

**KERN COUNTY BOARD OF EDUCATION**

**BOARD BYLAWS**

**UNIFORM COMPLAINT PROCEDURES**

Except as the Superintendent may otherwise specifically provide in other LEA policies, the UCP shall be used to investigate and resolve only the complaints specified in BP 1312.

Compliance Officers

The LEA designates the individual(s) identified below as the employee(s) responsible for coordinating the LEA's response to complaints and for complying with state and federal civil rights laws. The individual(s) also serve as the compliance officer(s) specified in AR 5145.3 - Nondiscrimination/Harassment as the responsible employee(s) to handle complaints regarding unlawful discrimination (such as discriminatory harassment, intimidation, or bullying). The individual(s) shall receive and coordinate the investigation of complaints and shall ensure LEA compliance with law.

For complaints alleging unlawful discrimination in employment:

Assistant Superintendent – Human Resources  
Kern County Superintendent of Schools  
1300 17<sup>th</sup> Street – CITY CENTRE  
Bakersfield, CA 93301-4533  
Telephone: (661) 636-4673; FAX (661) 636-4043

For all other complaints:

Chief of Staff  
Kern County Superintendent of Schools  
1300 17<sup>th</sup> Street – CITY CENTRE  
Bakersfield, CA 93301-4533  
Telephone: (661) 636-4262; FAX (661) 636-4130

The compliance officer who receives a complaint may assign another compliance officer to investigate and resolve the complaint. The compliance officer shall promptly notify the complainant and respondent, if applicable, if another compliance officer is assigned to the complaint.

In no instance shall a compliance officer be assigned to a complaint in which he/she has a bias or conflict of interest that would prohibit him/her from fairly investigating or resolving the complaint. Any complaint against a compliance officer or that raises a concern about the compliance officer's ability to investigate the complaint fairly and without bias shall be filed with the Superintendent or designee who shall determine how the complaint will be investigated.

The Superintendent or designee shall ensure that employees assigned to investigate and resolve complaints receive training and are knowledgeable about the laws and programs at issue in the complaints to which they are assigned. Training provided to such employees shall cover current state and federal laws and regulations governing the program, applicable processes for investigating and resolving complaints, including those alleging unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), applicable standards for reaching decisions on complaints, and appropriate corrective measures. Assigned employees may have access to legal counsel as determined by the Superintendent or designee.

The compliance officer or, if necessary, any appropriate administrator shall determine whether interim measures are necessary during and pending the result of an investigation. If interim measures are determined to be necessary, the compliance officer or the administrator shall consult with the Superintendent, the Superintendent's designee, or, if appropriate, the site principal to implement one or more interim measures. The interim measures shall remain in place until the compliance officer determines that they are no longer necessary or until the LEA issues its final written decision, whichever occurs first.

#### Notifications

The LEA's UCP policy and administrative regulation shall be posted in all LEA schools and offices, including staff lounges and student government meeting rooms, if any. (Education Code 234.1)

The Superintendent or designee shall annually provide written notification of the LEA's UCP, including information regarding unlawful student fees, local control and accountability plan (LCAP) requirements, and requirements related to the educational rights of foster youth, homeless students, and former juvenile court school students to students, employees, parents/guardians, the LEA advisory committee, school advisory committees, appropriate private school officials or representatives, and other interested parties. (Education Code 262.3, 48853, 48853.5, 49013, 49069.5, 51225.1, 51225.2, 52075; 5 CCR 4622.)

The annual notification, complete contact information of the compliance officer(s), and information related to Title IX as required pursuant to Education Code 221.61 shall be posted on the LEA web site and may be provided through LEA-supported social media, if available.

The Superintendent or designee shall ensure that all students and parents/guardians, including students and parents/guardians with limited English proficiency, have access to the relevant information provided in the LEA's policy, regulation, forms, and notices concerning the UCP.

If 15 percent or more of students enrolled in a particular LEA school speak a single primary language other than English, the LEA's policy, regulation, forms, and

notices concerning the UCP shall be translated into that language, in accordance with Education Code 234.1 and 48985. In all other instances, the LEA shall ensure meaningful access to all relevant UCP information for parents/guardians with limited English proficiency.

