



## **ADMINISTRATIVE PROCEDURE**

CATEGORY: **General Administration, Legal Processes**

SUBJECT: **Uniform Complaint and Williams Complaint Procedure**

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### **A. PURPOSE AND SCOPE**

1. To outline complaint and appeal procedures for alleged violation of federal or state law or regulation governing educational programs.
2. **Related Procedures:**  
Bullying, Harassment or Intimidation (Student-to-Student, Adult-to-Student) ..... 6381

### **B. LEGAL AND POLICY BASIS**

1. **Reference:** Board Policy (BP) 0410 adopted 12-13-16, previous Board policies A-3500, C-4700, F-2200, F-2510, F-3900, F-3975, and K-8300; *Hartzell v Connell* (1984); California Constitution Article IX, Section 5; California Education Code §§200, 220, 262.3, 8200-8493, 8500-8538, 17592.72(c)(1), 35186, 48985, 49011, 49490-49560, 52300-52480, 52500-52616.5, 54440-54445, 56000-56885, 59000-59300 and 64000[a]; California Code of Regulations, Title 5, §§3080 and 4600-4671; California Government Code §11135; California Administrative Code, Title 5, §4632; California Penal Code §422.55; No Child Left Behind Act (20 USC §7114[d][7]).

### **C. GENERAL**

1. **Originating Office.** Suggestions or questions concerning this procedure should be directed to the Title IX/Compliance Officer.
2. The district will investigate all allegations of unlawful discrimination, harassment, intimidation or bullying against any protected group as identified in Education Code §§200 and 220, and Government Code §11135, including any actual or perceived characteristics as set forth in Penal Code §422.55 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 which is funded directly by, or that receives or benefits from any state financial assistance.
3. The district is primarily responsible for compliance with federal and state law/regulations.
4. **Any individual, public agency, or organization may file a written complaint alleging:**
  - a. **A violation of federal or state law or regulations governing the following programs:**
    - (1) Adult Education (Education Code §§8500-8538 and 52500-52616.5)
    - (2) Child Nutrition (Education Code §§49490-49560)
    - (3) Child Care and Development (Education Code §§8200-8493)
    - (4) Consolidated Categorical Aid (Education Code §§64000[a])
    - (5) Migrant Education (Education Code §§54440-54445)
    - (6) Special Education (Education Code §§56000-56885 and 59000-59300)

- (7) Vocational Education (Education Code §§52300-52480)
- (8) School Safety Planning Requirements, No Child Left Behind Act (20 USC §7114[d][7])

b. **Unlawful discrimination, harassment, intimidation and bullying on the basis of actual or perceived characteristics** such as sex, sexual orientation, gender, ethnic group identification, ancestry, national origin, race or ethnicity, religion, color, or mental or physical disability, gender expression, gender identity, nationality or age, 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 conducted by the district, which is funded directly by, or that receives or benefits from any state financial assistance. This procedure covers complaints of unlawful harassment of students/pupils by students/pupils, employees, or third parties.

5. **A complaint may also be filed by alleging a violation of any of the following:**

a. **Issues related to sufficiency of instructional materials.**

- (1) A student/pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state- or district-adopted textbooks or other required instructional materials to use in class.
- (2) A student/pupil does not have access to instructional materials to use in class and to take home. (Please be advised that this requirement of one textbook to use in class and one to take home applies only for the core subjects of math, English/language arts, history/social studies, and science in Grades K-5 and adds world language and health in Grades 6-12.)
- (3) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

b. **Facility conditions that pose an emergency or urgent threat to the health or safety of students/pupils or staff, such as:**

- (1) Gas leaks.
- (2) Nonfunctioning heating, ventilation, fire sprinklers, or air-conditioning systems.
- (3) Electrical power failure.
- (4) Major sewer line stoppage.
- (5) Major pest or vermin infestation.
- (6) Broken windows or exterior doors or gates that will not lock and that pose a security risk.

