

To: Policy Subcommittee
From: Ty Alper and Susan Craig
Date: Feb. 19, 2016
Re: Proposed revisions to BP 1312.3 & AR 1312.3 for February 26, 2016 meeting

We propose revisions to BP 1312.3 and AR 1312.3, as indicated below. We can discuss these proposals at our February 26, 2016 meeting. Attached to this memo are a) 11/2/15 Letter from sujatha baliga; b) complete current text of BP 1312.3; and c) complete current text of AR 1312.3.

We propose two categories of revisions. First, we propose clarifying the BP and AR to allow for restorative justice to be used even in cases of sexual battery and sexual assault, so long as the Title IX Coordinator approves and all parties consent. Second, we propose amending the BP and AR to conform to new legislation that states that any complaint that the district has not complied with requirements regarding the education of homeless or foster students, as specified in Education Code 51225.1 or 51225.2, may be filed under the district's Uniform Complaint Procedures.

Restorative Justice

The Board passed a revised BP 1312.3 on June 24, 2015. This revision followed a Board discussion on May 20, 2015 (see 8:40 to 20:00, and summarized at 30:35 here: <https://vimeo.com/128663762>) about whether to allow restorative justice in cases involving sexual harm. There was a lack of consensus among the Board members at the time about the propriety of using restorative justice in cases of sexual harm, and the matter was referred back to the Policy Subcommittee. The final version of the BP was passed on consent on June 24, 2015 without further discussion.

In relevant part, BP 1312.3 states:

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 agreeable to all parties. Due to the implicit power imbalance between adults and students, ADR may only be offered to resolve complaints that involve both students and adults on a voluntary basis and with the determination by the Compliance Officer that ADR would be appropriate. ADR shall not be offered or used to resolve any complaint involving sexual assault or sexual battery, even on a voluntary basis; or where there is a reasonable risk that a party to the ADR feels compelled to participate. Additionally, the use of ADR to resolve any complaint of sexual harassment requires the approval of the Title IX Coordinator. The Superintendent or designee shall ensure that the use of ADR is consistent with state and federal laws and regulations.

In relevant part, AR 1312.3 states:

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

At the time the Board approved the latest revision to BP 1312.3, it was staff's understanding that the Office of Civil Rights (OCR) prohibited the use of restorative justice in sexual harm cases. We have since learned that this is not the case. OCR takes no official position on the use of restorative justice in sexual harm cases. We have heard anecdotally that senior administrators in OCR have publically advocated for the use of restorative justice in certain sexual harm cases, but our understanding is that OCR has not yet endorsed the practice in writing. Nevertheless, we do not view OCR as a barrier to the use of restorative justice in cases where District staff deems it appropriate and all parties voluntarily agree. We note that OCR's prohibition on "ADR" in sexual harm cases does not preclude the use of restorative justice in these cases. As restorative justice expert sujatha baliga explains in the letter that is included in this packet, ADR is not the same thing as restorative justice.

District staff is currently constrained by BP 1312.3 from exploring restorative justice as an option in sexual harm cases. This constraint is antithetical to the expressed desire of the Board to use restorative practices in lieu of exclusionary discipline when possible and where appropriate. We do agree that mediation is inappropriate as a method of resolving allegations of sexual harassment and sexual harm, for the reasons sujatha baliga explains in her letter.

For these reasons, we propose amending the language quoted above as follows:

BP 1312.3

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 agreeable to all parties. Due to the implicit power imbalance between adults and students, ADR may only be offered to resolve complaints that involve both students and adults on a voluntary basis and with the determination by the Compliance Officer that ADR would be appropriate. ADR shall not be offered or used to resolve any complaint involving sexual assault or sexual battery, even on

a voluntary basis; or where there is a reasonable risk that a party to the ADR feels compelled to participate. Additionally, the use of ADR to resolve any complaint of sexual harassment requires the approval of the Title IX Coordinator. The Superintendent or designee shall ensure that the use of ADR is consistent with state and federal laws and regulations. **ADR does not include restorative justice. Nothing in this provision should be construed as precluding the use of restorative justice or restorative practices in cases involving sexual harm, including sexual battery, sexual assault, or sexual harassment. Restorative justice or restorative practices may be used in cases involving sexual harm, including sexual battery, sexual assault, or sexual harassment with the approval of the Title IX Coordinator and the consent of all parties.**

