

## PERSONNEL

### **UNIFORM COMPLAINT POLICY AND PROCEDURES**

The Kern County Superintendent of Schools Office recognizes that it has the primary responsibility of ensuring that the office complies with applicable state and federal laws and regulations governing the educational programs that it operates. The office shall investigate complaints alleging failure to comply with such laws and regulations and/or alleging unlawful discrimination, harassment, intimidation or bullying and shall seek to resolve those complaints in accordance with the procedures set out in Sections 4600-4687 of Title 5 of the California Code of Regulations and in accordance with the policies and procedures of the office.

Discrimination Complaints. The office shall follow uniform complaint procedures when addressing complaints alleging unlawful discrimination, harassment, intimidation or bullying in programs and activities of the office based on any characteristic identified under Education Code Section 200 or 220, Penal Code Section 422.55, or Government Code Section 11135, including actual or perceived characteristics of age, sex, sexual orientation, gender, ethnicity, gender identity, gender expression, ethnic group identification, race, ancestry, nationality, national origin, religion, color, marital or parental status, genetic information, or mental or physical disability, or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics in any program or activity that receives or benefits from state financial assistance.

Program, Student Fee, and LCAP Complaints. Uniform complaint procedures shall also be used when addressing complaints alleging failure to comply with the prohibition against requiring students to pay fees, deposits or other charges for participation in educational activities, failure to comply with the legal requirements pertaining to the Local Control Accountability Plan (LCAP), the requirements for adoption of a school safety plan, or the failure to comply with state and/or federal laws in adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and career technical and technical training programs, childcare and development programs, child nutrition programs, and special education programs.

Williams Complaints. Complaints related to the sufficiency of textbooks or instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of students or staff, teacher vacancies and misassignments, and deficiency in the office's provision of instruction and/or services to any student who, by the completion of grade 12, has not passed one or both parts of the high school exit examination, shall be investigated pursuant to this office's separate "Williams Uniform Complaint Procedure."

Retaliation Prohibited. The office prohibits retaliation in any form for participating in complaint procedures, including, but not limited to the filing of a complaint or the reporting of instances of discrimination. Such participation shall not in any way affect the status, grades or work assignments of the complainant.

### **COMPLIANCE OFFICER**

The office designates the following compliance officers to receive and investigate complaints and ensure compliance with the law:

Chief Human Resources Officer  
**(Complaints relating to discrimination in employment)**  
Kern County Superintendent of Schools Office  
1300 17th Street - CITY CENTRE, Bakersfield, CA 93301-4533  
Telephone: (661) 636-4673 • FAX: (661) 636-4043

Associate Superintendent  
**(All other complaints under this policy)**  
Kern County Superintendent of Schools Office  
1300 17th Street - CITY CENTRE, Bakersfield, CA 93301-4533  
Telephone: (661) 636-4680 • FAX: (661) 636-4127

The associate superintendent may delegate the investigation of any complaint received to a division administrator. The office shall ensure that employees designated to receive and investigate complaints are knowledgeable about the laws and programs for which they are responsible. Such employees may have access to legal counsel, as determined by the Superintendent or designee.

## **NOTIFICATION**

The Superintendent or designee shall annually provide written notification of the office's uniform complaint procedures to students, employees, parents/guardians, school advisory committees, appropriate private school officials or representatives, and other interested parties as required by law. The Superintendent or designee shall make available copies of the office's uniform complaint procedures free of charge.

## **FILING OF COMPLAINT**

The following procedures shall be used to address complaints, which allege that the office has violated federal or state laws or regulations governing educational programs that it operates. Compliance officers shall maintain a record of each complaint and subsequent related actions, including all information required for compliance with the Title 5, California Code of Regulations, Sections 4631 and 4633.

