination in employment it receives, pursuant to 2 CCR 11023. For procedures related to complaints of discrimination in employment, see AR 4030 - Nondiscrimination in Employment.

3. Any complaint alleging employment discrimination shall be sent to the California Department of Fair Employment and Housing and the compliance officer shall notify the complainant by first class mail of the transfer.
4. Any complaint alleging fraud shall be referred to the California Department of Education.

Note: Education Code 35186 requires the district to use the 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, the CDE has created a separate uniform complaint process for the Williams complaints. See AR 1312.4 - Williams Uniform Complaint Procedures for the separate procedure.

In addition, the district's Williams Uniform Complaint Procedures, AR 1312.4, shall be used to investigate and resolve 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 students or staff, or teacher vacancies and misassignments. (Education Code 35186)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

Legal Reference: (see next page)

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UNIFORM COMPLAINT PROCEDURES (continued)

Legal Reference:

EDUCATION CODE

200-262.4 *Prohibition of discrimination*

222 *Reasonable accommodations; lactating students*

8200-8498 *Child care and development programs*

8500-8538 *Adult basic education*

18100-18203 *School libraries*

32289 *School safety plan, uniform complaint procedures*

35186 *Williams uniform complaint procedures*

48853-48853.5 *Foster youth*

48985 *Notices in language other than English*

49010-49013 *Student fees*

49060-49079 *Student records*

49069.5 *Rights of parents*

49490-49590 *Child nutrition programs*

51210 *Courses of study grades 1-6*

51223 *Physical education, elementary schools*

51225.1-51225.2 *Foster youth, ~~and~~ homeless children, **and former juvenile court school students**; course credits; graduation requirements*

51228.1-51228.3 *Course periods without educational content*

52060-52077 *Local control and accountability plan, especially:*

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

52160-52178 *Bilingual education programs*

52300-52490 *Career technical education*

52500-52616.24 *Adult schools*

~~52800-52870 School-based program coordination~~

54400-54425 *Compensatory education programs*

54440-54445 *Migrant education*

54460-54529 *Compensatory education programs*

56000-56867 *Special education programs*

59000-59300 *Special schools and centers*

64000-64001 *Consolidated application process*

GOVERNMENT CODE

11135 *Nondiscrimination in programs or activities funded by state*

12900-12996 *Fair Employment and Housing Act*

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

3080 *Application of section*

4600-4687 *Uniform complaint procedures*

4900-4965 *Nondiscrimination in elementary and secondary education programs*

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*

Legal Reference continued: (see next page)

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UNIFORM COMPLAINT PROCEDURES (continued)

Legal Reference: (continued)

UNITED STATES CODE, TITLE 20 (continued)

6301-6577 *Title I basic programs*

6801-~~6871~~**7014** *Title III language instruction for limited English proficient and immigrant students*

7101-7184 *Safe and Drug-Free Schools and Communities Act*

7201-7283g *Title V promoting informed parental choice and innovative programs*

7301-7372 *Title V rural and low-income school programs*

12101-12213 *Title II equal opportunity for individuals with disabilities*

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*

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*

CODE OF FEDERAL REGULATIONS, TITLE 34

106.8 *Designation of responsible employee for Title IX*

106.9 *Notification of nondiscrimination on basis of sex*

110.25 *Notification of nondiscrimination on the basis of age*

Management Resources:

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

Dear Colleague Letter: Title IX Coordinators, April 2015

Questions and Answers on Title IX and Sexual Violence, April 2014

Dear Colleague Letter: Bullying of Students with Disabilities, August 2013

Dear Colleague Letter: Sexual Violence, April 2011

Dear Colleague Letter: Harassment and Bullying, October 2010

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, 2002

WEB SITES

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

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

Family Policy Compliance Office: <http://familypolicy.ed.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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