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Memo

To Board of Education

From Antwan Wilson, Superintendent
Yana Smith, Chief of Staff, Organizational Effectiveness & Culture
Jacqueline Minor, General Counsel
Gabriel Valenzuela, Ombudsperson

Board Meeting Date January 27, 2016

Subject Amendment to Board Policy BP 1312.3 and AR 1312.3

Action Requested Approval of revisions to the Oakland Unified School District Board Policy BP 1312.3 and Administrative Regulation 1312.3 Uniform Complaint Procedures (UCP)

Background The revisions to Board Policy 1312.3 and AR 1312.3 address recent legislation, including legislation related to school fees (may file within one year) and a new requirement to adopt a process for receiving complaints of bullying based upon gender identity, gender expression or genetic information. As per Board Policy 5144.1 – Suspension & Expulsion / Due Process, it also includes language that persons may file a complaint regarding the district's discipline process.

Discussion The revisions bring our policy into compliance with state law. The revisions also meet the requirements of California Department of Education (CDE) compliance review which required that the district update our Uniform Complaint Procedures (UCP).

The changes to the policy and regulation are shown on the attachments.

Recommendation Approval of modifications to the Oakland Unified School District Board Policy BP 1312.3 and AR 1312.3 Uniform Complaint Procedures

Fiscal Impact Funding resource: no direct funding implications

Attachments

- Amendments to Board Policy BP 1312.3 and AR 1312.3

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 1312.3
Uniform Complaint Procedures

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 complaints whenever possible and appropriate. To resolve complaints which cannot be resolved through such informal process, the Board shall adopt a uniform system of complaint process 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 regulation governing adult education programs, consolidated categorical aid programs, migrant education, career 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, including discriminatory harassment,
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intimidation, or bullying, in district programs and activities against any person based upon 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 422.5, or based upon 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. 4030 - Nondiscrimination in Employment)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

3. Any complaint alleging bullying in district programs and activities, regardless of whether the bullying is based on a person's actual or perceived characteristics or race or ethnicity, color, ancestry, nationality, national origin, ethnic group identification, age, religion, marital or parent 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.

(cf. 5131,2 - Bullying)

4. 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. Claims and Actions Against the District)

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

(cf. 0460 – Local Control and Accountability Plan)

6. Any complaints 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.
7. Any other complaint as specified in a district policy.

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 complainant that is agreeable to all parties. One type of ADR is mediation, which shall be offered to resolve complaints that involve more than one student and no adult. However, mediation shall not be offered or used to resolve any complaint involving 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.

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 keep confidential the identity of the complainant and/or the subject of the complaint, if he/she is different from the complainant, 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 the 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 allegations(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 steps and timelines specified in this policy and accompanying administrative regulation.

(cf. 4131 – Staff Development)
(cf. 4231 – Staff Development)
(cf. 4331 – Staff Development)

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

(cf. 3580 – District Records)

Non-UCP Complaints

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

As per Board Policy 5144.1 – Suspension and Expulsion / Due Process,: As of July 1, 2016, the Superintendent shall develop a complaint form to allow members of the school community and

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public to raise concerns if restorative justice or another restorative approach is not available at a school site as an alternative to suspension. The complaint form will be available on the District's website, the District Discipline Office and the District Ombudsperson's Office. The Ombudsperson shall investigate such complaints and within 90 days of complaint submission develop a plan with the school site for addressing the complaint and provide a written response to the complaining party.

The Board prohibits any form of retaliation against any complainant in the complaint process. Participation in the complaint process shall not in any way affect the status, grades, or work assignments of the complainant.

The Board encourages the early, informal resolution of complaints at the site level whenever possible.

In addition, the district's Williams Uniform Complaint Procedures, AR 1312.4, shall be used to investigate and resolve any complaint related to the sufficiency of textbooks or instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of students or staff; or teacher vacancies and misassignments. (Education Code 35186)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

With the exception of pupil fee complaints, which may be filed within one (1) year of the alleged violation; all other uniform complaints must be filed no later than six (6) months after the alleged occurrence.

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

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52060-52077 – Local control 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
 26301-6577 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

Management Resources:

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATION
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>
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11/17/04, 11/18/09A; 10/26/11A; 05/22/13A, A 01/27/16 – Pending Board Approval)

OAKLAND UNIFIED SCHOOL DISTRICT

Administrative Regulation

AR 1312.3
Uniform Complaint Procedures

Community Relations

Except as the Governing Board may otherwise specifically provide in other Board policies, these general uniform complaint procedures (UCP) shall be used only 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)
(cf. 4031 - Complaints Concerning Discrimination in Employment)

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 the AR 5145.3 – Nondiscrimination/Harassment as the responsible employee to hand complaints alleging sex discrimination. The individual(s) shall receive and coordinate the investigation of complaints and shall ensure compliance with the law.

