Information Sheet – 2/08/2022 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.2

FR: Celli Coeville

DATE: February 2, 2022

RE: Revised BP/AR 1312.3, Uniform Complaint Procedures, Consider for Adoption

Revised BP 1312.3, Uniform Complaint Procedures has been updated to reflect New Law (AB 131, 2021) which renumbers the license-exempt California State Preschool Program code sections, ensures consistency with the California Department of Education's 2021-22 federal program monitoring instrument, clarifies that districts may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student, adds Item #3 to the section regarding "Non-UCP Complaints" that any complaint alleging that a student, while in an education program or activity as specified, was subjected to sexual harassment as defined in 34 CFR 106.30 be addressed through federal Title IX complaint procedures, and clarifies in Item #5 that complaints alleging a physical safety concern that interferes with a free appropriate public education is a non-UCP complaint.

AR 1312.3, Uniform Complaint Procedures has been updated to delete outdated and/or repealed U.S. Department of Education's Office for Civil Rights (OCR) references and where appropriate add current OCR material, ensures consistency with the California Department of Education's 2021-22 federal program monitoring instrument, clarifies posting requirements for the annual notification, compliance officer contact information and information related to Title IX, adds material regarding the requirement for an administrator who is not designated as a compliance officer who receives a complaint to notify the compliance officer, clarifies that districts may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student, deletes material regarding respondent being sent the investigation report at the same time it is provided to complainant as this simultaneous exchange is not required by law, amends language in regard to pursuing civil law remedies in the notice to complainants included in investigation reports for allegations of unlawful discrimination, harassment, intimidation, and bullying based on state law, clarifies when either party may request reconsideration of an appeal by the Superintendent of Public Instruction, and reflects NEW LAW (AB 131, 2021) which renumbers the license-exempt California State Preschool Program code sections.

Recommended Action: Approved revised BP/AR 1312.3, Uniform Complaint Procedures as presented

UNIFORM COMPLAINT PROCEDURES

CSBA NOTE: To address prohibited discrimination and violations of state and federal laws governing educational programs, 5 CCR 4621 mandates districts to adopt uniform complaint procedures (UCP) consistent with the state's complaint procedures specified in 5 CCR 4600-4670. Additionally, Education Code 52075 mandates districts to adopt policies and procedures implementing the use of UCP to investigate and resolve complaints alleging noncompliance with requirements related to the local control and accountability plan, and Education Code 8212, as renumbered by AB 131 (Ch. 116, Statutes of 2021) mandates districts to adopt policies and procedures for resolving complaints regarding specified health and safety issues in license-exempt California State Preschool Programs (CSPP). Furthermore, a number of federal civil rights statutes and their implementing regulations mandate districts to adopt policies and procedures for the prompt and equitable resolution of complaints of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying). For example, districts are mandated pursuant to 28 CFR 35.107 to adopt policy and procedures to address discrimination on the basis of disability, while districts that receive federal financial assistance are mandated pursuant to 34 CFR 106.8 and 34 CFR 110.25 to adopt policies and procedures to address discrimination on the basis of sex and age. The following policy contains a list of programs and activities subject to these procedures pursuant to state law; see the section "Complaints Subject to UCP", below.

The California Department of Education (CDE) monitors district programs and operations for compliance with these requirements through its Federal Program Monitoring (FPM) process. The FPM consists of a review of (1) written district policies and procedures for required statements, including prohibition of discrimination (such as discriminatory harassment, intimidation, and bullying) against students pursuant to Education Code 234.1; and (2) records of required activities, such as annual notification provided to students, parents/guardians, employees, and other school community members.

The U.S. Department of Education's Office for Civil Rights (OCR) enforces federal anti-discrimination laws, including Title II of the Americans with Disabilities Act (42 USC 12101-12213), Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000e-17), Title IX of the Education Amendments Act of 1972 (20 USC 1681-1688), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and the Age Discrimination Act of 1975 (42 USC 6101-6107). Whether a complaint of sexual harassment is addressed through the UCP or the federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, is dependent on whether the alleged conduct meets the more stringent federal definition or the state definition of sexual harassment. See the section "Non-UCP Complaints" below, the accompanying administrative regulation, BP/AR 5145.7 - Sexual Harassment, and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

The following policy and accompanying administrative regulation reflect all components required by law, 5 CCR 4600-4670, as amended by Register 2020, No. 21, and the 2021-22 FPM instrument. Additional details provided herein may help districts during a compliance check by CDE or in the event that a CDE or OCR investigation occurs.

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 resolution of complaints whenever possible. To resolve complaints which may require a more formal process, the Board adopts the uniform

UNIFORM COMPLAINT PROCEDURES (continued)

system of complaint processes specified in 5 CCR 4600-4670 and the accompanying administrative regulation.

Complaints Subject to UCP

CSBA NOTE: The FPM process includes a review of a district's policies and procedures to determine whether all district programs and activities that are subject to the UCP, as listed in the FPM instrument, are addressed. Items #1-23 list all programs and activities identified in the FPM instrument. According to CDE, the district's policy must list all such programs and activities and, at the district's discretion, may add a paragraph below the list stating the UCP programs and activities that are implemented in the district.

For further information regarding requirements for the following programs and activities, see the law cited and/or related CSBA policy and/or administrative regulation.

The district's uniform complaint procedures (UCP) shall be used to investigate and resolve the ~~following~~ complaints regarding the following programs and activities:

1. Accommodations for pregnant and parenting students (Education Code 46015)

~~Any complaint alleging district violation of applicable state or federal laws or regulations governing any program subject to the UCP which is offered by the district, including adult education programs; After School Education and Safety programs; agricultural career technical education; federal career technical education; child care and development programs; child nutrition programs; compensatory education; consolidated categorical aid programs; the federal Every Student Succeeds Act; migrant education; Regional Occupational Centers and Programs; school safety plans; California State Preschool Programs; and any other district-implemented state categorical program that is not funded through the local control funding formula pursuant to Education Code 64000~~

~~*(cf. 3553 - Free and Reduced Price Meals)*~~
~~*(cf. 3555 - Nutrition Program Compliance)*~~
~~*(cf. 5148 - Child Care and Development)*~~
~~*(cf. 5148.2 - Before/After School Programs)*~~
~~*(cf. 5148.3 - Preschool/Early Childhood Education)*~~
~~*(cf. 6171 - Title I Programs)*~~
~~*(cf. 6174 - Education for English 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. Adult education programs (Education Code 8500-8538, 52334.7, 52500-52617)

UNIFORM COMPLAINT PROCEDURES (continued)

~~Any complaint, by a student, employee, or other person participating in a district program or activity, alleging the occurrence of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) in district programs and activities, including in those programs or activities funded directly by or that receive or benefit from any state financial assistance, based on the person's actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, immigration status, ethnic group identification, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, 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 the person's 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. 5145.3 - Nondiscrimination/Harassment)*~~
~~*(cf. 5145.7 - Sexual Harassment)*~~

3. After School Education and Safety programs (Education Code 8482-8484.65)
~~Any complaint alleging district noncompliance with the requirement to provide reasonable accommodation to a lactating student on school campus to express breast milk, breastfeed an infant child, or address other breastfeeding-related needs of the student (Education Code 222)~~