AR 1312.3

After receipt of the complaint, the compliance officer or designee may informally discuss with all the parties the possibility of using mediation or restorative conferencing, which shall be conducted by an appropriately trained facilitator. Due to the implicit power imbalance between adults and students, ADR may only be offered to resolve complaints that involve both students and adults on a voluntary basis and with the determination by the Compliance Officer that ADR would be appropriate. ~~Neither mediation nor restorative conferencing shall not~~ be offered or used to resolve any complaint involving an allegation of a sexual assault or a sexual battery, or where there is a reasonable risk that a party to the mediation ~~or restorative conferencing~~ would feel compelled to participate. Additionally, the use of mediation or restorative conferencing to resolve any complaint of sexual harassment requires the approval of the Title IX Coordinator. If the parties agree to mediation or a restorative conference, the compliance officer or designee shall make all arrangements for this process.

Homeless and Foster Care Status

Effective January 1, 2016, Education Code section 51225.2 was amended to include new subsection (f), which pertains to foster and homeless students. The new provision is as follows:

(f) (1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department's receipt of the appeal.

(3) If a local educational agency finds merit in a complaint, or the Superintendent finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.

(4) Information regarding the requirements of this section shall be included in the annual notification distributed to, among others, pupils, parents or guardians of pupils, employees, and other interested parties pursuant to Section 4622 of Title 5 of the California Code of Regulations.

We are proposing that the following language (in bold) regarding the use of the Uniform Complaint Procedures (UCP) for complaints regarding the education of homeless or foster students be added to BUSD's BP and AP 1312.3, to align with the change in Education Code:

BP 1312.3

1. Any complaint alleging district violation of applicable state or federal law or regulations governing adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, **education of homeless or foster students**, and special education programs (5 CCR [4610](#))

AR 1312.3

The notice shall:

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

b. Federal and state laws and regulations prohibit the following:

i. violation of applicable state or federal law or regulations governing adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, **education of homeless or foster students**, and special education programs

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Dear Berkeley School Board Directors and Dr. Evans:

As a BUSD parent and a national leader in field of restorative justice (“RJ”), I am thrilled to see that Berkeley Unified recently committed to increasing the use of RJ in supporting positive school culture and resolving school conflicts. Based on conversations with other parents and community members, I am concerned, however, that RJ is not being considered as an option in a sufficient number of conflicts and cases. RJ could be used as an option in nearly every case, including, and especially, in cases involving serious and sexual harm. This letter clarifies how RJ can be used in serious cases and why RJ is not the same as Alternative Dispute Resolution (“ADR”).

First, a bit of background on my qualifications. For the past 10 years, I have been working in the field of RJ as a facilitator, trainer and consultant, including high level cases that have received national attention. In particular, I have facilitated circles involving sexual harm on school campuses, teen dating violence and significant assault and battery cases. I was drawn to this work due to my own history of surviving sexual harm and my belief that crime victims deserve multiple options for how to receive healing and vindication in the face the harms they suffer.

Due to my extensive experience in facilitating restorative processes, I believe RJ can be used in any type of case and if done well, never involves coercion or power imbalances with the victim. RJ is about accountability to crime victims’ self-identified needs. Participating in RJ is absolutely voluntary and before any circle, a trained facilitator would insure that no one was feeling forced to be part of the process. Best practices dictate that trained facilitators reach out to crime victims to determine whether a crime victim would be interested in participating in a RJ process. In my trainings, we spend a significant portion of time learning how to do this without pressuring victims to participate.