(cf.5145.3 – Nondiscrimination/ Harassment)
(cf. 5145.7 – Sexual Harassment)

Gabriel Valenzuela
Ombudsperson
Office of the Ombudsperson
1000 Broadway, 1st Floor, Suite 150

Oakland, California 94607
(510) 879-4281

FAX (510) 879-3678

Email: Gabriel.Valenzuela@ousd.org

The Ombudsperson is responsible for the intake and monitoring of all Uniform Complaints. The Ombudsperson is also responsible for investigating complaints regarding discrimination (filed by a parent or students) as well as Uniform Complaints concerning the program for English Language Learners (ELL) and retaliation for, or interference with, ELL Program advocacy.

As per Board Policy 5144.1 – Suspension and Expulsion / Due Process, As of July 1, 2016, the Superintendent shall develop a complaint form to allow members of the school community and public to raise concerns if restorative justice or another restorative approach is not available at a school site as an alternative to suspension. The complaint form will be available on the District's website, the District Discipline Office and the District Ombudsperson's Office. The Ombudsperson shall investigate such complaints and within 90 days of complaint submission develop a plan with the school site for addressing the complaint and provide a written response to the complaining party.

Aaron Townsend Deputy Chief
Talent Management Division
1000 Broadway, 2nd Floor, Suite 295

Oakland, CA 94608
(510) 879-0159
Email: Aaron.Townsend@ousd.org

The EEO/Reasonable Accommodations & Leaves Specialist will be responsible for investigating complaints alleging discrimination in employment.

Barbara Parker
Health Services/Section 504 Coordinator
Community Schools & Student Services

1000 Broadway, 1st Floor, Suite 150
Oakland, CA 94607
(510) 879-2365
FAX (510) 879-4605
Email: 504@ousd.k12.ca.us

The Section 504 Coordinator is responsible for coordinating program modifications for students with disabilities covered under Section 504 of the Rehabilitation Act of 1973 and also

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investigates complaints concerning Section 504.

The compliance officer who received a complaint may assign another compliance officer to investigate the complaint. The compliance officer shall promptly notify the complainant if another compliance officer is designated to investigate the complaint.

In no instance shall a compliance officer be designated to investigate a complaint if he/she is mentioned in the complaint or has a conflict of interest that would prohibit him/her from fairly investigating the complaint. Any complaint filed against or implicating a compliance officer may be filed with the Superintendent or designee.

Other complaints will be routed to the appropriate school site administrator, department director or to the Superintendent's designee for investigation.

The Superintendent or designee shall ensure that employees designated to investigate complaints receive training and are knowledgeable about the laws and programs for which they are responsible. Training provided to such designated employees shall include current and federal laws and regulations governing the program, applicable processes standards for reaching decisions on complaints, and appropriate corrective measure. Designated employees may have access to legal counsel as determined by the Superintendent or designee.

(cf. 4331 – Staff Development)

(cf. 9124 - Attorney)

The compliance officer or if necessary, 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 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 uniform complaint procedures 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; 5 CCR 4622)

(cf. 0420 - School Plans/Site Councils)
(cf. 1220 - Citizen Advisory Committees)
(cf. 3260 - Fees and Charges)
(cf. 4112.9/4212.9/4312.9 - Employee Notifications)
(cf. 5145.6 - Parental Notifications)

The Superintendent or designee shall ensure that all students and parent/ 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 the language, in accordance with Education Code 234.1 and 438985. 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.
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 court 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. The complaint review shall be completed within 60 calendar days from the date of receipt of the complaint unless the complainant agrees in writing to an extension of the timeline.
 - c. A complaint alleging retaliation, unlawful discrimination, or bullying 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 discrimination. The time for filing may be extended for up to 90 days by the Superintendent or designee for good cause upon written request by the complainant setting forth the reason for the extension.

- d. A student enrolled in a public school shall not be required to pay a fee for his/her participation in an educational activity that constituted an integral fundamental part of the district's education program, including curricular and extracurricular activities..
- e. . The Board is required to adopt and annually update a local control and accountability plan (LCAP), in a manner that includes meaningful engagement of parents/guardians, students, and other stakeholders in the development and /or review of the LCAP.

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.

g. The appeal to the CDE must include a copy of the complaint filed with the district and a copy of the district's decision.

h. Copies of the district's UCP are available free of charge.

District Responsibilities

All UCP-related complaints shall be investigated and resolved within 60 calendar days of the district's receipt of the complaint unless the complainant agrees in writing to an extension of the timeline. (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. However, the compliance officer shall keep all complaints or allegations of retaliation, unlawful discrimination, or bullying confidential except when disclosure is necessary to carry out the investigation, take subsequent corrective action, conduct ongoing monitoring, or maintain the integrity of the process. (5 CCR 4630, 4964)

Filing of Complaint

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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 written 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, including discriminatory harassment, intimidation, or bullying, may be filed only by a person who alleges that he/she personally suffered 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 discrimination occurred, or six months from the date when the complainant first obtained knowledge of the facts of the alleged discrimination. The time for filing may be extended for up to 90 days by the Superintendent or designee for good cause upon written request by the complainant setting forth the reasons for the extension. (5 CCR 4630)
4. When a complaint alleging unlawful discrimination or bullying is filed anonymously, the compliance officer shall pursue an investigation or other response as appropriate, depending on the specificity and reliability of the information provided and the seriousness of the allegation.
5. When the complainant or alleged victim of unlawful discrimination or bullying requests confidentiality, the compliance officer shall inform him/her that the request may limit the district's ability to investigate the conduct or take other necessary action. When honoring a request for confidentiality, the district will nevertheless take all reasonable steps to investigate and respond to the complaint consistent with the request.
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. (5 CCR 4600)

Mediation

Mediation

Within ten (10) business days after the compliance officer receives the complaint, he/she may informally discuss with all the parties the possibility of using mediation. Mediation shall be offered to resolve complaints that involve more than one student and no adult.

