

# **Berkeley USD**

## **Board Policy**

### **Uniform Complaint Procedures**

BP 1312.3

#### **Community Relations**

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, education of homeless or foster students, 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.

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.

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>

Policy BERKELEY UNIFIED SCHOOL DISTRICT

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