The notice shall:

1. Identify the person(s), position(s), or unit(s) responsible for receiving complaints;
2. Advise the complainant of any civil law remedies that may be available to him/her under state or federal anti-discrimination laws, if applicable;
3. Advise the complainant of the appeal process, including, if applicable, the complainant's right to take a complaint directly to the California Department of Education (CDE) or to pursue remedies before civil courts or other public agencies, such as the U.S. Department of Education's Office for Civil Rights (OCR) in cases involving unlawful discrimination (such as discriminatory harassment, intimidation, or bullying).
4. Include statements that:
  - a. The LEA has the primary responsibility to ensure compliance with applicable state and federal laws and regulations governing educational programs.
  - b. The complaint review shall be completed within 60 calendar days from the date of receipt of the complaint unless the complainant agrees in writing to an extension of the time-line.
  - c. A complaint alleging retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) must be filed not later than six months from the date it occurred, or six months from the date the complainant first obtained knowledge of the facts of the alleged unlawful discrimination. The time for filing may be extended for up to 90 days by the Superintendent or designee for good cause upon written request by the complainant setting forth the reasons for the extension.
  - d. Complaints should be filed in writing and signed by the complainant. If a complainant is unable to put his/her complaint in writing, for example, due to conditions such as a disability or illiteracy, LEA staff shall assist him/her in the filing of the complaint.
  - e. If a complaint is not filed in writing but the LEA receives notice of any allegation that is subject to the UCP, the LEA shall take affirmative

steps to investigate and address the allegations, in a manner appropriate to the particular circumstances.

If the allegation involves retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) and the investigation confirms that discrimination has occurred, the LEA will take steps to prevent recurrence of discrimination and correct its discriminatory effects on the complainant, and on others, if appropriate.

- f. A student enrolled in a public school shall not be required to pay a fee for his/her participation in an educational activity that constitutes an integral fundamental part of the LEA's educational program, including curricular and extracurricular activities.
- g. The Superintendent is required to adopt and annually update the LCAP in a manner that includes meaningful engagement of parents/guardians, students, and other stakeholders in the development and/or review of the LCAP.
- h. A foster youth shall receive information about educational rights related to his/her educational placement, enrollment in and checkout from school, as well as the responsibilities of the LEA liaison for foster youth to ensure and facilitate these requirements and to assist the student in ensuring proper transfer of his/her credits, records, and grades when he/she transfers between schools or between the LEA and another LEA.
- i. A foster youth, homeless student, or former juvenile court school student who transfers into a LEA high school or between LEA high schools as applicable shall be notified of the LEA's responsibility to:
  - (1) Accept any course-work or part of the course-work that the student has satisfactorily completed in another public school, juvenile court school, or a nonpublic, nonsectarian school or agency, and to issue full or partial credit for the course-work completed.
  - (2) Not require the student to retake any course or a portion of a course which he/she has satisfactorily completed in another public school, juvenile court school, or a nonpublic, nonsectarian school or agency.
  - (3) If the student has completed his/her second year of high school before the transfer, provide the student information about LEA-adopted course-work and KCSOS local graduation requirements from which he/she may be exempted pursuant to Education Code 51225.1.

- j. The complainant has a right to appeal the LEA's decision to the CDE by filing a written appeal within 15 calendar days of receiving the LEA's decision.

In any complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the respondent also shall have the right to file an appeal with the CDE in the same manner as the complainant, if he/she is dissatisfied with the LEA's decision.

- k. The appeal to the CDE must include a copy of the complaint filed with the LEA and a copy of the LEA's decision.
- l. Copies of the LEA's UCP are available free of charge.

### LEA Responsibilities

All UCP-related complaints shall be investigated and resolved within 60 calendar days of the LEA's receipt of the complaint unless the complainant agrees in writing to an extension of the time-line. (5 CCR 4631.)

For complaints alleging unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the LEA shall inform the respondent when the complainant agrees to an extension of the time-line for investigating and resolving the complaint.

The compliance officer 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.

All parties involved in the allegations shall be notified when a complaint is filed and when a decision or ruling is made. However, the compliance officer shall keep all complaints or allegations of retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) confidential except when disclosure is necessary to carry out the investigation, take subsequent corrective action, conduct ongoing monitoring, or maintain the integrity of the process. (5 CCR 4630, 4964.)

### Filing of Complaints

The complaint shall be presented to the compliance officer who shall maintain a log of complaints received, providing each with a code number and a date stamp.

All complaints shall be filed in writing and signed by the complainant. If a complainant is unable to put a complaint in writing due to conditions such as a disability or illiteracy, LEA staff shall assist him/her in the filing of the complaint. (5 CCR 4600.)