~~*(cf. 5146 - Married/Pregnant/Parenting Students)*~~

4. Agricultural career and technical education (Education Code 52460-52462)
~~Any complaint alleging district noncompliance with requirements to provide a pregnant or parenting student the accommodations specified in Education Code 46015, including those related to the provision of parental leave, right of return to the school of previous enrollment or to an alternative education program, if desired, and possible enrollment in school for a fifth year of instruction to enable the student to complete state and Board-imposed graduation requirements (Education Code 46015)~~

5. Career technical and technical education and career technical and technical training programs (Education Code 52300-52462)
~~Any complaint alleging district noncompliance with 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)*~~

6. Child care and development programs (Education Code 8200-8488)
~~Any complaint alleging district noncompliance with applicable requirements of Education Code 52060-52077 related to the implementation of the local control and accountability plan, including the development of a local control funding formula budget overview for~~

UNIFORM COMPLAINT PROCEDURES (continued)

~~parents/guardians (Education Code 52075)~~

~~*(cf. 0460 - Local Control and Accountability Plan)*~~
~~*(cf. 3100 - Budget)*~~

7. Compensatory education (Education Code 54400)
~~Any complaint alleging noncompliance with requirements related to the development of a school plan for student achievement or the establishment of a school site council, as required for the consolidated application for specified federal and/or state categorical funding (Education Code 64000-64001, 65000-65001)~~

~~*(cf. 0420 - School Plans/Site Councils)*~~

8. Consolidated categorical aid programs (Education Code 33315; 34 CFR 229.10-299.12)
~~Any complaint, by or on behalf of a student who is a foster youth as defined in Education Code 51225.2, alleging district noncompliance with any requirement applicable to the student regarding placement decisions; the responsibilities of the district's educational liaison to the student; the award of credit for coursework satisfactorily completed in another school, district, or country; school or records transfer; or the grant of an exemption from Board-imposed graduation requirements (Education Code 48853, 48853.5, 49069.5, 51225.1, 51225.2)~~

~~*(cf. 6173.1 - Education for Foster Youth)*~~

9. Course periods without educational content (Education Code 51228.1-51228.3)
~~Any complaint alleging district noncompliance with the physical education instructional minutes requirement (Education Code 51210, 51222, 51223)~~

~~*(cf. 6142.7 - Physical Education and Activity)*~~

10. Discrimination, harassment, intimidation, or bullying in district programs and activities, including in those programs or activities funded directly by or that receive or benefit from any state financial assistance, based on a person's actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, immigration status, ethnic group identification, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, 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 the person's association with a person or group with one or more of these actual or perceived characteristics (5 CCR 4610)
~~Complaints regarding the noncompliance of a license-exempt California State Preschool Program (CSPP) with health and safety standards specified in Health and Safety Code 1596.7925 and related state regulations (Education Code 8235.5; Health and Safety Code 1596.7925)~~

11. Educational and graduation requirements for students in foster care, homeless students,

UNIFORM COMPLAINT PROCEDURES (continued)

students from military families, and students formerly in a juvenile court school (Education Code 48645.7, 48853, 48853.5, 49069.5, 51225.1, 51225.2)
~~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~~

12. Every Student Succeeds Act (Education Code 52059.5; 20 USC 6301 et seq.)
~~Any other complaint as specified in district policy~~

13. Local control and accountability plan (Education Code 52075)

14. Migrant education (Education Code 54440-54445)
15. Physical education instructional minutes (Education Code 51210, 51222, 51223)

16. Student fees (Education Code 49010-49013)

17. Reasonable accommodations to a lactating student (Education Code 222)

18. Regional occupational centers and programs (Education Code 52300-52334.7)

19. School plans for student achievement as required for the consolidated application for specified federal and/or state categorical funding (Education Code 64001)

20. School safety plans (Education Code 32280-32289)

21. School site councils as required for the consolidated application for specified federal and/or state categorical funding (Education Code 65000)

22. State preschool programs (Education Code 8207-8225)

CSBA NOTE: Pursuant to Education Code 8212, as renumbered by AB 131, and CDE's 2021-22 FPM instrument, the district must use the UCP, with modifications as necessary, to resolve complaints alleging deficiencies related to health and safety issues in license-exempt CSPPs.

Pursuant to 5 CCR 4610, such complaints must be addressed through the procedures described in 5 CCR 4690-4694, as added by Register 2020, No. 21. See the section "Health and Safety Complaints in License-Exempt Preschool Programs" in the accompanying administrative regulations.

23. State preschool health and safety issues in license-exempt programs (Education Code 8212)

CSBA NOTE: 5 CCR 4621 mandates that district policy ensure that complainants are protected from retaliation as specified in item #24 below.

24. Any complaint alleging retaliation against a complainant or other participant in the

UNIFORM COMPLAINT PROCEDURES (continued)

complaint process or anyone who has acted to uncover or report a violation subject to this policy

25. Any other state or federal educational program the Superintendent of Public Instruction or designee deems appropriate

CSBA NOTE: 5 CCR 4631 authorizes the district to utilize alternative dispute resolution (ADR) methods, including mediation, to resolve complaints before initiating a formal investigation. However, the district should ensure that any ADR it uses, particularly "in-person ADR," is appropriate for the particular situation. For example, in some instances (e.g., sexual assault), face-to-face mediation should not be used, even if all parties voluntarily agree, given the risk that a student might feel pressured to "voluntarily" agree to it. Districts may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student; see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. The following optional paragraph provides for a neutral mediator and should be revised to reflect district practice

The Board recognizes that alternative dispute resolution (ADR) can, depending on the nature of the allegations, offer a process for resolving a complaint in a manner that is acceptable to all parties. An ADR process such as mediation may 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.

CSBA NOTE: The following paragraph is mandated pursuant to 5 CCR 4621. Appropriate disclosure will vary in each case depending on the facts and circumstances.

The district shall protect all complainants from retaliation. In investigating complaints, the confidentiality of the parties involved shall be protected as required by law. For any complaint alleging retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the Superintendent or designee shall keep the identity of the complainant, and/or the subject of the complaint if different from the complainant, confidential when appropriate and 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 subject to UCP is included in a UCP complaint, the district shall refer the non-UCP allegation to the appropriate staff or agency and shall investigate and, if appropriate, 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 requirements related to UCP, including the steps and timelines specified in this policy and the accompanying administrative regulation.

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~~*(cf. 4131 - Staff Development)*~~
~~*(cf. 4231 - Staff Development)*~~
~~*(cf. 4331 - Staff Development)*~~

CSBA NOTE: It is important to maintain records of all UCP complaints and the investigations of those complaints. If the district is investigated by OCR or CDE, these are important documents in demonstrating that the district has complied with federal law, state law, and its own policies and regulations

The Superintendent or designee 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.