There is nothing that precludes RJ from being used in sexual harm cases, including serious sexual harm cases. In fact, RJ is much more responsive and respectful to victims than adversarial hearings. In a study of participating crime victims in Alameda County, including sexual harm victims, over 98% of victims said that they would participate in a RJ process again.

An adversarial hearing, on the other hand, has the opposite impact: it re-traumatizes and deeply damages victims. Being made to share the details of the sexual harms they suffered in

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front of strangers, and being subjected to cross examination, causes victims to feel guilty, ashamed, and doubted about their understanding of what happened. By contrast, in a RJ process, these re-traumatizing elements are minimized by allowing the crime victim to lead the discussion and share only as much of his or her experience as they choose. Moreover, extensive preparation on both sides prepares everyone for the circle, and allows the circle itself to be crafted by crime victims' needs. Minimizing re-victimization is at the center of restorative processes.

Restorative Justice is not the same as Alternative Dispute Resolution. RJ is often mistakenly thought to be a type of ADR, but it is not. In fact, it is very different and has a very different function. Unlike ADR, RJ is about those who have harmed taking responsibility for their actions and being accountable to victims to address the harm they caused. RJ is not about debating the merits of what happened or disputing the facts. ADR and mediation, on the other hand, do not assume there was a harm. They are fact-finding approaches with the primarily purpose of settling disputes. It would be insulting to a victim to consider a sexual harm a "dispute," and those trained in facilitating restorative processes are aware of this critical distinction.

Similar concerns have existed in the sexual assault and domestic violence community more broadly. Some worry that RJ runs afoul of prescriptions against mediation and ADR in those contexts. I have spoken at several national meetings, convenings, and conferences hosted by victims' advocates about the difference between ADR and mediation. Just last month, I was invited by the Department of Justice's Office of Violence Against Women to explain this exact critical distinction.

RJ is a natural fit for BUSD. BUSD is a leader in progressive, thoughtful and high quality public education. Using expulsions and contested hearings to address serious cases, especially sexual harm cases, however, is not in line with best practices or with the BUSD that I have come to know as a parent.

Our office is a leader in using RJ to address sexual harm cases. I would be happy to help you think through the application of restorative processes to these cases. Because this issue is so close to my heart, it's an issue we hope to move forward both locally and nationally, we would also be more than willing to facilitate these cases for BUSD.

My very best,



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Berkeley Unified School District

BP 1312.3 Uniform Complaint Procedures

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, informal resolution of incidents that may be the proper subject of a UCP complaint whenever possible and appropriate. To resolve complaints which cannot be resolved through such informal process, the Board shall adopt a uniform system of complaint processes specified in 5 CCR 4600-4670, this policy, and the accompanying administrative regulation. This process shall be prompt, impartial, and equitable and shall comply with all applicable federal and state laws and regulations.

For purposes of this policy and the accompanying regulation, "Complaint" means a written and signed statement alleging one or more violations of paragraphs #1-6 below. If the complainant is unable to put the complaint in writing, due to conditions such as a disability or illiteracy, the district shall assist the complainant in filing the complaint. (5 CCR 4600)

Anyone who files, verbally or in writing, a report that is the proper subject of a UCP complaint shall be notified of his or her right to file a complaint and advised of the process for doing so pursuant to this policy and accompanying 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, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, and special education programs (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. 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 unlawful discrimination in district programs and activities against any person based on his/her actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55, or based on his/her association with a person or group with one or more of these actual or perceived characteristics. Unlawful discrimination includes, but is not limited to, discriminatory bullying, discriminatory intimidation, and sexual harassment. (5 CCR 4610)

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

(cf. 4030 - Nondiscrimination in Employment)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

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

(cf. 3260 - Fees and Charges)

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

4. Any complaint alleging that the district has not complied with legal requirements related to the implementation of the local control and accountability plan (Education Code 52075)

(cf. 0460 - Local Control and Accountability Plan)

5. 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
6. Any other complaint as specified in a district policy

Complaints alleging non-discriminatory bullying shall follow the procedures outlined in BP/AR 5131.2 – Anti-Bullying. Complaints alleging a violation of district or site policy, practice, or procedure or against a district employee shall follow the procedures outlined in BP/AR/E 1312.1 – Complaints Concerning District Policies, Practices, Procedures or Employee.

