

BOARD POLICY 1312.3: Uniform Complaint Procedures
Comparison Chart
Section: Community Relations

SUMMARY OF UPDATE

Summary of Update: Policy updated to reflect NEW LAW (AB 131, 2021) which renumbers the license-exempt California State Preschool Program code sections, ensure consistency with the California Department of Education's 2021-22 federal program monitoring instrument, clarify that districts may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student, add 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 clarify in Item #5 that complaints alleging a physical safety concern that interferes with a free appropriate public education is a non-UCP complaint.

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.

PARA	Section	Sub-Section	<p style="text-align: center;">June 8, 2021</p> <p style="text-align: center;">CURRENT VERSION</p>	<p style="text-align: center;">December 2021</p> <p style="text-align: center;">REVISED VERSION</p>	<p style="text-align: center;">CSBA MODIFICATIONS and/or NOTES</p>
1			<p>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 system of complaint processes specified in 5 CCR 4600-4670 and the accompanying administrative regulation.</p>	<p>No change</p>	<p>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.</p>
			<p><u>Complaints Subject to UCP</u></p>	<p>No change</p>	
1			<p>The district's uniform complaint procedures (UCP) shall be used to investigate and resolve complaints regarding the following programs and activities:</p>	<p>No change</p>	<p>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.</p> <p>For further information regarding requirements for the following programs and activities, see the law cited and/or related CSBA policy and/or administrative regulation.</p>
	1		<p>Accommodations for pregnant and parenting students</p>	<p>No change</p>	

	2	Adult education programs	No change	
	3	After School Education and Safety programs	No change	
	4	Agricultural career technical education	No change	
	5	Career technical and technical education and career technical and technical training programs	No change	
	6	Child care and development programs	No change	
	7	Compensatory education	No change	
	8	Consolidated categorical aid programs	No change	
	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	Course periods without educational content	
	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	No change	

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	Educational and graduation requirements for students in foster care, homeless students, students from military families, and students formerly in a juvenile court school	
12	Every Student Succeeds Act	No change	
13	Local control and accountability plan	No change	
14	Migrant education	No change	
15	Physical education instructional minutes	No change	
16	Student fees	No change	
17	Reasonable accommodations to a lactating student	No change	
18	Regional occupational centers and programs	No change	
19	School plans for student achievement as required for the consolidated application for specified federal and/or state categorical funding	No change	
20	School safety plans	No change	
21	School site councils as required for the consolidated application for specified federal and/or state categorical funding	No change	
22	State preschool programs	No change	
23	State preschool health and safety issues in license-exempt programs	No change	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.
	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	No change		CSBA NOTE: 5 CCR 4621 mandates that district policy ensure that complainants are protected from retaliation as specified in item #24.
	25	Any other state or federal educational program the Superintendent of Public Instruction or designee deems appropriate	No change		
2		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.	No change		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.

3		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.	No change	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.
4		When an allegation that is not subject to the UCP is included in a UCP complaint, the district shall refer the non-UCP allegation to the appropriate staff or agency and shall investigate and, if appropriate, resolve the UCP-related allegation(s) through the district's UCP.	No change	
5		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.	No change	
6		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.	No change	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.
		<u>Non-UCP Complaints</u>	No change	
1		The following complaints shall not be subject to the district's UCP but shall be investigated	No change	

		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 and the appropriate law enforcement agency.	No change	
2		Any complaint alleging health and safety violations by a child development program shall, for licensed facilities, be referred to Department of Social Services.	No change	
			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.	New section added
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.	No change	
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	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	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

		with AR 6159.1 - Procedural Safeguards and Complaints for Special Education.	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.	Employment and Housing. See AR 4030 - Nondiscrimination in Employment for applicable complaint procedures.
	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.	No change	
	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.	No change	
	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.	No change	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.

Created: 1/28/2022