~~*(cf. 3580 - District Records)*~~

Non-UCP Complaints

The following complaints shall not be subject to the district's UCP but shall be investigated and resolved by ~~referred to~~ the specified agency or through an alternative process: ~~(5 CCR 4611)~~

1. Any complaint alleging child abuse or neglect shall be referred to the County Department of Social Services Protective Services Division and the appropriate law enforcement agency. (5 CCR 4611)

~~*(cf. 5141.4 - Child Abuse Prevention and Reporting)*~~

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~~. (5 CCR 4611)

3. Any complaint alleging that a student, while in an education program or activity in which the district exercises substantial control over the context and respondent, was subjected to sexual harassment as defined in 34 CFR 106.30 shall be addressed through the federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as specified in AR 5145.71 – Title IX Sexual Harassment Complaint Procedures.
~~Any complaint alleging fraud shall be referred to the Legal, Audits and Compliance Branch of the California Department of Education.~~

CSBA NOTE: Complaints of employment discrimination are not subject to the UCP. Instead, pursuant to 2 CCR 11023, the district must establish an impartial and prompt process for addressing such complaints. In addition, 5 CCR 4611 requires that employment discrimination complaints be referred to the Department of Fair Employment and Housing. See AR 4030 - Nondiscrimination in Employment for applicable complaint procedures.

UNIFORM COMPLAINT PROCEDURES (continued)

4. Any complaint alleging employment discrimination or harassment shall be investigated and resolved by the district in accordance with the procedures specified in AR 4030 - Nondiscrimination in Employment, including the right to file the complaint with the California Department of Fair Employment and Housing.

CSBA NOTE: 5 CCR 4610, as amended by Register 2020, No. 21, limits the applicability of the UCP for complaints regarding special education and child nutrition, as provided in Items #5-7 below.

5. Any complaint alleging a violation of a state or federal law or regulation related to special education, a settlement agreement related to the provision of a free appropriate public education (FAPE), failure or refusal to implement a due process hearing order to which the district is subject, or a physical safety concern that interferes with the district's provision of FAPE shall be submitted to the California Department of Education (CDE) in accordance with AR 6159.1 - Procedural Safeguards and Complaints for Special Education. (5 CCR 3200-3205)

6. Any complaint alleging noncompliance of the district's food service program with laws regarding meal counting and claiming, reimbursable meals, eligibility of children or adults, or use of cafeteria funds and allowable expenses shall be filed with or referred to CDE in accordance with BP 3555 - Nutrition Program Compliance. (5 CCR 15580-15584)

7. Any allegation of discrimination based on race, color, national origin, sex, age, or disability in the district's food service program shall be filed with or referred to the U.S. Department of Agriculture in accordance with BP 3555 - Nutrition Program Compliance. (5 CCR 15582)

CSBA NOTE: Education Code 35186 requires the district to use UCP, with modifications, to investigate and resolve complaints related to the issues stated in the following paragraph (i.e., "Williams complaints"). Because Education Code 35186 sets forth different timelines for investigation and resolution of these kinds of complaints than the timelines specified in law for other uniform complaints, CDE has created a separate uniform complaint process for the Williams complaints. See AR 1312.4 - Williams Uniform Complaint Procedures for the separate procedure.

8. 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 shall be investigated and resolved in accordance with ~~the procedures in~~ AR 1312.4 - Williams Uniform Complaint Procedures. (Education Code ~~8235.5~~, 35186)

~~*(cf. 1312.4 - Williams Uniform Complaint Procedures)*~~

Legal References:

State References:
2 CCR 11023 Harassment and discrimination prevention and correction

UNIFORM COMPLAINT PROCEDURES (continued)

5 CCR 15580-15584 Child nutrition programs complaint procedures
5 CCR 3200-3205 Special education compliance complaints
5 CCR 4600-4670 Uniform complaint procedures
5 CCR 4680-4687 Williams uniform complaint procedures
5 CCR 4690-4694 Complaints regarding health and safety issues in license-exempt preschool programs
5 CCR 4900-4965 Nondiscrimination in elementary and secondary education programs

EDUCATION CODE
200-262.4 Educational equity: Prohibition of discrimination on the basis of sex -
~~*8200-8498 Child care and development programs*~~
~~*8500-8538 Adult basic education*~~
18100-18203 School libraries
32221.5 Insurance for athletic team members
32280-32289 School safety plan~~s, uniform complaint procedures~~
35186 Williams uniform complaint procedures
46015 Parental leave for students
48853-48853.5 Foster youth
48985 Notices in language other than English
49010-49014 Student fees
49060-49079 Student records~~, especially:~~
49069.5 Records of foster youth
49490-49590 Child nutrition programs
49701 Interstate Compact on Educational Opportunity for Military Children
51210 Courses of study grades 1-6
51222 Physical education
51223 Physical education, elementary schools
51225.1-51225.2 Foster youth, homeless children, former juvenile court school students;~~, military-connected students, migrant students, and newly arrived immigrant students;~~ course credits; graduation requirements
51226-51226.1 Career technical education
51228.1-51228.3 Course periods without educational content
52060-52077 Local control and accountability plan~~, especially:~~
52075 Complaint for lack of compliance with local control and accountability plan requirements
52300-52462 Career technical education
52500-52616.24 Adult schools
54400-54425 Compensatory education programs
54440-54445 Migrant education
54460-54529 Compensatory education programs
59000-59300 Special schools and centers
64000-64001 Consolidated application process; school plan for student achievement
65000-65001 School site councils
8200- 8498 Child care and development programs
8500-8538 Adult basic education

GOVERNMENT CODE
11135 Nondiscrimination in programs or activities funded by state; Discrimination

UNIFORM COMPLAINT PROCEDURES (continued)

12900-12996 Fair Employment and Housing Act
HEALTH AND SAFETY CODE
1596.792 California Child Day Care Act; general provisions and definitions

1596.7925 California Child Day Care Act; health and safety regulations
PENAL CODE
422.55 Definition of h~~H~~ate crime~~; definition~~
422.6 ~~Interference with constitutional right or privilege~~ Civil rights; crimes
~~CODE OF REGULATIONS, TITLE 2~~
~~11023 Harassment and discrimination prevention and correction~~
~~CODE OF REGULATIONS, TITLE 5~~
~~4600-4670 Uniform complaint procedures~~
~~4680-4687 Williams 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 (FERPA) of 1974
1681-1688 Title IX of the Education Amendments of 1972
6301-6576 Title I Improving the Academic Achievement of the Disadvantaged
6801-7014 Title III language instruction for limited English proficient and immigrant students
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
11431-11435 McKinney-Vento Homeless Assistance Act
12101-12213 Title II equal opportunity for individuals with disabilities
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 Act
100.3 Prohibition of discrimination on basis of race, color or national origin
104.7 Designation of responsible employee for Section 504
106.1-106.85 Nondiscrimination on the basis of sex in education programs
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:
CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS
Uniform Complaint Procedure 2020-21Program Instrument
Sample UCP Board Policies and Procedures
U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS
Dear Colleague Letter, September 22, 2017
Dear Colleague Letter: Title IX Coordinators, April 2015

UNIFORM COMPLAINT PROCEDURES (continued)