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 agreeable to all parties. Due to the implicit power imbalance between adults and students, ADR may only be offered to resolve complaints that involve both students and adults on a voluntary basis and with the determination by the Compliance Officer that ADR would be appropriate. ADR shall not be offered or used to resolve any complaint involving sexual assault or sexual battery, even on a voluntary basis; or where there is a reasonable risk that a party to the ADR feels compelled to participate. Additionally, the use of ADR to resolve any complaint of sexual harassment requires the approval of the Title IX Coordinator. The Superintendent or designee shall ensure that the use of ADR is consistent with state and federal laws and regulations.

In filing and investigating complaints, the confidentiality of the parties involved shall be protected as required by law. As appropriate for any complaint alleging retaliation, unlawful discrimination, or bullying, the Superintendent or designee shall maintain the integrity of the complaint process and shall keep confidential the identity of the complainant and/or the subject of the complaint, if he/she is different from the complainant.

(cf. 5125 - Student Records)

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 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.

The Superintendent or designee shall maintain records of all UCP complaints and the investigations of those complaints. All such records shall be destroyed in accordance with applicable state law and district policy.

(cf. 3580 - District Records)

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

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.
3. Any complaint alleging employment discrimination shall be sent to the California Department of Fair Employment and Housing and the compliance officer or designee 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.

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:

EDUCATION CODE

200-262.4 Prohibition of discrimination
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
48985 Notices in language other than English
49010-49013 Student fees
49060-49079 Student records
49490-49590 Child nutrition programs
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 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
6301-6577 Title I basic programs
6801-6871 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

- 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
- 106.9 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

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

WEB SITES

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

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

U.S. Department of Education, Office for Civil Rights:

<http://www.ed.gov/about/offices/list/ocr>

Adopted: May 21, 2003

Revised: February 1, 2006

Revised and adopted: June 24, 2015

Berkeley Unified School District

AR 1312.3 Uniform Complaint Procedures

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

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.2 - Complaints Concerning Instructional Materials)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

Compliance Officers

The district designates the individual(s) identified below as the employee(s) responsible for coordinating the district's response to complaints and for complying with state and federal civil rights laws. The individual(s) also serve as the compliance officer(s) specified in AR 5145.3 - Nondiscrimination/Harassment and the Title IX Coordinator specified in AR 5145.7 - Sexual Harassment. The individual(s) shall receive and coordinate the investigation of complaints and shall ensure district compliance with law.

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

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

In no instance shall a designee be assigned to investigate a complaint if he/she is mentioned in the complaint, has a conflict of interest that would prohibit him/her from fairly investigating or resolving the complaint, or is not properly trained to investigate and resolve the complaint given the nature of the specific allegations in the complaint. Any complaint filed against or implicating a compliance officer may be filed with the Superintendent or designee.

The Superintendent or designee shall ensure that employees assigned to complaints receive training and are knowledgeable about the laws and

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

Interim Measures

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

Notifications

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

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

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

The Superintendent or designee shall ensure that all students and parents/guardians, including students and parents/guardians with limited English proficiency, have access to the relevant information provided in the district's policy, regulation, forms, and notices concerning the UCP.

If 15 percent or more of students enrolled in a particular district school speak a single primary language other than English, the district's policy, regulation, forms, and notices concerning the UCP shall be translated into that language, in accordance with Education Code 234.1 and 48985. In all other instances,

the district shall ensure meaningful access to all relevant UCP information for parents/guardians with limited English proficiency.