An individual, public agency or organization may file a written complaint of an alleged noncompliance by the office with the appropriate compliance officer named above. If a complainant is unable to put a complaint in writing due to conditions such as illiteracy or other disabilities, the office staff shall assist him/her in filing the complaint. (Title 5, California Code of Regulations, Section 4600)

Complaints involving unlawful discrimination, harassment, intimidation, or bullying may be filed 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 the above. The complaint must be initiated no later than six (6) months from the date when the alleged discrimination, harassment, intimidation, or bullying occurred, or when the complainant first obtained knowledge of the facts of the alleged discrimination, harassment, intimidation, or bullying. However, upon written request by the complainant, the Superintendent or designee may extend the filing period for up to 90 calendar days. (Title 5, California Code of Regulations, Section 4630)

A complaint alleging noncompliance with the law regarding the prohibition against requiring students to pay student fees, deposits, and charges or noncompliance with the legal requirements pertaining to the LCAP, may be filed anonymously if the complaint provides evidence or information leading to evidence to support an allegation of noncompliance. (Education Code Section 49013)

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

## **MEDIATION**

The office recognizes that a neutral mediator can often suggest a compromise that is agreeable to all parties in a dispute. In accordance with uniform complaint procedures, whenever all parties to a complaint agree to try to resolve their problem through mediation, the Superintendent or designee may initiate mediation.

Within three (3) days of receiving the complaint, the compliance officer may informally discuss with the complainant the possibility of using mediation. If the complainant agrees to mediation, the compliance officer shall make all arrangements for this process. Before initiating the mediation of a complaint alleging discrimination, harassment, intimidation or bullying, the compliance officer shall ensure that all parties agree to make the mediator a party to related confidential information.

If the mediation process is adopted and does not resolve the problem within the parameters of law, the compliance officer shall proceed with the investigation of the complaint.

If utilized, the use of mediation shall not extend the office's timelines for investigating and resolving the complaint unless the complainant agrees, in writing, to such an extension of time. Notwithstanding the use of mediation,

all complaints alleging discrimination against a member of a protected group shall be promptly and thoroughly investigated as required by law.

## **INVESTIGATION OF COMPLAINT**

In investigating complaints, the confidentiality of the parties involved and the integrity of the process shall be protected. As appropriate for any complaint alleging discrimination, harassment, intimidation or bullying, the office may keep the identity of a complainant confidential to the extent that the investigation of the complaint is not obstructed.

Within ten (10) calendar days of receiving the complaint, the complainant and/or the complainant's representative and the office's representative shall also have an opportunity to present the complaint and evidence or information leading to evidence which supports the allegations in the complaint. (Title 5, California Code of Regulations, Section 4631)

A complainant's refusal to provide the office investigator with documents or other evidence related to the allegations in the complaint, or the complainant's failure or refusal to cooperate in the investigation or the complainant's 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.

The office's failure to provide the investigator with access to records and/or other information related to the allegation in the complaint, or its failure or refusal to cooperate in the investigation or its engagement in any other obstruction of the investigation, may result in a finding, based on the evidence collected, that a violation has occurred and may result in the imposition of a remedy in favor of the complainant.

## **WRITTEN DECISION**

Within sixty (60) days of receiving the complaint, the compliance officer shall prepare and send to the complainant a written report of the office's investigation and decision, unless this time period is extended by written agreement with the complainant.

The report shall include:

1. The findings of fact based on the evidence gathered. (Title 5, California Code of Regulations, Section 4631)
2. The conclusion(s) of law. (Title 5, California Code of Regulations, Section 4631)
3. The disposition of the complaint. (Title 5, California Code of Regulations, Section 4631)
4. The rationale for the disposition of the complaint. (Title 5 California Code of Regulations, Section 4631)
5. Corrective actions, if any are warranted. (Title 5, California Code of Regulations, Section 4631)
6. Notice of the complainant's right to appeal the decision within fifteen (15) days to the California Department of Education or to the State Superintendent of Public Instruction for complaints alleging noncompliance with the legal requirements pertaining to the LCAP, and procedures to be followed for initiating such an appeal. (Title 5, California Code of Regulations, Sections 4631, 4652)
7. For complaints alleging discrimination, harassment, intimidation or bullying, notice that the complainant must wait until sixty (60) days have elapsed from the filing of an appeal with the California Department of Education before pursuing civil law remedies. (Title 5, California Code of Regulations, Section 4631, Education Code Section 262.3)

The written decision shall be in English and in the primary language of the complainant if required by law.

If an employee or student is disciplined as a result of the complaint, the report shall simply state that effective action was taken and that the employee or student was informed of the office's expectations. The report shall not give any further information as to the nature of the disciplinary action.