Dear Colleague Letter: Responding to Bullying of Students with Disabilities, October 2014
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
U.S. DEPARTMENT OF JUSTICE PUBLICATIONS
Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 2002
WEB SITES
CSBA: http://www.csba.org
California Department of Education: http://www.cde.ca.gov
Family Policy Compliance Office: https://www2.ed.gov/policy/gen/guid/fpco
U.S. Department of Education, Office for Civil Rights: http://www.ed.gov/ocr
U.S. Department of Justice: http://www.justice.gov

UNIFORM COMPLAINT PROCEDURES

CSBA NOTE: 5 CCR 4621 mandates that the district's uniform complaint procedures (UCP) be consistent with the procedures of 5 CCR 4600-4670. Additionally, Education Code 52075 mandates districts to adopt policies and procedures implementing the use of UCP to investigate and resolve complaints alleging noncompliance with requirements related to the local control and accountability plan (LCAP), and Education Code 8212, as renumbered by AB 131 (Ch. 116, Statutes of 2021) mandates districts to adopt policies and procedures for resolving complaints regarding specified health and safety issues in license-exempt California State Preschool Programs (CSPP). Furthermore, a number of federal civil rights statutes and their implementing regulations mandate districts to adopt policies and procedures for the prompt and equitable resolution of complaints of unlawful discrimination, harassment, intimidation, or bullying. For example, all districts are mandated pursuant to 28 CFR 35.107 to adopt policy and procedures to address discrimination on the basis of disability, while districts that receive federal financial assistance are mandated pursuant to 34 CFR 106.8 and 34 CFR 110.25 to adopt policies and procedures to address discrimination on the basis of sex and age. Some of the factors considered by the U.S. Department of Education's Office for Civil Rights (OCR) when determining whether a district's procedures are "prompt and equitable" are addressed throughout the following administrative regulation.

Apart from these mandates, state law authorizes the use of UCP to resolve complaints of noncompliance with laws related to the development of a school plan for student achievement and the establishment of school site councils; accommodations for pregnant and parenting students; prohibition against the charging of student fees; educational rights of foster youth, homeless students, former juvenile court school students, children of military families, migrant students, and students participating in a newcomer program for newly arrived immigrants; assignment of students to courses without educational content; and physical education instructional minutes. See the section "Complaints Subject to UCP" in the accompanying Board policy.

Except as ~~the Governing Board~~ may otherwise be specifically provided in other district policies, these uniform complaint procedures (UCP) shall be used to investigate and resolve only the complaints specified in the accompanying Board policy ~~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. 4030 - Nondiscrimination in Employment)*~~

Compliance Officers

CSBA NOTE: 5 CCR 4621 mandates the district to identify in its policies and procedures the person(s), position(s), or unit(s) responsible for ensuring compliance with applicable state and federal laws and regulations governing educational programs, including the receiving and investigating of complaints alleging unlawful discrimination, harassment, intimidation, or bullying and retaliation. During its Federal Program Monitoring (FPM) process, California Department of Education (CDE) staff will check to ensure that the district's procedures list the specific title(s) of the employee(s) responsible for receiving and investigating complaints. Districts should identify the specific title(s) of the compliance officer(s) in the space provided below. If a district identifies multiple compliance officers, it is recommended that one be designated the lead compliance officer.

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The following paragraph specifies that the compliance officer will be the same person designated to serve as the Title IX Coordinator for addressing complaints of sexual harassment pursuant to AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. Districts may modify this regulation to designate different district employees to serve these functions

The district designates the individual(s), position(s), or unit(s) identified below as responsible for receiving, coordinating, and investigating ~~the district's response to~~ complaints and for complying with state and federal civil rights laws. The individual(s), position(s), or unit(s) also serve as the compliance officer(s) specified in AR 5145.3 - Nondiscrimination/Harassment responsible for handling complaints regarding unlawful discrimination, harassment, intimidation, or bullying and in AR 5145.7 – Sexual Harassment for handling complaints regarding sexual harassment. ~~(such as discriminatory harassment, intimidation, or bullying). The compliance officer(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)*~~

Superintendent
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Superintendent@jsdtracy.com

CSBA NOTE: The following paragraph is for use by districts that have designated more than one compliance officer.

The compliance officer who receives a complaint may assign another compliance officer to investigate and resolve the complaint. The compliance officer shall promptly notify the complainant and respondent, ~~if applicable,~~ if another compliance officer is assigned to the complaint.

In no instance shall a compliance officer be assigned to a complaint in which the compliance officer has a bias or conflict of interest that would prohibit the fair investigation or resolution of the complaint. Any complaint against a compliance officer or that raises a concern about the compliance officer's ability to investigate the complaint fairly and without bias shall be filed with the Superintendent or designee who shall determine how the complaint will be investigated.

CSBA NOTE: 5 CCR 4621 mandates that the district's policy requires employees responsible for compliance and/or for investigating and resolving complaints to be knowledgeable about the laws and programs at issue in the complaints they are assigned. Compliance officers must also have training or experience in handling discrimination complaints, including appropriate investigative techniques and understanding of the applicable legal standards.

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The Superintendent or designee shall ensure that employees assigned to investigate and resolve complaints receive training and are knowledgeable about the laws and programs at issue in the complaints to which they are assigned. Training provided to such employees shall cover current state and federal laws and regulations governing the program;~~,~~ applicable processes for investigating and resolving complaints, including those alleging unlawful discrimination, harassment, intimidation, or bullying; ~~(such as discriminatory harassment, intimidation, or bullying),~~ applicable standards for reaching decisions on complaints;~~,~~ and appropriate corrective measures. Assigned 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, an~~y~~ appropriate administrator shall determine whether interim measures are necessary during an investigation and while ~~pending~~ the result is pending ~~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 one or more interim measures. The interim measures shall 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)

CSBA NOTE: During the FPM process, CDE staff will check to ensure that the district's policy contains a statement ensuring annual dissemination of notice of the district's UCP to the persons specified below.

In addition, the Superintendent or designee shall annually provide written notification of the district's UCP to students, employees, parents/guardians of district students, district advisory committee members, school advisory committee members, 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. 4112.9/4212.9/4312.9 - Employee Notifications)*~~
~~*(cf. 5145.6 - Parental Notifications)*~~

CSBA NOTE: 5 CCR 4622 requires the district to include specified information in its annual UCP notice to students, parents/guardians, employees, and others. The following list reflects those required components and additional content of the notice listed in CDE's FPM instrument.

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A sample of the annual notice is available through CDE's web site. It is the district's responsibility to update the notice as necessary to reflect new law.

The notice shall include:

1. A statement that the district is primarily responsible for compliance with federal and state laws and regulations, including those related to prohibition of unlawful discrimination, harassment, intimidation, or bullying against any protected group, and a list of all programs and activities that are subject to UCP as identified in the section "Complaints Subject to UCP" in the accompanying Board policy

2. The title of the position responsible for processing complains, the identity of the person(s) currently occupying that position if know, and a statement that such persons will be knowledgeable about the laws and programs that they are assigned to investigate.

3. A statement that a UCP complaint, except a complaint alleging unlawful discrimination, harassment, intimidation, or bullying, must be filed no later than one year from the date the alleged violation occurred

4. A statement that a UCP complaint alleging unlawful discrimination, harassment, intimidation, or bullying must be filed no later than six months from the date of the alleged conduct or the date the complainant first obtained knowledge of the facts of the alleged conduct.