The notice shall:

1. Identify the person(s), position(s), or unit(s) responsible for receiving complaints, including contact telephone number and email address.
2. Advise the complainant of any civil law remedies that may be available to him/her under state or federal discrimination laws, if applicable
3. Advise the complainant of the appeal process, including, if applicable, the complainant's right to take a complaint directly to the California Department of Education (CDE) or to pursue remedies before civil courts or other public agencies, such as the U.S. Department of Education's Office for Civil Rights (OCR) in cases involving unlawful discrimination.
4. Include statements that:
 - a. The district has the primary responsibility to ensure compliance with applicable state and federal laws and regulations governing educational programs.
 - b. Federal and state laws and regulations prohibit the following:
 - i. violation of applicable state or federal law or regulations governing adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, and special education programs
 - ii. unlawful discriminatory activity, within the jurisdiction of the District, by district staff, district students, or other district representatives against any person based on his/her actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55, or

based on his/her association with a person or group with one or more of these actual or perceived characteristics

- iii. violation of the prohibition against requiring students to pay fees, deposits, or other charges for participation in educational activities
 - iv. violation of legal requirements related to the implementation of the local control and accountability plan
 - v. retaliation against a complainant or other participant in the complaint process or anyone who has acted to uncover or report a violation subject to this policy
- c. The complaint review shall be completed within 30 calendar days of the district's receipt of the complaint, although this deadline may be extended an additional 30 calendar days with written approval of the Superintendent. This deadline may be extended beyond a total of 60 calendar days from the date of receipt of the complaint if the complainant agrees in writing to an extension of the timeline.
- d. A complaint alleging retaliation or unlawful discrimination must be filed not later than six months from the date it occurred, or six months from the date the complainant first obtained knowledge of the facts of the alleged retaliation or unlawful discrimination. The time for filing may be extended for up to 90 calendar days by the Superintendent or designee for good cause upon written request by the complainant setting forth the reasons for the extension.

(cf. 0460 - Local Control and Accountability Plan)

- e. The complainant has a right to appeal the district's decision to the CDE by filing a written appeal within 15 calendar days of receiving the district's decision.
- f. The appeal to the CDE must include a copy of the complaint filed with the district and a copy of the district's decision.
- g. Copies of the district's UCP are available free of charge.

District Responsibilities

All UCP-related complaints shall be investigated and resolved within 30 calendar days of the district's receipt of the complaint, although this deadline may be extended an additional 30 calendar days with written approval of the

Superintendent. This deadline may be extended beyond a total of 60 calendar days if the complainant agrees in writing to an extension. (5 CCR 4631)

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

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

Filing of Complaint

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

All complaints shall be filed in accordance with the following:

1. A complaint alleging district violation of applicable state or federal law or regulations governing adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, and special education programs may be filed by any individual, public agency, or organization. (5 CCR 4630)
2. Any complaint alleging noncompliance with law regarding the prohibition against requiring students to pay student fees, deposits, and charges or any requirement related to the LCAP may be filed anonymously if the complaint provides evidence, or information leading to evidence, to support an allegation of noncompliance. (Education Code 49013, 52075)
3. A complaint alleging unlawful discrimination may be filed only by a person who alleges that he/she personally suffered retaliation or unlawful discrimination or by a person who believes that an individual or any specific class of individuals has been subjected to it. The complaint shall be initiated no later than six months from the date when the alleged retaliation or unlawful discrimination occurred, or six months from the date when the complainant first obtained knowledge of the facts of the alleged retaliation or unlawful discrimination. The time for filing may be extended for up to 90

calendar days by the Superintendent or designee for good cause upon written request by the complainant setting forth the reasons for the extension. (5 CCR 4630)