- (7) Abatement of hazardous materials previously undiscovered that pose an immediate threat to students/pupils or staff.
- (8) Structural damage creating a hazardous or uninhabitable condition.
- (9) Any other emergency conditions that the district determines appropriate.
- (10) Emergency facilities needs do not include any cosmetic or non-essential repairs.
- (11) A school restroom that has not been cleaned, maintained or kept open during school hours when students/pupils are not in classes or an insufficient number of restrooms are open during school hours when students/pupils are in classes.

c. **Teacher vacancy and miss-assignment issues.**

- (1) A semester begins and a certificated teacher is not assigned to teach the class.
- (2) A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20 percent English learner students/pupils in the class.
- (3) A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

6. **A complaint may also be filed alleging that a student/pupil enrolled in a public school was required to pay a fee for participation in an educational activity, as defined below:**

- a. "Educational activity" means an activity offered by a school, school district, charter school or county office of education that constitutes an integral fundamental part of elementary and secondary education, including, but not limited to, curricular and extracurricular activities.
- b. "Student/pupil fee" means a fee, deposit, or other charge imposed on students/pupils, or a student/pupil's parent/guardian, in violation of California Constitution Article IX, Section 5, and Education Code §49011, which require educational activities to be provided free of charge to all students/pupils without regard to their families' ability or willingness to pay fees or request special waivers, as provided for in *Hartzell v Connell* (1984) 35 Cal.3d 899. A student/pupil fee includes, but is not limited to, all of the following:
  - (1) A fee charged to a student/pupil as a condition for registering for school or classes, or as a condition for participation in a class or an extracurricular activity, regardless of whether the class or activity is elective or compulsory, or is for credit.
  - (2) A security deposit, or other payment, that a student/pupil is required to make to obtain a lock, locker, book, class apparatus, musical instrument, uniform or other materials or equipment.
  - (3) A purchase that a student/pupil is required to make to obtain materials, supplies, equipment or uniforms associated with an educational activity.

(4) Nothing in this section shall be interpreted to prohibit solicitation of voluntary donations of funds or property, voluntary participation in fundraising activities, or district, schools and other entities from providing students/pupils prizes or other recognition for voluntarily participating in fundraising activities.

7. **A complaint may also be filed alleging that the district has not complied with the requirements to implement a Local Control and Accountability Plan (LCAP).**

#### **D. IMPLEMENTATION**

1. **Complaints filed under Section C.4.b., alleging unlawful discrimination, harassment, intimidation and bullying.**

- a. Complaints should be filed on the Uniform Complaint Form (Attachment 1) with the Title IX/Compliance Officer, 4100 Normal Street, Room 2129, San Diego, CA 92103 who will forward them to program coordinators for resolution. The Title IX/Compliance Officer is responsible for receiving complaints, coordinating complaint investigations and ensuring district compliance.
- b. Discrimination, harassment, intimidation and bullying complaints must be filed no later than six months from the date of the alleged discrimination, harassment, intimidation or bullying occurred or six months from the date the complainant first obtained knowledge of the facts of the alleged discrimination, harassment, intimidation or bullying. Said six month period may be extended for good cause, not to exceed an additional 90 days. A student/pupil or parent is not required to attempt resolution at the school site before contacting the district's Title IX Coordinator or filing a Uniform Complaint. The use of the Uniform Complaint Form (Attachment 1) is not required. All complaints must be in writing. If a complainant is unable to file a complaint in writing due to conditions such as disability or illiteracy, district staff shall assist him/her in filing of the complaint.
- c. The district will investigate complaints alleging failure to comply with applicable state and federal laws and regulations and/or alleging discrimination, harassment, intimidation and bullying and seek to resolve those complaints in accordance with these Uniform Complaint procedures.
- d. For all complaints other than discrimination, harassment, intimidation and bullying complaints, any individual, public agency or organization may file a written complaint alleging a matter, which if true, would constitute a violation of federal or state law or regulation.
- e. The complaint may be filed by the person making the allegation or by someone else on behalf of the individual or class.
- f. A complainant may also pursue civil law remedies under state or federal discrimination, harassment, intimidation or bullying laws.
- g. Investigation of discrimination, harassment, intimidation and bullying complaints must be conducted so as to protect the confidentiality of parties and facts.

