

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

SUMMARY OF UPDATE

Summary of Update: Policy updated to reflect the relationship between the state uniform complaint procedures (UCP) and **NEW FEDERAL REGULATIONS (85 Fed. Reg. 30026)** regarding Title IX complaints of sexual harassment. Policy also reflects **NEW STATE REGULATIONS (Register 2020, No. 21)** which limit the applicability of the UCP for complaints regarding special education and child nutrition programs, add procedures for addressing complaints regarding health and safety deficiencies in license-exempt California State Preschool Programs (CSPP), and delete the referral of complaints of fraud to the California Department of Education (CDE). The list of programs subject to the UCP revised and reorganized to more directly reflect CDE's 2020-21 Federal Program Monitoring (FPM) instrument.

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

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 accompanying administrative regulation, BP/AR 5147 - 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 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.

PARA	Section	Sub-Section	September 8, 2020 CURRENT VERSION	December 15, 2020 REVISED VERSION	CSBA MODIFICATIONS and/or NOTES
1			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.	No change	
			<u>Complaints Subject to UCP</u>	No change	
1			The district's uniform complaint procedures (UCP) shall be used to investigate and to resolve the following complaints:	The district's uniform complaint procedures (UCP) shall be used to investigate and resolve complaints regarding the following programs and activities:	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 related CSBA policy and/or administrative regulation.
	1		Any complaint alleging district violation of applicable state or federal laws or regulations	Accommodations for pregnant and parenting students	

		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		
	2	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	Adult education programs	

		more of these actual or perceived characteristics		
	3	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	After School Education and Safety programs	
	4	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	Agricultural career technical education	
	5	Any complaint alleging district noncompliance with the prohibition against requiring students to pay fees, deposits, or other charges for participation in education activities	Career technical and technical education and career technical and technical training programs	
	6	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 parents/guardians	Child care and development programs	
	7	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	Compensatory education	

		specified federal and/or state categorical funding		
8		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	Consolidated categorical aid programs	
9		Any complaint, by or on behalf of a student who transfers into the district after the second year of high school and is a homeless child or youth as defined in 42 USC 11434a, a former juvenile court school student currently enrolled in the district, a child of a military family as defined in Education Code 49701, or a migrant student as defined in Education Code 54441, or by or on behalf of an immigrant student participating in a newcomer program as defined in Education Code 51225.2 in the third or fourth year of high school, alleging district noncompliance with any requirement applicable to the student regarding the grant of an exemption from Board-imposed graduation requirements	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	
10		Any complaint, by or on behalf of a student who is a homeless child or youth as defined in 42 USC 11434a, a former juvenile court school student, a child of a military family as defined in Education Code 49701, a migrant child as defined in Education Code 54441, or a newly arrived immigrant student who is participating in a newcomer program as defined in	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,	

		Education Code 51225.2, alleging district noncompliance with requirements for the award of credit for coursework satisfactorily completed in another school, district, or country	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	
11		Any complaint alleging district noncompliance with requirements of Education Code 51228.1 and 51228.2 that prohibit the assignment of a student in grades 9-12 to a course without educational content for more than one week in any semester or to a course the student has previously satisfactorily completed, without meeting specified conditions	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	
12		Any complaint alleging district noncompliance with the physical education instructional minutes' requirement	Every Student Succeeds Act	
13		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	Local control and accountability plan	
14		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	Migrant education	
15		Any other complaint as specified in a district policy	Physical education instructional minutes	

				16. Student fees	New listed items added
				17. Reasonable accommodations to a lactating student	
				18. Regional occupational centers and programs	
				19. School plans for student achievement as required for the consolidated application for specified federal and/or state categorical funding	
				20. School safety plans	
				21. School site councils as required for the consolidated application for specified federal and/or state categorical funding	
				22. State preschool programs	
				23. State preschool health and safety issues in license-exempt programs	CSBA 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.
				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	CSBA NOTE: 5 CCR 4621 mandates that district policy ensure that complainants are protected from retaliation as specified in item #24 below.

			25. Any other state or federal educational program the Superintendent of Public Instruction or designee deems appropriate	
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. 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	No change	

		UCP-related allegation(s) through the district's UCP.		
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 referred to the specified agency:	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 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 and shall, for licensing-exempt facilities, be referred to the appropriate Child Development regional administrator.	Any complaint alleging health and safety violations by a child development program shall, for licensed facilities, be referred to Department of Social Services.	
	3	Any complaint alleging fraud shall be referred to the Legal, Audits and Compliance Branch of the California Department of Education.	Any complaint alleging employment discrimination or harassment shall be investigated and resolved by the district in accordance with the procedures specified in	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

			AR 4030 - Nondiscrimination in Employment, including the right to file the complaint with the California Department of Fair Employment and Housing.	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.
			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.	New listed items added 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 #4-6 below.
			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.	
			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.	
			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	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

			of students or staff, or teacher vacancies and misassignments shall be investigated and resolved in accordance with AR 1312.4 - Williams Uniform Complaint Procedures.	(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.
2		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.	Delete	
3		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.	Delete	

