

## **COMMUNITY RELATIONS**

### **SUBJECT: Uniform Complaint Procedures**

Except as the Governing Board may otherwise specifically provide in other Board policies, the Uniform Complaint Procedures shall be used only to investigate and resolve complaints alleging violations of Federal or State laws or regulations governing specific educational programs, the prohibition against requiring students to pay fees, deposits, or other charges for participating in educational activities, and unlawful discrimination, harassment, intimidation, or bullying, as specified in accompanying Board Policy. Additionally it is a requirement that school personnel take immediate steps to intervene when safe to do so when he or she witnesses an act of discrimination, harassment, intimidation, or bullying.

(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)

The District's Uniform Complaint Procedures Policy and Administrative Regulation shall be posted in all District schools and offices, including staff lounges and student government meeting rooms. If 15 % 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 Uniform Complaint Procedures shall be translated into that language. (Education Code 234.1, 48985)

(cf. 5145.6 - Parental Notifications)

### **Compliance Officers**

The following compliance officer(s) shall receive and investigate complaints and shall ensure District compliance with law:

Assistant Superintendent of Instructional Services

830 North Capitol Avenue  
San Jose, CA 95133

408-347-5061

The Superintendent or designee shall ensure that employees designated to investigate complaints are knowledgeable about the laws and programs for which they are responsible. Designated employees may have access to legal counsel as determined by the Superintendent or designee.

(cf. 9124 - Attorney)

## **Notifications**

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. (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)

Complete copies of the District's Uniform Complaint Procedures are available free of charge from the office of the Assistant Superintendent of Instructional Services and each school site.

## **Procedures**

The following procedures shall be used to address all complaints which allege that the District has violated Federal or State laws or regulations governing educational programs or has committed unlawful discrimination. This process shall be used when a person or organization believes the District has violated a Federal or State law or regulation governing one of the following: 1) Adult Basic Education, 2) Consolidated Categorical Aid Programs, 3) Migrant Education, 4) Vocational Education, 5) Child Care and Development, 6) Child Nutrition, 7) Special Education, 8) Title VII, 9) and the implementation of the Local Control Funding Formula (LCFF) and the requirements regarding the development and adoption of the Local Control Accountability Plan (LCAP). However, complainants need not use the District's complaint form in order to file a complaint.

All complaints shall be investigated and resolved within 60 calendar days of the receipt of the complaint. Compliance officers shall maintain a record of each complaint and subsequent related actions, including all information required for compliance with 5 CCR 4631 and 4633.

All parties involved in allegations shall be notified when a complaint is filed, when a complaint meeting or hearing is scheduled, and when a decision or ruling is made.

### **Step 1: Filing of Complaint**

Any individual, public agency, or organization may file a written complaint of the District's alleged noncompliance with Federal or State laws or regulations governing educational programs. (5 CCR 4630)

A complaint concerning unlawful discrimination, may be filed with the Assistant Superintendent of Instructional Services, or other officer designated by the Board, only by a person who alleges that he/she personally suffered unlawful discrimination, harassment, intimidation, or bullying 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 (6) months from the date when the alleged discrimination, harassment, intimidation, or bullying occurred, or six (6) months from the date when the complainant first obtained knowledge of the facts of the alleged discrimination, harassment, intimidation, or bullying. Complainants need not use the District's complaint form in order to file a complaint. However, upon written request by the complainant, the Superintendent or designee may extend the filing period for up to 90 days. (5 CCR 4630)

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

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)

#### Step 2: Mediation

Within three (3) business days of receiving the complaint, the compliance officer may informally discuss with all the parties the possibility of using mediation. If the parties agree to mediation, the compliance officer shall make all arrangements for this process.

Before initiating the mediation of a discrimination, harassment, intimidation, or bullying complaint, the compliance officer shall ensure that all parties agree to make the mediator a party to related confidential information.

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. (5 CCR 4631)

#### Step 3: Investigation of Complaint

Within sixty (60) days of receiving the discrimination, harassment, intimidation, or bullying complaint, the compliance officer shall provide the complainant and/or his/her representative an opportunity to present the complaint and any evidence, or information leading to evidence, to support the allegations in the complaint. The compliance officer also shall collect all documents and interview all witnesses with information pertinent to the complaint.

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/or 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)

#### Step 4: District 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 Step #5 below, within 60 calendar days of the District's receipt of the complaint. (5 CCR 4631)

#### Step 5: Final Written Decision

The District's decision shall be in writing and sent to the complainant. (5 CCR 4631)

The District's decision shall be written in English and, when required by Education Code 48985, in the complainant's primary language.

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

1. The findings of fact based on the evidence gathered
2. The conclusion(s) of law
3. Disposition of the complaint
4. Rationale for such disposition
5. Corrective actions, if any are warranted
6. Notice of the complainant's right to appeal the District's decision within 15 calendar days to the California Department of Education (CDE) and procedures to be followed for initiating such an appeal

In addition, any decision concerning a discrimination, harassment, intimidation, or bullying complaint based on State law shall include a notice that the complainant must wait until 60 calendar days have elapsed from the filing of an appeal with the California Department of Education (CDE) before pursuing civil law remedies. (Education Code 262.3)

If investigation of a complaint results in discipline to a student or an employee, the decision shall

simply state that effective action was taken and that the student or employee was informed of District expectations. The report shall not give any further information as to the nature of the disciplinary action.

### **Appeals to the California Department of Education (CDE)**

If dissatisfied with the District's decision, the complainant may appeal in writing to the CDE. (Education Code 49013; 5 CCR 4632)

The complainant shall file his/her appeal within 15 days of receiving the District's decision. When appealing to the CDE, 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
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)

For assistance you may contact:

- Legal Aid Society of Santa Clara County .....408.283.1535 ext. 268
- Bay Area Legal Aid .....408.283.3700
- A private attorney\*
- Local Assistance Centers\*

*\* Please consult your local white/yellow pages and/or business directory*

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
- 37254 Intensive instruction and services for students who have not passed exit exam
- 41500-41513 Categorical education block grants
- 48985 Notices in language other than English
- 49010-49013 Student Fees
- 49060-49079 Student records
- 49490-49590 Child nutrition programs
- 52075 Local Control and Accountability Plans
- 52160-52178 Bilingual education programs
- 52300-52490 Career technical education
- 52500-52616.24 Adult schools
- 52800-52870 School-based program coordination
- 54000-54028 Economic impact aid programs
- 54100-54145 Miller-Unruh Basic Reading Act
- 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

6301-6577 Title I basic programs

6601-6777 Title II preparing and recruiting high quality teachers and principals

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

Management Resources:

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>