

KERN COUNTY SUPERINTENDENT OF SCHOOLS

UNIFORM COMPLAINT POLICY AND PROCEDURES

The Kern County Superintendent of Schools recognizes that it has the primary responsibility of ensuring that the Kern County Superintendent of Schools complies with applicable state and federal laws and regulations governing the educational programs that it operates. The Kern County Superintendent of Schools 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, Harassment, Intimidation and Bullying Complaints. The Kern County Superintendent of Schools shall follow uniform complaint procedures when addressing complaints alleging unlawful discrimination, harassment, intimidation or bullying in programs and activities of the Kern County Superintendent of Schools 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, gender identity, gender expression, ethnicity, ethnic group identification, race, ancestry, nationality, national origin, immigration status, 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.

Retaliation Prohibited. The Kern County Superintendent of Schools ensures that complainants are protected from 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, harassment, intimidation and bullying. Such participation shall not in any way affect the status, grades or work assignments of the complainant.

Complaints not Subject to Uniform Complaint Procedures. The following complaints shall not be subject to the Kern County Superintendent of Schools uniform complaint procedures but shall be referred to the specified agency:

1. Any complaint alleging child abuse or neglect shall be referred to the County Department

of Social Services, the County Protective Services Division, and the appropriate law enforcement agency.

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.
3. Any complaint alleging fraud shall be referred to the Legal, Audits and Compliance Branch of the California Department of Education.

Employment-Related Complaints. Any complaint alleging employment discrimination or harassment shall be investigated and resolved by the office in accordance with the procedures specified in SP 4030 - Nondiscrimination in Employment.

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 Kern County Superintendent of Schools 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 the Kern County Superintendent of Schools separate “Williams Uniform Complaint Procedure.”

COMPLIANCE OFFICER

The Kern County Superintendent of Schools designates the following Compliance Officer to receive and investigate complaints and ensure compliance with the law:

Assistant Superintendent-Educational Services
Kern County Superintendent of Schools Office
1300 17th Street - CITY CENTRE
Bakersfield, CA 93301-4533
Telephone: (661) 636-4646 FAX: (661) 636-4127
E-mail: devonflue@kern.org

The Assistant Superintendent may delegate the investigation of any complaint received to a division administrator. The Kern County Superintendent of Schools 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 Kern County Superintendent of Schools uniform complaint procedures to students, employees, parents/guardians, district/county office advisory committees, school advisory committees,

appropriate private school officials or representatives, and other interested parties as required by law and including information regarding unlawful pupil fees and LCAP requirements. The Superintendent or designee shall make available copies of the Kern County Superintendent of Schools uniform complaint procedures free of charge.

FILING OF COMPLAINT

The following procedures shall be used to address complaints, which allege that the Kern County Superintendent of Schools has violated federal or state laws or regulations governing educational programs that it operates. The Compliance Officer 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 non-compliance by the Kern County Superintendent of Schools with the 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 Kern County Superintendent of Schools 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 ninety (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 shall be filed no later than one year from the date the alleged violation occurred and may be filed with the principal of a school. The Kern County Superintendent of Schools will attempt in good faith by engaging in reasonable efforts to identify and fully reimburse all pupils, parents, and guardians who paid a pupil fee within one year prior to the filing of the complaint. A complaint alleging noncompliance with the law regarding pupil fees or a complaint of 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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, harassment, intimidation and bullying 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, and intimidation or bullying, the Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools final written decision. If the Superintendent decides to hear the appeal, the Superintendent's decision shall be the Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools. (Title 5, California Code of Regulations, section 4632)

Upon notification by the California Department of Education that the complainant has appealed the decision of Kern County Superintendent of Schools, 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 Kern County Superintendent of Schools.
3. A summary of the nature and extent of the investigation conducted by the Kern County Superintendent of Schools, 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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 Kern County Superintendent of Schools 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, restraining orders, or other remedies or orders that may be available under state or federal discrimination, harassment, intimidation or bullying laws, if applicable.

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 Kern County Superintendent of Schools 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.

Legal References:

EDUCATION CODE

200-262.4 Prohibition of discrimination
 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
 48985 Notices in language other than English
 49060-49079 Student records

49490-49590 Child nutrition programs
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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