Complaints shall also be filed in accordance with the following rules, as applicable:

1. A complaint alleging LEA violation of applicable state or federal law or regulations governing adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, and special education programs may be filed by any individual, public agency, or organization. (5 CCR 4630.)
2. Any complaint alleging noncompliance with law regarding the prohibition against requiring students to pay student fees, deposits, and charges or any requirement related to the LCAP may be filed anonymously if the complaint provides evidence, or information leading to evidence, to support an allegation of noncompliance. A complaint about a violation of the prohibition against the charging of unlawful student fees may be filed with the principal of the school or with the Superintendent or designee. However, any such complaint shall be filed no later than one year from the date the alleged violation occurred. (Education Code 49013, 52075; 5 CCR 4630.)
3. A complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) may be filed only by a person who alleges that he/she personally suffered the unlawful discrimination or by a person who believes that an individual or any specific class of individuals has been subjected to it. The complaint shall be initiated no later than six months from the date when the alleged unlawful discrimination occurred, or six months from the date when the complainant first obtained knowledge of the facts of the alleged unlawful discrimination. The time for filing may be extended for up to 90 days by the Superintendent or designee for good cause upon written request by the complainant setting forth the reasons for the extension. (5 CCR 4630.)
4. When a complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) is filed anonymously, the compliance officer shall pursue an investigation or other response as appropriate, depending on the specificity and reliability of the information provided and the seriousness of the allegation.
5. When the complainant of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) or the alleged victim, when he/she is not the complainant, requests confidentiality, the compliance officer shall inform him/her that the request may limit the LEA's ability to investigate the conduct or take other necessary action. When honoring a request for confidentiality, the LEA shall nevertheless take all reasonable steps to investigate and resolve/respond to the complaint consistent with the request.

## Mediation

Within three business days after the compliance officer receives the complaint, he/she may informally discuss with all the parties the possibility of using mediation. Mediation shall 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 an allegation of sexual assault or where there is a reasonable risk that a party to the mediation would feel compelled to participate. If the parties agree to mediation, the compliance officer shall make all arrangements for this process.

Before initiating the mediation of a complaint alleging retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the compliance officer shall ensure that all parties agree to make the mediator a party to relevant confidential information. The compliance officer shall also notify all parties of the right to end the informal process at any time.

If the mediation process does not resolve the problem within the parameters of law, the compliance officer shall proceed with his/her investigation of the complaint.

The use of mediation shall not extend the LEA's timelines for investigating and resolving the complaint unless the complainant agrees in writing to such an extension of time. If mediation is successful and the complaint is withdrawn, then the LEA shall take only the actions agreed to through the mediation. If mediation is unsuccessful, the LEA shall then continue with subsequent steps specified in this administrative regulation.

## Investigation of Complaint

Within 10 business days after the compliance officer receives the complaint, the compliance officer shall begin an investigation into the complaint.

Within one business day of initiating the investigation, the compliance officer shall provide the complainant and/or his/her representative with the opportunity to present the information contained in the complaint to the compliance officer and shall notify the complainant and/or his/her representative of the opportunity to present the compliance officer with any evidence, or information leading to evidence, to support the allegations in the complaint. Such evidence or information may be presented at any time during the investigation.

In conducting the investigation, the compliance officer shall collect all available documents and review all available records, notes, or statements related to the complaint, including any additional evidence or information received from the parties during the course of the investigation. He/she shall individually interview all available witnesses with information pertinent to the complaint, and may visit any

reasonably accessible location where the relevant actions are alleged to have taken place. At appropriate intervals, the compliance officer shall inform both parties of the status of the investigation.

To investigate a complaint alleging retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the compliance officer shall interview the alleged victim(s), any alleged offenders, and other relevant witnesses privately, separately, and in a confidential manner. As necessary, additional staff or legal counsel may conduct or support the investigation.

A complainant's refusal to provide the LEA's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or 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. Similarly, a respondent's refusal to provide the LEA's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or engagement in any other obstruction of the investigation may result in a finding, based on evidence collected, that a violation has occurred and in the imposition of a remedy in favor of the complainant. (5 CCR 4631.)

In accordance with law, the LEA shall provide the investigator with access to records and other information related to the allegation in the complaint and shall not in any way obstruct the investigation. Failure or refusal of the LEA to cooperate in the investigation may result in a finding based on evidence collected that a violation has occurred and in the imposition of a remedy in favor of the complainant. (5 CCR 4631.)