4. When a complaint alleging unlawful discrimination is filed anonymously, the compliance officer or designee shall pursue an investigation, resolution, or other response as appropriate, depending on the specificity and reliability of the information provided and the seriousness of the allegation.
5. When the complainant or alleged victim of unlawful discrimination requests confidentiality, the compliance officer or designee shall inform him/her that the request may limit the district's ability to investigate or resolve the conduct or take other necessary action. When honoring a request for confidentiality, the district will nevertheless take all reasonable steps to respond to and resolve the complaint consistent with the request and take all reasonable steps to protect the safety and well-being of students.
6. If a complainant is unable to put a complaint in writing due to conditions such as a disability or illiteracy, district staff shall assist him/her in the filing of the complaint. If a complainant requires translation, district staff shall assist him/her in the filing of the complaint. Notwithstanding any timeline in this policy, a complaint shall not be deemed to be filed late because of the need for such accommodations. (5 CCR 4600)

Mediation and Restorative Conferencing

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

Before initiating the mediation or restorative conference of a complaint alleging retaliation or unlawful discrimination, the compliance officer or designee shall

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

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

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

Investigation of Complaint

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

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

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

In conducting the investigation, the compliance officer or designee shall collect all available documents and review all available hardcopy or electronic records,

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

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

A complainant's refusal to provide documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or engagement in any other obstruction of the investigation may result in the dismissal of the complaint because of a lack of evidence to support the allegation. (5 CCR 4631)

In accordance with law, the district shall provide the compliance officer or designee with access to records and other information related to the allegation in the complaint and shall not in any way obstruct the investigation. Failure or refusal of the district to cooperate in the investigation may result in a finding based on evidence collected that a violation has occurred and in the imposition of a remedy in favor of the complainant. (5 CCR 4631)

The complaint shall be decided using a "preponderance of the evidence" standard in determining the veracity of the factual allegations in a complaint. This standard is met if the allegation is more likely to be true than not.

Report of Findings

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

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

Final Written Decision

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

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

If the complaint involves a limited-English-proficient student or parent/guardian and the student involved attends a school at which 15 percent or more of the students speak a single primary language other than English, then the decision shall also be translated into that language. In other all other instances, the district shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

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

1. The findings of fact based on the evidence gathered. In reaching a factual determination, the following factors may be taken into account:
 - a. Statements made by any witnesses
 - b. The relative credibility of the individuals involved
 - c. How the complaining individual reacted to the incident
 - d. Any documentary or other evidence relating to the alleged conduct
 - e. Past instances of similar conduct by any alleged offenders
 - f. Past false allegations made by the complainant
2. The conclusion(s) of law
3. Disposition of the complaint
4. Rationale for such disposition

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

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

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

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

- a. The corrective actions imposed on the individual found to have engaged in the conduct that relate directly to the subject of the complaint
 - b. Individual remedies offered or provided to the subject of the complaint
 - c. Systemic measures the school has taken to eliminate a hostile environment and prevent recurrence
6. Notice of the complainant's right to appeal the district's decision within 15 calendar days to the CDE and procedures to be followed for initiating such an appeal
7. A means to contact the compliance officer with questions regarding the implementation of the decision, with concerns that the corrective

action(s) are not being followed, or with information regarding any recurrence or retaliation

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

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

Corrective Actions

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

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

1. Counseling
2. Academic support
3. Health services
4. Assignment of an escort to allow the victim to move safely about campus
5. Information regarding available resources and how to report similar incidents or retaliation
6. Separation of the victim from any other individuals involved, provided the separation does not penalize the victim

7. Restorative justice
8. Follow-up inquiries to ensure that the conduct has stopped and there has been no retaliation
9. Determination of whether any past actions of the victim that resulted in discipline were related to the treatment the victim received and described in the complaint

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

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

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

If a complaint alleging noncompliance with the laws regarding student fees, deposits, and other charges or any requirement related to the LCAP is found to have merit, the district shall provide a remedy to all affected students and parents/guardians. (Education Code 49013, 52075)

For complaints alleging noncompliance with the laws regarding student fees, such remedies, where applicable, shall include reasonable efforts to ensure full reimbursement to affected students and parents/guardians. (Education Code 49013; 5 CCR 4600)

Appeals to the California Department of Education

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

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

Adopted: January 11, 2011

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