

# **Berkeley Unified School District**

## **Board Policy**

### **Uniform Complaint Procedures**

BP 1312.3

#### **Community Relations**

**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. See the section "Complaints Subject to UCP" below for a list of programs and activities subject to these procedures pursuant to state law.

**Note:** 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.

**Note:** 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 accompanying administrative regulation, BP/AR 5147 - Sexual Harassment, and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

**Note:** 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 2020-21 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 early resolution of complaints whenever possible. To resolve complaints which may require a more formal process, the Board adopts the uniform system of complaint processes specified in 5 CCR 4600-4670 and the accompanying administrative regulation.

## **Complaints Subject to UCP:**

**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.

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

**The district's Uniform Complaint Procedures (UCP) shall be used to investigate and resolve complaints regarding the following programs and activities:**

- 1.** Accommodations for pregnant and parenting students (Education Code 46015)  
(cf. 5146 - Married/Pregnant/Parenting Students)
- 2.** Adult education programs (Education Code 8500-8538, 52334.7, 52500-52617)  
(cf. 6200 - Adult Education)
- 3.** After School Education and Safety programs (Education Code 8482-8484.65)  
(cf. 5148.2 - Before/After School Programs)
- 4.** Agricultural career technical education (Education Code 52460-52462)
- 5.** Career technical and technical education and career technical and technical training programs (Education Code 52300-52462)  
(cf. 6178 - Career Technical Education)  
(cf. 6178.1 - Work-Based Learning)
- 6.** Child-care and development programs (Education Code 8200-8498)  
(cf. 5148 - Child Care and Development)
- 7.** Compensatory education (Education Code 54400)  
(cf. 6171 - Title I Programs)
- 8.** Consolidated categorical aid programs (Education Code 33315; 34 CFR 299.10-299.12)
- 9.** Course periods without educational content, when students in grades 9-12 are assigned to such courses more than one week in any semester or in a course the student has previously satisfactorily completed, unless specified conditions are met (Education Code 51228.1-51228.3)  
(cf. 6152 - Class Assignment)
- 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 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)

(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)

**11.** Educational and graduation requirements for students in foster care, homeless students, students from military families, students formerly in a juvenile court school, migrant students, and immigrant students participating in a newcomer program (Education Code 48645.7, 48853, 48853.5, 49069.5, 51225.1, 51225.2)

(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)

**12.** Every Student Succeeds Act (Education Code 52059; 20 USC 6301 et seq.)

**13.** Local Control and Accountability Plan (Education Code 52075)

(cf. 0460 - Local Control and Accountability Plan)

**14.** Migrant Education (Education Code 54440-54445)

(cf. 6175 - Migrant Education Program)

**15.** Physical education instructional minutes (Education Code 51210, 51222, 51223)

(cf. 6142.7 - Physical Education and Activity)

**16.** Student fees (Education Code 49010-49013)

(cf. 3260 - Fees and Charges)

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

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

(cf. 6178.2 - Regional Occupational Center/Program)

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

(cf. 0420 - School Plans/Site Councils)

**20.** School Safety Plans (Education Code 32280-32289)

(cf. 0450 - Comprehensive Safety Plan)

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

(cf. 0420 - School Plans/Site Councils)

**22.** State preschool programs (Education Code 8235-8239.1)

(cf. 5148.3 - Preschool/Early Childhood Education)

**Note:** Pursuant to Education Code 8235.5 and CDE's 2020-21 FPM instrument, the district must use the UCP, with modifications as necessary, to resolve complaints alleging deficiencies in license-exempt California State Preschool Programs related to health and safety issues. 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 8235.5)

**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 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.

**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. 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.

**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.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

**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 the specified agency or through an alternative process:

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

**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 (DFEH). See AR 4030 - Nondiscrimination in Employment for applicable complaint procedures.

3. 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.

**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 #4-6 below.

4. 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, or a due process hearing order 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)

(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)

5. 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)

6. 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)

**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.

7. 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 AR 1312.4 - Williams Uniform Complaint Procedures. (Education Code 35186)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

### **Legal Reference:**

**Education Code:**

200-262.4 - Prohibition of discrimination  
8200-8498 - Child care and development programs  
8500-8538 - Adult basic education  
18100-18203 - School libraries  
32280-32289 - School safety plan, 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, secondary schools  
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  
52059.5 - Statewide system of support  
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

**Government Code:**

11135 - Nondiscrimination in programs or activities funded by state.  
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 - Hate crime; definition  
422.6 - Interference with constitutional right or privilege

**Code of Regulations, Title 2:**

11023 - Harassment and discrimination prevention and correction

**Code of Regulations, Title 5:**

3200-3205 - Special education compliance complaints  
4600-4670 - Uniform Complaint Procedures  
4680-4687 - Williams Uniform Complaint Procedures  
  
4690-4694 - Complaints regarding health and safety issues in license-exempt preschool programs  
  
900-4965 - Nondiscrimination in elementary and secondary education programs  
15580-15584 - Child nutrition programs complaint procedures

**United States Code, Title 20:**

1221 - Application of laws  
1232g - Family Educational Rights and Privacy Act  
1681-1688 - Title IX of the Education Amendments of 1972  
6301-6576 - 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  
106.1-106.82 - Nondiscrimination on the basis of sex in education programs, especially:

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 2020-21 Program 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  
Dear Colleague Letter: Responding to Bullying of Students with Disabilities, October 2014  
Dear Colleague Letter: Harassment and Bullying, October 2010

#### **U.S. Department of Education, Office for Civil Rights Publications:**

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>  
Student Privacy Policy Office: <http://www2.ed.gov/about/offices/list/opepd/sppo>  
U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/ocr>  
U.S. Department of Justice: <http://www.justice.gov>

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