~~2~~.5. A statement that a complaint regarding student fees or the local control and accountability plan (LCAP) may be filed anonymously if the complainant provides evidence or information leading to evidence to support the complaint

~~*(cf. 0460 - Local Control and Accountability Plan)*~~
~~*(cf. 3260 - Fees and Charges)*~~

~~3.~~6. A statement that a student enrolled in a public school shall not be required to pay a fee for participation in an educational activity that constitutes an integral fundamental part of the district's educational program, including curricular and extracurricular activities

~~4. A statement that a complaint regarding student fees must be filed no later than one year from the date the alleged violation occurred~~

~~5.~~7. A statement that the district will post a standardized notice of the educational and graduation requirements ~~rights~~ of foster youth, homeless students, children of military families, and former juvenile court school students now enrolled in the district~~, children of military families, migrant students, and immigrant students enrolled in a newcomer program,~~ as specified in Education Code 48645.7, 48853, 48853.5, 49069.5, 51225.1, and 51225.2, and the complaint process

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~~*(cf. 6173 - Education for Homeless Children)*~~
~~*(cf. 6173.1 - Education for Foster Youth)*~~
~~*(cf. 6173.2 - Education of Children of Military Families)*~~
~~*(cf. 6173.3 - Education for Juvenile Court School Students)*~~
~~*(cf. 6175 - Migrant Education Program)*~~

~~6. Identification of the responsible staff member(s), position(s), or unit(s) designated to receive complaints~~

~~7.~~8. A statement that complaints will be investigated in accordance with the district's UCP and a written decision will be sent to the complainant within 60 days from the receipt of the complaint, unless this time period is extended by written agreement of the complainant

~~8.~~9. A statement that, for programs within the scope of the UCP as specified in the accompanying Board policy, the complainant has a right to appeal the district's investigation report ~~decision~~ to the California Department of Education (CDE) by filing a written appeal, including a copy of the original complaint and the district's decision, within ~~15~~ 30 calendar days of receiving the district's decision

~~9.~~10. A statement advising the complainant of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal ~~antidiscrimination~~ laws prohibiting discrimination, harassment, intimidation, or bullying, if applicable

~~10.~~11. A statement that copies of the district's UCP are available free of charge

CSBA NOTE: The following paragraph may be modified to reflect district practice. Pursuant to Education Code 221.61, a district and district school are required to post information related to Title IX on their web sites, including specified information about complaint procedures under Title IX. See AR 5145.3 - Nondiscrimination/Harassment. A school or district that does not maintain a web site may comply by posting the information on the web site of its district or county office of education (COE), however a school, district, or COE is not required to establish a web site if it does not maintain one. A comprehensive list of rights based on the provisions of the federal regulations implementing Title IX can be found in Education Code 221.8

The annual notification, complete contact information of the compliance officer(s), and information related to Title IX as required pursuant to Education Code 221.6~~1~~ shall be posted on the district and district school web sites and may be provided through district-supported social media, if available.

~~*(cf. 1113 - District and School Web Sites)*~~
~~*(cf. 1114 - District-Sponsored Social Media)*~~

CSBA NOTE: Both federal and state laws contain requirements for translation of certain information and

documents. Title VI of the Civil Rights Act of 1964 requires districts to ensure meaningful access to their programs and activities by persons with limited English proficiency. OCR has interpreted this to require that, whenever information is provided to parents/guardians, districts must notify limited-English-proficient (LEP) parents/guardians in a language other than English in order to be adequate. OCR enforces this requirement consistent with the Department of Justice's 2007 Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. Under the Guidance, a recipient of federal funds has an obligation to provide language assistance to LEP individuals based on the balancing of four factors: (1) the number or proportion of LEP individuals likely to encounter the program, (2) the frequency with which LEP individuals come in contact with the program, (3) the nature and importance of the services provided by the program, and (4) the resources available to the recipient. State law is more specific than federal law: Education Code 48985 requires translation of certain information and documents if 15 percent or more of students enrolled in the school speak a single primary language other than English.

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 UCP 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.

Filing of Complaints

CSBA NOTE: Complaints filed under UCP may be filed directly with a compliance officer or with any site administrator not designated as a compliance officer. For example, acts of unlawful discrimination, harassment, intimidation, or bullying may initially be reported to a principal. See AR 5145.3 - Nondiscrimination/Harassment and AR 5145.7 - Sexual Harassment. If a site administrator not designated as a compliance officer receives a UCP complaint, the site administrator must notify a compliance officer. A district may also establish a site-level process for receiving informal reports about incidents for which a UCP complaint may be filed and notifying students and parents/guardians of their right to file a UCP complaint. Any site-level process established by a district should be in writing and distributed in the same manner as the grievance procedures listed herein with an explanation of how it interacts with the UCP complaint process.

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. If a site administrator not designated as a compliance officer receives a complaint, the site administrator shall notify the compliance officer.

All complaints shall be filed in writing and signed by the complainant. If a complainant is unable to put a complaint in writing due to conditions such as a disability or illiteracy, district staff shall

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assist in the filing of the complaint. (5 CCR 4600)

Complaints shall also be filed in accordance with the following rules, as applicable:

1. A complaint alleging district violation of applicable state or federal law or regulations governing the programs specified in the accompanying Board policy ~~(item #1 of the section "Complaints Subject to UCP")~~ may be filed by any individual, public agency, or organization. (5 CCR 4600 ~~4630~~)

CSBA NOTE: Education Code 49013 and 52075 mandate districts to adopt procedures that allow for anonymous complaints to be filed when a district allegedly violates the prohibition against the charging of student fees or violates any requirement related to the LCAP.

2. Any complaint alleging noncompliance with law regarding the prohibition against 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. A complaint about a violation of the prohibition against the charging of unlawful student fees may be filed with the principal of the school or with the Superintendent or designee. ~~However, any such complaint shall be filed no later than one year from the date the alleged violation occurred. (Education Code 49013, 52075; 5 CCR 4630)~~

CSBA NOTE: Pursuant to 5 CCR 4630, complaints related to the LCAP must be filed within a year of the date that the County Superintendent of Schools, the reviewing authority for districts, approves the district's LCAP

3. A UCP complaint, except for a UCP complaint alleging unlawful discrimination, harassment, intimidation, or bullying, shall be filed no later than one year from the date the alleged violation occurred. For complaints related to the LCAP, the date of the alleged violation is the date when the County Superintendent of Schools approves the LCAP that was adopted by the Governing Board. (5 CCR 4630)

~~3.~~4. A complaint alleging unlawful discrimination, ~~(such as discriminatory~~ harassment, intimidation, or bullying~~)~~ may be filed only by a person~~s~~ who alleges having ~~that they have~~ personally suffered unlawful discrimination, ~~or~~ a person who believes that ~~an individual or~~ any specific class of individuals has been subjected to unlawful discrimination,~~.~~ or a duly authorized representative who alleges that an individual student has been subjected to discrimination, harassment, intimidation, or bullying.
~~The complaint shall be initiated no later than six months from the date that the alleged unlawful discrimination occurred, or six months from the date that the complainant first obtained knowledge of the facts of the alleged unlawful 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)

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5. A complaint alleging unlawful discrimination, harassment, intimidation, or bullying shall be initiated no later than six months from the date that the alleged unlawful discrimination occurred, or six months from the date that the complainant first obtained knowledge of the facts of the alleged unlawful 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.~~ 6. When a complaint alleging unlawful discrimination, ~~(such as discriminatory~~ harassment, intimidation, 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.

