

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 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 any case.**

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