The compliance officer shall apply a "preponderance of the evidence" standard in determining the veracity of the factual allegations in a complaint. This standard is met if the allegation is more likely to be true than not.

### Report of Findings

Unless extended by written agreement with the complainant, a final decision shall be sent to the complainant within 60 calendar days of the LEA's receipt of the complaint. Within 50 calendar days of receiving the complaint, the compliance officer shall prepare and send to the complainant a written report, as described in the section "Final Written Decision" below. If the complainant is dissatisfied with the compliance officer's decision, he/she may, within three business days, request a meeting, in writing with the Superintendent.

The Superintendent may meet with the complainant with the 60-day time limit. The Superintendent may decide not to meet with the complaint, in which case the compliance officer's decision shall be final.

If the Superintendent decides to review the matter, the compliance officer shall send the Superintendent's decision to the complainant within 60 calendar days of



the LEA's initial receipt of the complaint or within the time period that has been specified in a written agreement with the complainant. (5 CCR 4631.)

In resolving any complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, and bullying), the respondent also shall be sent the LEA's decision and, in the same manner as the complainant, may file a complaint with the Superintendent if dissatisfied with the decision.

#### Final Written Decision

The LEA's decision on how it will resolve the complaint shall be in writing and shall be sent to the complainant and respondent. (5 CCR 4631.)

In consultation with LEA legal counsel, information about the relevant part of a decision may be communicated to a victim who is not the complainant and to other parties who may be involved in implementing the decision or are affected by the complaint, as long as the privacy of the parties is protected. In a complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, and bullying), notice of the LEA's decision to the alleged victim shall include information about any sanction to be imposed upon the respondent that relates directly to the alleged victim.

If the complaint involves a limited-English-proficient student or parent/guardian and the student involved attends a school at which 15 percent or more of the students speak a single primary language other than English, then the decision shall also be translated into that language. In all other instances, the LEA shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

For all complaints, the decision shall include: (5 CCR 4631.)

1. The findings of fact based on the evidence gathered. In reaching a factual determination, the following factors may be taken into account:
  - a. Statements made by any witnesses;
  - b. The relative credibility of the individuals involved;
  - c. How the complaining individual reacted to the incident;
  - d. Any documentary or other evidence relating to the alleged conduct;
  - e. Past instances of similar conduct by any alleged offenders; and
  - f. Past false allegations made by the complainant.

2. The conclusion(s) of law.
3. Disposition of the complaint.
4. Rationale for such disposition.

For complaints of retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the disposition of the complaint shall include a determination for each allegation as to whether retaliation or unlawful discrimination has occurred.

The determination of whether a hostile environment exists may involve consideration of the following:

- a. How the misconduct affected one or more students' education;
  - b. The type, frequency, and duration of the misconduct;
  - c. The relationship between the alleged victim(s) and offender(s);
  - d. The number of persons engaged in the conduct and at whom the conduct was directed;
  - e. The size of the school, location of the incidents, and context in which they occurred; and
  - f. Other incidents at the school involving different individuals.
5. Corrective action(s), including any actions that have been taken or will be taken to address the allegations in the complaint and including, with respect to a student fees complaint, a remedy that comports with Education Code 49013 and 5 CCR 4600.

For complaints of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the decision may, as required by law, include:

- a. The corrective actions imposed on the respondent;
- b. Individual remedies offered or provided to the complainant or another person who was the subject of the complaint, but this information should not be shared with the respondent; and
- c. Systemic measures the school has taken to eliminate a hostile environment and prevent recurrence.

6. Notice of the complainant's and respondent's right to appeal the LEA's decision to the CDE within 15 calendar days, and procedures to be followed for initiating such an appeal.

The decision may also include follow-up procedures to prevent recurrence or retaliation and for reporting any subsequent problems.

For complaints alleging unlawful discrimination based on state law (such as discriminatory harassment, intimidation, and bullying), the decision shall also include a notice to the complainant that:

1. He/she may pursue available civil law remedies outside of the LEA's complaint procedures, including seeking assistance from mediation centers or public/private interest attorneys, 60 calendar days after the filing of an appeal with the CDE. (Education Code 262.3.)
2. The 60 days moratorium does not apply to complaints seeking injunctive relief in state courts or to discrimination complaints based on federal law. (Education Code 262.3.)
3. Complaints alleging discrimination based on race, color, national origin, sex, gender, disability, or age may also be filed with the U.S. Department of Education, Office for Civil Rights at [www.ed.gov/ocr](http://www.ed.gov/ocr) within 180 days of the alleged discrimination.