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However, mediation shall not be offered or used to resolve any complaint involving an allegation of asexual assault or where there is a reasonable risk that a party to the mediation would feel compelled to participate. If the parties agree to mediation, the compliance officer shall make all arrangements for this process.

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

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

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

Investigation of Complaint

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

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

In conducting the investigation, the compliance officer shall collect all available documents and review all available records, notes, or statements related to the complaint, including any additional evidence or information received from the parties during the course of the investigation, 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 resolve a complaint alleging retaliation, unlawful discrimination, or bullying, the compliance officer 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.

A complainant's refusal to provide the district's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or 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 investigator 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 compliance officer shall apply 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

Response

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 **45** calendar days of the district's receipt of the complaint. (5 CCR 4631)

Level II Appeal

A complaint not satisfactorily resolved at Level I may be appealed to the Superintendent or designee in writing by the complainant within five (5) calendar days of receipt of the Level I response. The appeal form shall be filed with the Office of the Ombudsperson. The appeal can only include the allegations outlined in the Level I Complaint. New allegations cannot be included in the Level II Appeal.

Upon receiving the appropriately completed appeal form from the complainant, the Superintendent or designee shall:

1. Notify the employee(s) to whom the complaint was directed.
2. Investigate the appeal. This may include the following steps:
 - Review the appeal filed by the complainant
 - Review documents from the Level I investigation
 - Conduct additional interviews as necessary
 - Allow both parties to discuss complaint, Level I decision, or question each other, except for discrimination or sexual harassment complaints.
3. Respond in writing to the complainant within ten (10) calendar days after receipt of appeal, including a resolution.
4. Notify the employee(s) of the resolution.

Except for the following cases which may be appealed to the CDE, the appeal decision shall be final:

Final Written Decision

The district's decision shall be in writing and shall be sent to the complainant. (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

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- 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, including discriminatory harassment, intimidation, or bullying, 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

AR 1312.3(1)

UNIFORM COMPLAINT PROCEDURES (continued)

- 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

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comports with Education Code 49013 and 5 CCR 4600

For complaints of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, 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

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

For complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, and bullying, 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 days moratorium does not apply to complaints seeking injunctive relief in state courts or to discrimination complaints based on federal law. (Education Code 262.3)
3. Complaints alleging discrimination based on race, color, national origin, sex, gender, disability, or age may also be filed with the U.S. Department of Education, Office for Civil Rights at www.ed.gov/ocr within 180 days of the alleged 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, unlawful discrimination, or bullying, 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, unlawful discrimination, or bullying, 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 for the larger school community to ensure that students, staff, and parents/guardians understand the types of behavior that constitute unlawful discrimination, including discriminatory harassment, intimidation, or bullying, that the district does not tolerate it, and how to 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

Any complainant who is dissatisfied with the district's final written decision may file an appeal in writing with the CDE within 15 calendar days of receiving the district's decision. (Education Code 49013, 52075; 5 CCR 4632)

The complainant shall specify the basis for the appeal of the decision and whether the facts are incorrect and/or the law has been misapplied. The appeal shall be accompanied by a copy of the locally filed complaint and a copy of the district's decision. (5 CCR 4632)

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 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 investigator
5. A report of any action taken to resolve the complaint
6. A copy of the district's uniform complaint procedures

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7. Other relevant information requested by the CDE

The CDE may directly intervene in a complaint without waiting for action by the district when one of the conditions listed in 5 CCR 4650 exists, including cases in which the district has not taken action within 60 calendar days of the date the complaint was filed with the district. (5 CCR 4650)

Civil Law Remedies

A complainant may pursue available civil law remedies outside of the district's complaint procedures. Complainants may seek assistance from mediation centers or public/private interest attorneys. Civil law remedies that may be imposed by a court include, but are not limited to, injunctions and restraining orders.

For complaints alleging discrimination, harassment, intimidation, and bullying based on state law, a complainant shall wait until 60 calendar days have elapsed from the filing of an appeal with the CDE before pursuing civil law remedies, provided the district has appropriately and in a timely manner apprised the complainant of his/her right to file a complaint in accordance with 5 CCR 4622. The moratorium does not apply to injunctive relief and to discrimination complaints based on federal law. (Education Code 262.3)

11/17/04, 11/18/09; 10/26/11A; 05/22/13A