- h. The investigation shall be conducted by a person knowledgeable about the law/programs, i.e., program coordinator who has completed district-provided sexual harassment training, and a written report shall be issued to the complainant within 60 days of receipt of the complaint unless the complainant agrees in writing to an extension of time. The investigator must document the specific steps taken in conducting the investigation.
- i. The investigation shall include:
  - (1) Opportunity for the complainant, and/or representatives, to present relevant information or evidence to the district. The investigation will be adequate, reliable and impartial. The investigator will interview individuals who have knowledge relevant to the complaint, including, but not limited to, the complainant, the person who was the subject of the discrimination, if different, the person accused of discrimination, anyone who witnessed the reported discrimination, and individuals identified as having relevant information. The investigator will also review any records, notes, memoranda, correspondence, or statements related to the discrimination. The district may take other appropriate investigative steps, such as visiting the location where the discrimination is alleged to have taken place.
  - (2) Option for both parties to discuss the complaint except in cases of sexual assault, which would not be appropriate even on a voluntary basis.
  - (3) A written report that includes findings of fact and such disposition sent to the complainant within 60 days from receipt of the complaint.
  - (4) The preponderance of the evidence standard will be used for investigating allegations of discrimination, including harassment.
- j. Refusal by the complainant to provide the investigator with documents or other evidence related to the allegations in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage 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.
- k. Refusal by the district to provide the investigator with access to records and/or other information related to the allegation in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation, may result in a finding based on evidence collected that a violation has occurred and may result in the imposition of a remedy in favor of the complainant.
- l. The written report shall contain the summary of the facts, findings of fact based on the evidence gathered and conclusions of law, the disposition of the complaint, the rationale for disposition, description of any corrective action (if warranted) to remedy any harm, including remedies for the victim, a notice of the right to appeal to the California Department of Education, as set forth in Section D.s.(1), and the procedures to be followed for initiating an appeal.
- m. Remedial actions will be taken that are designed to end the harassment, prevent its recurrence and address its effects on the harassed student/pupil (such as counseling,

academic support, separating the harassed student/pupil from the harasser) so long as it does not penalize the harassed student/pupil, and follow up with the harassed student/pupil to ensure the harassment has stopped and there is no retaliation.

- n. The Title IX/Compliance Officer will maintain a record of each complaint and subsequent actions.
- o. Complainants shall be protected from retaliation for filing the complaint. Retaliation against any person who reports alleged discrimination or harassment or participates in related proceedings is prohibited. A complainant or other individual involved in the processing of the complaint may file a separate complaint of retaliation using this procedure.
- p. When sexual harassment is reported, the district will take interim steps to stop harassment and protect the victim from further harassment pending the outcome of the complaint. Any such actions, whether interim or permanent, shall avoid or minimize, to the extent possible, any disadvantage to the student/pupil who complained.
- q. A staff member who receives a report of discrimination, including discriminatory harassment, intimidation and/or bullying, shall promptly notify the site principal/administrator or designee. In addition, any school employee who observes any incident of unlawful discrimination, including discriminatory harassment, intimidation and/or bullying involving a student/pupil, shall promptly report this observation to the site principal/administrator or designee, whether or not the victim makes a report. Where an oral or written report is made of unlawful discrimination, including discriminatory harassment, intimidation and/or bullying involving the site principal/administrator or designee to whom the report would ordinarily be communicated, the employee who receives the report or who observes the incident shall instead report it to the Title IX Coordinator as outlined in Administrative Procedure 6381. The site principal/administrator or designee shall, within one day of receiving an oral or written report of unlawful discrimination, including discriminatory harassment, intimidation and/or bullying, shall inform the individual making the report of the resolution options under these procedures, the responsive steps that will be taken to end the harassment, prevent its recurrence and address its effects on the harassed student/pupil, and the right to file a written Uniform Complaint, including where the Uniform Complaint procedure can be found. If a complainant is unable to file a complaint in writing due to conditions such as a disability or illiteracy, district staff shall assist him/her in the filing of the complaint.
- r. Students/pupils who are found to have engaged in discriminatory conduct may be subject to discipline up to and including expulsion. Disciplinary action for students/pupils may include oral warnings, written warnings, mandatory training, counseling, suspension, transfer or expulsion. Such disciplinary action shall be in accordance with Board policy and state law. Suspension and recommendations for expulsion must follow applicable law. Staff members who are found to have engaged in discriminatory conduct toward students/pupils shall be subject to discipline up to and including dismissal. Disciplinary action for employees may include oral warnings, written warnings, mandatory training, counseling, suspension, transfer, demotion or termination. Such disciplinary action shall be determined by site and district administration in accordance with applicable policies, law, and/or collective bargaining

agreements. In identifying appropriate disciplinary action, repeated incidents and/or multiple victims will result in more severe penalties.