### Corrective Actions

When a complaint is found to have merit, the compliance officer shall adopt any appropriate corrective action permitted by law. Appropriate corrective actions that focus on the larger school or LEA environment may include, but are not limited to, actions to reinforce LEA policies; training for faculty, staff, and students; updates to school policies; or school climate surveys.

For complaints involving retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), appropriate remedies that may be offered to the victim but not communicated to the respondent may include, but are not limited to, the following:

1. Counseling;
2. Academic support;
3. Health services;
4. Assignment of an escort to allow the victim to move safely about campus;
5. Information regarding available resources and how to report similar incidents or retaliation;

6. Separation of the victim from any other individuals involved, provided the separation does not penalize the victim;
7. Restorative justice;
8. Follow-up inquiries to ensure that the conduct has stopped and there has been no retaliation; and
9. Determination of whether any past actions of the victim that resulted in discipline were related to the treatment the victim received and described in the complaint.

For complaints involving retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), appropriate corrective actions that focus on a student offender may include, but are not limited to, the following:

1. Transfer from a class or school as permitted by law;
2. Parent/guardian conference;
3. Education regarding the impact of the conduct on others;
4. Positive behavior support;
5. Referral to a student success team;
6. Denial of participation in extracurricular or co-curricular activities or other privileges as permitted by law; and
7. Disciplinary action, such as suspension or expulsion, as permitted by law.

When an employee is found to have committed retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the LEA shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

The LEA may also consider training and other interventions for the larger school community to ensure that students, staff, and parents/guardians understand the types of behavior that constitute unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), that the LEA does not tolerate it, and how to report and respond to it.

If a complaint alleging noncompliance with the laws regarding student fees, deposits, and other charges, physical education instructional minutes for students in elementary schools, or any requirement related to the LCAP is found to have merit, the LEA shall provide a remedy to all affected students and parents/guardians subject to procedures established by regulation of the State

Board of Education. (Education Code 49013, 51223, 52075.)

For complaints alleging noncompliance with the laws regarding student fees, the LEA shall attempt in good faith, by engaging in reasonable efforts, to identify and fully reimburse all affected students and parents/guardians who paid the unlawful student fees within one year prior to the filing of the complaint. (Education Code 49013; 5 CCR 4600.)

To reiterate if KCSOS finds merit in a complaint regarding Pupil Fees, LCAPs, Education of Pupils in Foster Care, Pupils who are Homeless, and former Juvenile Court Pupils now enrolled in a school district, Reasonable Accommodations to a Lactating Pupil, Course Periods without Educational Content (grades nine through twelve), and Physical Education Instructional Minutes (grades one through eight), KCSOS shall provide a remedy.

- (a) In the case of complaints regarding: Course Periods without Educational content, Reasonable Accommodations to a Lactating Pupil, and Education of Pupils in Foster Care, Pupils who are Homeless, and former Juvenile Court Pupils now enrolled in a school district, the remedy shall go to the affected pupil.
- (b) In the case of complaints regarding: Pupil Fees, Physical Education Instructional Minutes and LCAP, the remedy shall go to all affected pupils and parents/guardians.

#### Appeals to the California Department of Education

Any complainant who is dissatisfied with the LEA's final written decision may file an appeal in writing with the CDE within 15 calendar days of receiving the LEA's decision. (Education Code 222, 48853, 48853.5, 49013, 49069.5, 51223, 51225.1, 51225.2, 51228.3, 52075; 5 CCR 4632.)

When a respondent in any complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) is dissatisfied with the LEA's final written decision, he/she, in the same manner as the complainant, may file an appeal with the CDE.

The complainant or respondent shall 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 LEA's decision. (5 CCR 4632.)

Upon notification by the CDE that the complainant or respondent has appealed the LEA's decision, the Superintendent or designee shall forward the following documents to the CDE: (5 CCR 4633.)

1. A copy of the original complaint;

2. A copy of the written decision;
3. A summary of the nature and extent of the investigation conducted by the LEA, 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 LEA's uniform complaint procedures; and
7. Other relevant information requested by the CDE.

10/2017