CSBA NOTE: Districts should consult legal counsel before honoring a confidentiality request to withhold the victim's name from the alleged perpetrator, especially in the case of alleged sexual assault, as this may affect the district's ability to conduct a thorough investigation or provide supportive measures to the victim. In OCR's Part 1: Questions and Answers Regarding the Department's Title IX Regulations, it is stated that, "Title IX regulations balance a complainant's desire for confidentiality (in terms of, for instance, the complainant's identity not being disclosed to the respondent) with a school's discretion to pursue an investigation where factual circumstances warrant an investigation even though the complainant does not desire to file a formal complaint or participate in a grievance process."

These guiding principles would also apply to harassment on the basis of race, gender, disability, or other protected characteristic.

~~5.~~7. When the complainant of unlawful discrimination, ~~(such as discriminatory~~ harassment, intimidation, or bullying~~)~~ or the alleged victim, when not the complainant, requests confidentiality, the compliance officer shall inform the complainant or victim 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 shall nevertheless take all reasonable steps to investigate and resolve/respond to the complaint consistent with the request.

Mediation

CSBA NOTE: The following section should be used only by those districts that have decided to establish procedures for attempting to resolve complaints through alternative dispute resolution (ADR) procedures such as mediation; see the accompanying Board policy. The following section may be modified to specify the ADR method and timelines used within the district.

Districts may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student; see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Within three business days after receiving the complaint, the compliance officer may informally discuss with all the parties the possibility of using mediation to resolve the complaint. Mediation 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 an allegation of sexual 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 or unlawful discrimination, ~~(such as discriminatory~~ harassment, intimidation, or bullying~~)~~, the compliance officer shall ensure that all parties agree to ~~make~~ permit the mediator ~~a party~~ access to all 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 an 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 upon through the mediation. If mediation is unsuccessful, the district shall then continue with subsequent steps specified in this administrative regulation.

Investigation of Complaint

CSBA NOTE: 5 CCR 4631, which requires the district to provide the complainant with the opportunity to present relevant information, does not provide any timeline. Thus, the timeline specified below may be modified to reflect district practice.

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 the complainant's representative with the opportunity to present the information contained in the complaint to the compliance officer and shall notify the complainant and/or 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.

CSBA NOTE: During the investigation, the compliance officer should consider all relevant circumstances, such as how the alleged misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; the identity, age, and sex of the individuals involved in and impacted by the conduct and the relationship between them; the number of persons engaged in the conduct and at whom the conduct was directed; the size of the school, location of the incidents, and context in which they occurred; and other incidents at the school involving different individuals.

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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. The compliance officer 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. At appropriate intervals, the compliance officer shall inform both parties of the status of the investigation.

To investigate a complaint alleging retaliation or unlawful discrimination, ~~(such as discriminatory~~ harassment, intimidation, or bullying~~)~~, the compliance officer shall interview the alleged victim(s), any alleged offender(s), and other relevant witnesses privately, separately, and in a confidential manner. As necessary, additional staff or legal counsel may conduct or support the investigation.

CSBA NOTE: 5 CCR 4631 allows the district to dismiss a complaint when the complainant refuses to provide the investigator with relevant documents or otherwise obstructs the investigation. 5 CCR 4631 also provides that, if the district refuses to provide the investigator with access to records or other documents, the investigator may issue a finding in favor of the complainant. During the FPM process, CDE staff will check to ensure that both of these statements regarding the provision of access to information are included in the district's policy or procedures, as specified below.

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. ~~Similarly, a respondent'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 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)

~~In accordance with law, the~~ Refusal by the district ~~shall~~ to provide the investigator with access to records and/or ~~other~~ information related to the allegations in the complaint, ~~and shall not in any way obstruct the investigation. Failure~~ failure or refusal ~~of the district~~ to cooperate in the investigation, or any other obstruction of 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)

Timeline for ~~Final Decision~~ Investigation Report

Unless extended by written agreement with the complainant, ~~a final decision~~ the investigation report shall be sent to the complainant within 60 calendar days of the district's receipt of the complaint.

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Within 30 calendar days of receiving the complaint, the compliance officer shall prepare and send to the complainant a written report, as described in the section ~~"Final Written Decision"~~ "Investigation Report" below. If the complainant is dissatisfied with the compliance officer's decision, the complainant may, within five business days, file the complaint in writing with the Board.

The Board may consider the matter at its next regular Board meeting or at a special Board meeting convened in order to meet the 60-day time limit within which the complaint must be answered. When required by law, the matter shall be considered in closed session. The Board may decide not to hear the complaint, in which case the compliance officer's decision shall be final.

~~*(cf. 9321 - Closed Session)*~~

If the Board hears the complaint, the compliance officer shall send the Board's decision to the complainant within 60 calendar days of the district's initial receipt of the complaint or within the time period that has been specified in a written agreement with the complainant. (5 CCR 4631)

For any complaint alleging unlawful discrimination, ~~(such as discriminatory~~ harassment, intimidation, and bullying~~)~~, the respondent shall be informed of any extension of the timeline agreed to by the complainant, ~~shall be sent the district's final written decision,~~ and, in the same manner as the complainant, may file a complaint with the Board if dissatisfied with the decision.

~~Final Written Decision~~ Investigation Report

CSBA NOTE: 5 CCR 4631 specifies components that are required to be part of the district's investigation report. Inclusion of these items will help protect the district's position in case of an appeal to CDE, a complaint submitted to OCR, or if litigation is filed.

For all complaints, the district's ~~final written decision~~ investigation report 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~~

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~~e. Past instances of similar conduct by any alleged offenders~~

~~f. Past false allegations made by the complainant~~

2. ~~The~~ A conclusion~~(s) of law~~ providing a clear determination for each allegation as to whether the district is in compliance with the relevant law

3. ~~Disposition of the complaint~~ Corrective action(s) whenever the district finds merit in the complaint, including, when required by law, a remedy to all affected students and parents/guardians and, for a student fees complaint, a remedy that complies with Education Code 49013 and 5 CCR 4600

4. ~~Rationale for such disposition~~ Notice of the complainant's right to appeal the district's investigation report to CDE, except when the district has used the UCP to address a complaint not specified in 5 CCR 4610

5. Procedures to be followed for initiating an appeal to CDE

~~For complaints of retaliation or unlawful discrimination (such as 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. The manner in which 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 (such as discriminatory harassment, intimidation, or~~

~~bullying), the decision may, as required by law, include:~~

~~a. The corrective actions imposed on the respondent~~

~~b. Individual remedies offered or provided to the complainant or another person who was the subject of the complaint, but this information should not be shared with the respondent.~~

~~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 to CDE within 15 calendar days, and procedures to be followed for initiating such an appeal~~

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

CSBA NOTE: The Family Educational Rights and Privacy Act (FERPA) (20 USC 1232g; 34 CFR 99.1-99.67) protects student privacy, including student records containing details of the actions taken in response to a UCP complaint. However, pursuant to 20 USC 1221, FERPA may not "be construed to affect the applicability of Title VI of the Civil Rights Act of 1964, Title IX of Education Amendments of 1972, Title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." In February 2015, the Family Policy Compliance Office (FPCO), now the Student Privacy Policy Office, released a letter concluding that FERPA permits a district to disclose to a student who was subjected to unlawful discrimination certain information about the sanctions imposed upon the respondent when the sanctions directly relate to that student. Thus, if properly remedying the impact of discrimination would require disclosing to the alleged victim certain information on how the district disciplined the respondent (e.g., an order that the respondent stay away from the alleged victim), FPCO interprets FERPA as allowing the district to disclose that information.