- s. When a complainant is not satisfied with the district's decision, he/she/they may appeal to the California Department of Education pursuant to the following guidelines:
- (1) Written appeal of the district's decision must be filed with the State Superintendent of Public Instruction within 15 days of receipt of the decision. The Superintendent of Public Instruction may grant extensions for good cause.
  - (2) Appeal by the complainant shall include the reason for the appeal, a copy of the complaint, and a copy of the district's decision or response.
  - (3) Upon notification by the State Superintendent that a complainant has appealed the district must forward:
    - (a) The original complaint.
    - (b) A copy of the district's written decision.
    - (c) A summary of the investigation, if not included in the decision.
    - (d) A report of the action taken to resolve the complaint.
    - (e) A copy of this procedure.
    - (f) Any other relevant information.
    - (g) In a complaint of unlawful discrimination, harassment, intimidation and bullying, a complainant has a right to seek civil law remedies no sooner than 60 days have elapsed since filing an appeal, with the exception of injunctive relief, for which the moratorium does not apply, provided the complainant is advised in a timely manner of the right to file a complaint.
- t. Written notice of the local complaint procedures is disseminated annually to students/pupils, employees, parents/guardians, school and district advisory committees, appropriate private school officials or representatives, and other interested parties. Annual written notice and responses to complaints shall be in the language of the school's students/pupils when appropriate.

**2. Complaints filed under Section C.5.**

- a. Complaints should be made using the Williams Complaint form (Attachment 2). Schools shall have complaint forms available. (Complainants need not use the complaint form, but should include the information called for in Attachment 2.)
- (1) Williams Complaints may be made anonymously.
  - (2) The Williams Complaint form includes a space to indicate whether a response is requested. If the complainant requests a response and provides contact information, the district shall provide a response in writing which shall be sent to

the mailing address of the complainant indicated on the complaint. The response, if requested, and report shall be written in English and the primary language in which the complaint was filed.

- b. Complaints shall be filed with the principal/administrator of the site in which the complaint arises, or his/her designee. The Williams Complaint form shall identify the place for filing the complaint.
- c. If the complaint is beyond the authority of the site principal/administrator, he/she must forward it to the appropriate school district official within 10 days of receipt of the complaint.
- d. The site principal/administrator or the superintendent's designee must make all reasonable efforts to investigate any problem within his/her authority.
- e. Valid complaints must be remedied within 30 working days of receipt.
- f. The site principal/administrator or the superintendent's designee has 45 days from the initial filing to report the resolution in writing to the complainant, if complainant identifies himself/herself and requests a response. If the site principal/administrator makes this report, the site principal/administrator shall also report the same information in the same timeframe to the superintendent or his/her designee.
- g. Appeal procedures.
  - (1) If a person is not satisfied with the resolution of the complaint by the site principal/administrator or the superintendent or his/her designee, the person has the right to describe the complaint to the Board of Education at a regularly scheduled meeting.
  - (2) The Board of Education will respond to the appeal in writing within 30 days.
  - (3) If the complaint involves a condition of a facility that poses an emergency or urgent threat, as defined in Education Code §17592.72(c)(1), a complainant who is not satisfied with the resolution proposed by the site principal/administrator, superintendent or designee, has the right to file an appeal to the State Superintendent of Public Instruction within 15 days of receiving the report. The complainant shall comply with the appeal requirements of California Administrative Code, Title 5, §4632. The State Superintendent of Public Instruction will provide a written report to the State Board of Education describing the complaint and a proposed remedy, as appropriate.
- h. Notice.
  - (1) Effective January 1, 2005, a notice shall be posted in each classroom notifying parents/guardians of the opportunity to complain about instructional materials, facility issues, and teacher miss-assignments.
  - (2) Each classroom shall use the standardized notice for complaints (Attachment 4-A).



(3) Pursuant to Education Code §48985, the notice must be in the parents'/guardians' primary language when 15 percent or more of the students/pupils enrolled in the school speaks a primary language other than English.

(4) Site principals/administrators are responsible for ensuring that each classroom has posted the required notice.

i. Reporting requirements.

(1) All complaints and written responses are public records and copies shall be faxed to the Title IX/Compliance Officer for reporting purposes and retention as public records using the Fax Transmittal Cover Sheet (Attachment 5).

(2) Starting with the quarter of January through March 2005, the superintendent or his/her designee is responsible for submitting a quarterly report to the County Superintendent and the Board of Education on the nature and resolution of complaints addressing insufficient instructional materials, teacher vacancies and miss-assignments and emergency or urgent facilities issues.