If a complaint alleging noncompliance with the laws regarding student fees, deposits and other charges is found to have merit, the office shall provide a remedy to all affected students and parents/guardians which, where applicable, shall include reasonable efforts to ensure full reimbursement to them. (Education Code section 49013) If a complaint

alleging noncompliance with the legal requirements pertaining to the LCAP is found to have merit, the office shall provide a remedy to all affected students and parents/guardians. (Education Code section 52075)

## **APPEAL TO THE SUPERINTENDENT**

If a complainant is dissatisfied with the compliance officer's decision, the complainant may, within five (5) days of receipt of the decision, appeal the decision to the Superintendent. If the Superintendent decides not to hear the appeal, or if the 60-day time period within which a decision on the complaint must be made will expire before the Superintendent can hear or decide the matter and the parties have not agreed to an extension of time, then the compliance officer's decision shall be the office's final written decision. If the Superintendent decides to hear the appeal, the Superintendent's decision shall be the office's final written decision on the complaint, and the compliance officer shall send the Superintendent's decision on the appeal to the complainant within sixty (60) days of the office's initial receipt of the complaint or within an extended time period agreed to in writing by the complainant.

Notwithstanding these procedures, the complainant and the office may meet at any time to consider resolution of the issues presented in the complaint.

## **APPEAL TO THE CALIFORNIA DEPARTMENT OF EDUCATION**

If dissatisfied with the office's final written decision, the complainant may appeal, in writing, to the California Department of Education or to the State Superintendent of Public Instruction for complaints alleging noncompliance with the legal requirements pertaining to the LCAP within fifteen (15) days of receiving the office's final written decision.

When appealing to the California Department of Education, the complainant must 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 decision by the office. (Title 5, California Code of Regulations, Section 4632)

Upon notification by the California Department of Education that the complainant has appealed the decision of office, the Superintendent or designee shall forward the following documents to the California Department of Education:

1. A copy of the original complaint.
2. A copy of the decision by the office.
3. A summary of the nature and extent of the investigation conducted by the office, 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 office complaint procedures.
7. Other relevant information requested by the California Department of Education.

The California Department of Education may directly intervene in the complaint without waiting for action by the office when one of the conditions listed in Title 5, California Code of Regulations, Section 4650, exists. In addition, the California Department of Education may also intervene in those cases where the office has not taken action within sixty (60) calendar days of the date the complaint was filed with the office compliance officer.

## **CIVIL LAW REMEDIES**

A complainant may pursue available civil law remedies outside of the office'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, however, a complainant must wait until sixty (60) days have elapsed from the filing of an appeal with the California Department of Education before pursuing civil law remedies. The moratorium does not apply to injunctive relief or to discrimination complaints based on federal law and is applicable only if the office has appropriately, and in a timely manner, apprised the complainant of his/her right to file a complaint in accordance with Title 5, California Code of Regulations, Section 4622.

Policy revised: June 17, 2014

SP 4100

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination  
310b2 English Learner Language Acquisition Programs  
8200-8498 Childcare and development programs  
8500-8538 Adult basic education  
18100-18203 School libraries  
32289 School safety plan, uniform complaint  
procedure 35186 Alternative uniform complaint  
procedure  
37254 Intensive instruction and services for student who have not passed exit  
exam 41500-41513 Categorical education block grants  
49010-49013 Student fees  
48929 Involuntary transfer of a Student Convicted of Violent Felony or Misdemeanor  
48985 Notices in language other than English 49060-  
49079 Student records  
4519490-49590 Child nutrition programs  
51225.1 Noncompliance with rights of foster youth, homeless student or  
former juvenile court school student  
52075 Complaints for lack of compliance  
52160-52178 Bilingual education  
programs 52300-52490 Career technical  
education 52500-52616.24 Adult  
schools  
52800-52870 School-based coordinated programs  
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

CALIFORNIA CODE OF REGULATIONS, TITLE 5

3080 Application of section  
4600-4687 Uniform complaint procedures  
4900-4965 Nondiscrimination in elementary and secondary education programs

PENAL CODE

422.55 Hate crime; definition  
422.6 Interference with constitutional right or privilege

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, including  
7201-7283g Title V Promoting Informed Parental Choice and Innovative  
Programs 7301- 7372 Title V Rural and Low-Income School Programs

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