Given the potential liability from improperly disclosing such information, districts are advised to consult with legal counsel when presented with a situation where a victim of unlawful discrimination requests information about sanctions imposed upon the respondent

In consultation with district legal counsel, information about the relevant part of ~~a decision~~ an investigation report may be communicated to a victim who is not the complainant and to other parties who may be involved in implementing the ~~decision~~ investigation report or are affected by the complaint, as long as the privacy of the parties is protected. In a complaint alleging unlawful discrimination, ~~(such as discriminatory~~ harassment, intimidation, and bullying~~)~~, notice of the ~~district's decision~~ investigation report to the alleged victim shall include information about any sanction to be imposed upon the respondent that relates directly to the alleged victim.

CSBA NOTE: Education Code 48985 requires that reports sent to parents/guardians be written in their primary language when 15 percent or more of a school's enrolled students speak a single primary

language other than English. During the FPM process, CDE staff will check to ensure that UCP complaint procedures pertaining to CSPP health and safety issues include a statement that the district response and the investigation report must, whenever Education Code 48985 is applicable, be written in English and the primary language in which the complaint was filed; see the section "Health and Safety Complaints in License-Exempt Preschool Programs" below. The following paragraph extends this provision to all types of complaints to ensure compliance with Education Code 48985. In addition, based on Title VI of the Civil Rights Act of 1964, OCR requires districts to ensure meaningful access to all relevant UCP information for parents/guardians with limited English proficiency.

If the complaint involves a limited-English-proficient (LEP) student or parent/guardian, ~~and the student involved is enrolled in a school at which 15 percent or more of the students speak a single primary language other than English,~~ then the district's response, if requested by the complainant, and the investigation report shall be written in English and the primary language in which the complaint was filed. ~~decision shall also be translated into that language pursuant to Education Code 48985. In all other instances, the district shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.~~

CSBA NOTE: During the FPM process, CDE staff will expect to see a statement detailing a complainant's right to pursue civil law remedies (i.e., action in a court of law) in addition to or in conjunction with the right to pursue administrative remedies from CDE.

For complaints alleging unlawful discrimination, harassment, intimidation, and bullying based on state law ~~(such as discriminatory harassment, intimidation, and bullying)~~, the ~~decision~~ investigation report shall also include a notice to the complainant that:

1. The complainant may pursue available civil law remedies outside of the district's complaint procedures, including, but not limited to, injunctions, restraining orders or other remedies on orders, ~~seeking assistance from mediation centers or public/private interest attorneys,~~ 60 calendar days after the filing of an appeal with 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.

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~~*(cf. 5137 - Positive School Climate)*~~

For complaints involving retaliation or unlawful discrimination, ~~(such as discriminatory~~ harassment, intimidation, or bullying~~)~~, appropriate remedies that may be offered to the victim but not communicated to the respondent may include, but are not limited to, the following:

1. Counseling

~~*(cf. 6164.2 - Guidance/Counseling Services)*~~

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

For complaints ~~involving~~ of retaliation or unlawful discrimination, ~~(such as discriminatory~~ harassment, intimidation, or bullying~~),~~ involving a student as the respondent, appropriate corrective actions that ~~focus on a~~ may be provided to the 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

~~*(cf. 6164.5 - Student Success Teams)*~~

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6. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law

~~*(cf. 6145 - Extracurricular and Cocurricular Activities)*~~

7. Disciplinary action, such as suspension or expulsion, as permitted by law

~~*(cf. 5144 - Discipline)*~~
~~*(cf. 5144.1 - Suspension and Expulsion/Due Process)*~~

When an employee is found to have committed retaliation or unlawful discrimination, ~~(such as discriminatory~~ harassment, intimidation, or bullying~~)~~, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

~~*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*~~
~~*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*~~

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, ~~(such as discriminatory~~ harassment, intimidation, or bullying~~)~~, that the district does not tolerate it, and how to report and respond to it.

CSBA NOTE: Generally, when a complaint is found to have merit, an appropriate remedy is provided to the complainant or other affected person. However, in certain instances, the law may require a remedy to be provided to all affected persons, not just the complainant or subject of the complaint. For example, pursuant to Education Code 49013 and 5 CCR 4600, if the district, or CDE on appeal, finds merit in the complaint alleging noncompliance with the law regarding student fees and charges, the district is required to provide a remedy to all affected students and parents/guardians, as specified below. The same requirement applies to allegations of noncompliance with required instructional minutes for physical education pursuant to Education Code 51222 and 51223, course periods without educational content pursuant to Education Code 51228.3, and the LCAP requirements pursuant to Education Code 52075. Districts that do not maintain elementary schools should delete the reference to physical education below.

When a complaint is found to have merit, an appropriate remedy shall be provided to the complainant or other affected person.

However, if a complaint alleging noncompliance with the law~~s~~ regarding student fees, deposits, and other charges, physical education instructional minutes, courses without educational content, 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 subject to procedures established by regulation of the State Board of Education. (Education Code 49013, 51222, 51223, 51228.3, 52075)

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For complaints alleging noncompliance with the law~~s~~ regarding student fees, the district, by engaging in reasonable efforts, shall attempt in good faith~~, by engaging in reasonable efforts,~~ to identify and fully reimburse all affected students and parents/guardians who paid the unlawful student fees within one year prior to the filing of the complaint. (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~~ investigation report on a complaint regarding any specified federal or state educational program subject to UCP may file an appeal in writing with CDE within ~~15~~ 30 calendar days of receiving the district's ~~decision~~ investigation report. (5 CCR 4632)

~~The complainant shall specify the basis for the appeal, of the decision and how the facts of the district's decision are incorrect and/or the law has been misapplied.~~ The appeal shall be sent to CDE with a copy of the original locally filed complaint and a copy of the district's ~~decision~~ investigation report for ~~in~~ that complaint. The complainant shall specify and explain the basis for the appeal, including at least one of the following: (5 CCR 4632)

1. The district failed to follow its complaint procedures.

2. Relative to the allegations of the complaint, the district's investigation report lacks material findings of fact necessary to reach a conclusion of law.