(3) The summaries must be publicly reported on a quarterly basis at a regularly scheduled meeting of the Board of Education.

(4) The quarterly reports will be prepared in the specified reporting format (Attachment 6) and shall include the number of complaints by general subject area with the number of resolved and unresolved complaints.

j. Public records. Complaints, responses, and quarterly reports will all be considered public records.

3. **Complaints filed under Section C.6.**

a. Complaints shall be made using the School Fee Complaint form (Attachment 3).

b. The district will investigate complaints alleging noncompliance with laws relating to student/pupil fees for participation in an educational activity and seek to resolve those complaints in accordance with these Uniform Complaint procedures.

c. Complaints shall be filed with the applicable site principal/administrator or his/her designee within one year from the date the alleged violation occurred. A School Fee Complaint may be filed anonymously if the complaint provides evidence or information leading to evidence to support an allegation of noncompliance with laws relating to student/pupil fees.

d. When a complainant is not satisfied with the district's decision, he/she/they may appeal to the California Department of Education and shall receive a written appeal decision within 60 days of the California Department of Education's receipt of the appeal.

e. If a public school finds merit in a complaint, or the California Department of Education finds merit in an appeal, the public school shall provide a remedy to all affected students/pupils, parents and guardians that, where applicable, includes reasonable

efforts by the district to ensure full reimbursement to all affected students/pupils, parents and guardians, subject to procedures established through regulations adopted by the State Board of Education. The district will, in good faith, make a reasonable effort to identify and fully reimburse all students/pupils, parents and guardians who paid a student/pupil fee within one year prior to the filing of the complaint.

- f. Written notice of the student/pupil fee complaint procedures shall be included in the annual notification disseminated to students/pupils, employees, parents/guardians and other interested parties.
4. **Complaints filed under Section C.7.**
- a. Complaints should be filed on the Uniform Complaint form (Attachment 1) with the Title IX/Compliance Officer, who will forward them to appropriate program managers for resolution.
  - b. A complaint may be filed anonymously if the complaint provides evidence or information leading to evidence to support an allegation of noncompliance with the requirements.
  - c. A complainant not satisfied with the decision of a school district, county superintendent of schools or charter school may appeal the decision to the State Superintendent of Public Instruction and shall receive a written appeal decision within 60 days of the State Superintendent's receipt of the appeal.
  - d. If a school district, county superintendent of schools or charter school finds merit in a complaint, or the State Superintendent of Public Instruction finds merit in an appeal, the school district, county superintendent of schools or charter school shall provide a remedy to all affected students/pupils, parents and guardians.
  - e. Information regarding the requirements of this article shall be included in the annual notification distributed to students/pupils, parents and guardians, employees and other interested parties pursuant to California Code of Regulations, Title V, §4622 or any successor regulation.
  - f. School districts, county superintendents of schools and charter schools shall establish local policies and procedures to implement the provision of this section on or before June 30, 2014.

#### **E. FORMS AND AUXILIARY REFERENCES**

- 1. Uniform Complaint Form (Attachment 1), available from the Title IX/Compliance Officer or on the district website at <https://www.sandiegounified.org/node/484>
- 2. Williams Uniform Complaint Form (Attachment 2), available at school sites, from the Title IX/Compliance Officer or on the district website at <https://www.sandiegounified.org/node/484>
- 3. School Fee Uniform Complaint Form (Attachment 3), available from the Title IX/Compliance Officer or on the district website at <https://www.sandiegounified.org/node/484>

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REVISED: **3-16-17**

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4. Standardized Classroom Notice Form (Attachment 4-A), available on the district website at <https://www.sandiegounified.org/node/484>
5. Fax Transmittal Cover Sheet (Attachment 5), available from the Title IX/Compliance Officer or on the district website at <https://www.sandiegounified.org/node/484>
6. Quarterly Uniform Complaint Report Summary (Attachment 6), available on the district website at <https://www.sandiegounified.org/node/484>

**F. REPORTS AND RECORDS**

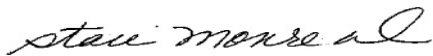
1. The Title IX/Compliance Officer shall maintain records of all Uniform Complaints, their resolution, and related documentation.

**G. APPROVED BY**



\_\_\_\_\_  
General Counsel, Legal Services  
As to form and legality

**H. ISSUED BY**



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Chief of Staff