3. The material findings of fact in the district's investigation report are not supported by substantial evidence.

4. The legal conclusion in the district's investigation report is inconsistent with the law.

5. In a case in which the district found noncompliance, the corrective actions fail to provide a proper remedy.

~~When a respondent in any complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) is dissatisfied with the district's final written decision, the respondent, in the same manner as the complainant, may file an appeal with CDE.~~

CSBA NOTE: 5 CCR 4633 requires the district to submit the following documents to CDE within 10 days after the district has been notified that an appeal has been filed. The district's failure to provide a timely and complete response may result in CDE ruling on the appeal without considering information from the district.

Upon notification by CDE that the district's ~~decision~~ investigation report has been appealed, the Superintendent or designee shall forward the following documents to CDE within 10 days of the date of notification: (5 CCR 4633)

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1. A copy of the original complaint

2. A copy of the ~~written decision~~ district's investigation report

~~3. A summary of the nature and extent of the investigation conducted by the district, if not covered by the decision~~

~~4.~~3. 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.~~4. A report of any action taken to resolve the complaint

~~6.~~5. A copy of the district's UCP

~~7.~~6. Other relevant information requested by CDE

If notified by CDE that the district's investigation report failed to address allegation(s) raised by the complaint, the district shall, within 20 days of the notification, provide CDE and the appellant with an amended investigation report that addresses the allegation(s) that were not addressed in the original investigation report. The amended report shall also inform the appellant of the right to separately appeal the amended report with respect to the allegation(s) that were not addressed in the original report. (5 CCR 4632)

CSBA NOTE: Pursuant to 5 CCR 4633, CDE is required to issue a written decision regarding the appeal within 60 days of CDE's receipt of the appeal, unless extended by written agreement with the appellant or documentation by CDE of exceptional circumstances. Pursuant to 5 CCR 4635, if CDE's decision was issued based on evidence in the investigation file CDE received from the district or evidence uncovered after further investigation of the allegations that were the basis of the appeal, either party may request reconsideration by the Superintendent of Public Instruction or designee within 30 days of the appeal decision.

Pursuant to 5 CCR 4650, CDE may directly intervene in a complaint without waiting for action by the district when certain conditions exist, including the following: (1) the complaint alleges failure to comply with the UCP, including failure to follow the required timelines and failure to implement the final investigation report; (2) the complainant requests anonymity due to the possibility of retaliation and would suffer immediate and irreparable harm if a complaint was filed and the complainant was named; or (3) the complainant would suffer immediate and irreparable harm as a result of an application of a districtwide policy that is in conflict with state or federal law and that filing a complaint would be futile.

Health and Safety Complaints in ~~California State~~ License-Exempt Preschool Programs

CSBA NOTE: The following section is for use by districts that operate any license-exempt CSPP program. Education Code 8212, as renumbered by AB 131 (Ch. 116, Statutes of 2021), mandates districts to adopt policies and procedures for resolving complaints regarding specified health and safety issues in a

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license-exempt CSPP program. Pursuant to Education Code 8212, the district must use the UCP, with modifications as necessary, to resolve such complaints. Pursuant to 5 CCR 4610, such complaints must be addressed through the procedures described in 5 CCR 4690-4694.

See the accompanying exhibits for a sample classroom notice and complaint form.

Any complaint regarding health or safety issues in a license-exempt California State Preschool Program (CSPP) shall be addressed through the procedures described in 5 CCR 4690-4694.

In order to identify appropriate subjects of CSPP health and safety issues pursuant to Health and Safety Code 1596.7925, ~~each license-exempt CSPP classroom,~~ a notice shall be posted in each license-exempt CSPP classroom in the district notifying parents/guardians, students, and teachers of the health and safety requirements of Title 5 regulations that apply to CSPP programs pursuant to Health and Safety Code 1596.7925 and the location at which to obtain a form to file any complaint alleging noncompliance with those requirements. For this purpose, the Superintendent or designee may download and post a notice available from the CDE web site (Education Code 8212; 5 CCR 4691 ~~8235.5~~)
The district's annual UCP notification distributed pursuant to 5 CCR 4622 shall clearly indicate which of its CSPP programs are operating as exempt from licensing and which CSPP programs are operating pursuant to requirements under Title 22 of the Code of Regulations. (5 CCR 4691)

Any complaint regarding specified health or safety issues in a license-exempt CSPP program shall be filed with the preschool program administrator or designee, and may be filed anonymously. The complaint form shall specify the location for filing the complaint, ~~and shall~~ contain a space to indicate whether the complainant desires a response to the complaint, and allow a complainant to add as much text as desired to explain the complaint (Education Code 8212; 5 CCR 4690).

If it is determined that the complaint is beyond the authority of the preschool program administrator, the matter shall be forwarded to the Superintendent or designee in a timely manner, not to exceed 10 working days, for resolution. The preschool administrator or the Superintendent or designee shall make all reasonable efforts to investigate any complaint within their authority. (Education Code 8212; 5CCR 4692 ~~8235.5~~)

Investigation of a complaint regarding health or safety issues in a license-exempt CSPP program shall begin within 10 days of receipt of the complaint. (Education Code 8212; 5CCR 4692 ~~8235.5~~)

The preschool administrator or designee shall remedy a valid complaint within a reasonable time period not to exceed 30 working days from the date the complaint was received. If the complainant has indicated on the complaint form a desire to receive a response to the complaint, the preschool administrator or Superintendent's designee shall, within 45 working days of the initial filing of the complaing, report the resolution of the complaint to the complainant ~~within 45~~

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~~working days of the initial filing of the complaint~~ and CDE's assigned field consultant. If the preschool administrator makes this report, the information shall be reported at the same time to the Superintendent or designee. (Education Code 8212; 5 CCR 4692)

CSBA NOTE: Education Code 48985 requires that reports sent to parents/guardians be written in their primary language when 15 percent or more of a school's enrolled students speak a single primary language other than English. During the FPM process, CDE staff will check to ensure compliance with this requirement. Based on Title VI of the Civil Rights Act of 1964, OCR requires districts to ensure meaningful access to all relevant UCP information for parents/guardians with limited English proficiency

If a complaint regarding health or safety issues in a license-exempt CSPP program involves an LEP student or parent/guardian, then the district's response, if requested by the complainant, and the investigation report shall be written in English and the primary language in which the complaint was filed.

If a complainant is not satisfied with the resolution of a complaint, the complainant has the right to describe the complaint to the Board at a regularly scheduled meeting and, within 30 days of the date of the written report, ~~(Education Code 8235.5) A complainant~~ may file a written appeal of the district's decision to ~~CDE~~ the Superintendent of Public Instruction in accordance with 5 CCR 4632. (Education Code 8212; 5 CCR 4693, 4694 ~~8235.5~~)

~~Any such appeal shall be filed within 30 days of receiving the decision.~~

All complaints and responses are public records. (5 CCR 4690)

On a quarterly basis, the Superintendent or designee shall report summarized data on the nature and resolution of all CSPP health and safety complaints, including the number of complaints by general subject area with the number of resolved and unresolved complaints, to the Board at a regularly scheduled Board meeting and to the County Superintendent ~~of Schools~~. (5 CCR 4693)