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Uniform Complaint Procedures An Overview

**Oroville Union High School District
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Topics for Today

- Filing Uniform Complaints and Jurisdiction
- Definitions of Discrimination, Harassment, and Bullying
- Overview of Investigation Process
- Overview of UCP Report



Uniform Complaint Procedure – Authority

- Title 5, California Code of Regulations, Sections 4600-4694
 - Most relevant are 4600-4635
- Overseen by the California Department of Education (“CDE”)
- District Board Policies (BP) and Administrative Regulations (AR)
 - 1312.1 (Complaint Concerning District Employee)
 - 1312.2 (Complaint Concerning Instructional Materials)
 - 1312.3 (Uniform Complaint Procedures (5 CCR §§ 4600-4635))*
 - 1312.4 (Williams Complaint Procedures (5 CCR §§ 4680-4687))*

* Appealable to CDE

Jurisdiction: Educational Programs and Services Covered by the UCP (a sampling)

- Accommodations for Pregnant & Parenting Students
- Adult Education
- After School Education and Safety
- Agricultural Vocational Education
- American Indian Education Centers and Early Childhood Education Program Assessments
- Career Technical Education
- Child Care and Development (including State Preschool) 5 CCR §§ 4690-94
- **Discrimination, harassment, intimidation, bullying, student lactation accommodations, and Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) resources**
- Foster and Homeless Students
- Local Control Funding Formula (LCFF) and Local Control Accountability Plans (LCAP)
- ESSA and federal programs (Titles I-VII), including improving academic achievement, compensatory education, English learner programs, and migrant education
- Physical Education: Instructional Minutes
- Course Periods Without Educational Content or Previously Completed Courses
- Regional Occupational Centers and Programs
- Migrant Education
- Tobacco-Use Prevention Education
- **Pupil Fees**
- **Retaliation**

Jurisdiction: NOT Covered by the UCP (BP/AR 1312.3)

- Special Education Programs (5 CCR § 4610)
 - However, LEA not prohibited from investigating complaints excluded under 5 CCR § 4610.
- Child Nutrition Programs (5 CCR § 4610)
- Child Abuse (Refer to social services, protective services, or law enforcement) (5 CCR § 4611)
- Title IX (Follow Title IX Investigation Processes / Procedures)
- Employment Discrimination (Refer to CRD and notify complainant of referral) (5 CCR § 4611)
- Williams Complaint Procedures (See BP/AR 1312.4)

NOT Covered by the UCP (Con.)

- Complaints within school district's discretion: classroom assignments, common core, grades, graduation requirements, hiring and evaluation of staff, homework policies, provision of core curricula subjects, public meeting laws (such as the Brown Act), student advancement and retention, student discipline, student records, and other general education requirements.
- Complaints against employees not involving educational program or services covered by UCP.
 - See 1312.1 and Contract

NOT Covered by the UCP (Con.)

- Discrimination in Employment
 - “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.”
 - DFEH (CRD)

UCP Process (1312.1) – An Overview

- Receive / Review Written Complaint
 - If oral, request complainant to submit in writing / assist in written complaint
- Determine Jurisdiction
 - 1312.1 or 1312.3 or both or other?
 - 1312.1 not appealable to CDE
 - Title IX?
- Notify Complainant of Next Steps
 - Meet with Complainant?
 - Recommend outline of “next steps” in writing
- Notify Respondent (Employee) within AR / CBA timelines

UCP Process (1312.1) – An Overview (Con.)

- Determine who is responsible for investigating / resolving
- Investigate and Resolve Complaint within 60 days
 - Review records, interviews (union representation as needed)
 - Report of findings (personnel record)
 - Written summary to Complainant
- Appeal process to Superintendent and Board
 - Employee allowed to appeal decision as well.

1312.3 UCP Process - Complaints

- Complaints are to be in writing, signed, and submitted to the compliance officer, who shall keep a log of the complaints
 - Dr. Corey Willenberg
 - Immediately forward all UCP or similar complaints to compliance officer
- If the complaint is not submitted in writing, request that it be put in writing.
 - If a complainant is unable to put a complaint in writing due to conditions such as a disability or illiteracy, district staff shall assist in the filing of the complaint. (5 CCR § 4600)
- Bullying complaints per school site forms
 - Offer UCP
 - Investigation for student discipline?
 - Interim measures necessary?

1312.3 UCP Process - Complaints

- Written Acknowledgement of Complaint
 - Offer to meet with complainant
 - No later than 11th Day
 - Invite complainant to submit evidence in support of complaint
- Meeting with Complainant
 - Explain process / timelines
 - Review complaint / reach consensus on scope of investigation
 - Gather other relevant information (documents, potential witnesses, etc.)
 - Follow up with summary of meeting in writing

1312.3 UCP Process - Complaints

- Notify Respondent of the Complaint
 - Required under 1312.1 (Complaint against Employee)
 - Due Process Considerations
- Confidentiality
 - Complainant of unlawful discrimination, harassment, intimidation, or bullying or the alleged victim, when not the complainant, may request confidentiality
 - Complainant or victim shall be informed that the request may limit the district's ability to investigate the conduct or take other necessary action.
 - When honoring a request for confidentiality, the district shall nevertheless take all reasonable steps to investigate and resolve/respond to the complaint consistent with the request

1312 UCP Process - Complaints

- Offer Mediation / ADR?
 - AFTER you have determined jurisdiction.
 - Within 3 days of receiving the complaint.
 - For complaints involving more than one student and no adult.
 - 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.
 - Agreement from the parties that mediator can have access to relevant information
 - Participant's right to end the process at any time
 - If mediation unsuccessful, investigation continues; does not extend timelines.

1312.3 UCP Process - Jurisdiction

- Conflict of Interest?
 - Compliance officer should not investigate a matter where they have bias or conflict of interest prohibiting fair investigation or resolution of the complaint.
 - Complaint against a compliance officer or complaint that raises a concern about the compliance officer's ability to investigate the complaint fairly and without bias to be filed with Superintendent or designee to determine how the complaint will be investigated.

- Timing
 - Within one year from the incident
 - Discrimination / Harassment / Intimidation / Bullying within 6 months of the incident or knowledge of the incident
 - Discretion to increase the timelines.

1312.3 UCP Process - Jurisdiction

- Subject Matter?
 - 1312.1 or 1312.3 or both?
 - Discrimination / Harassment / Intimidation / Bullying
 - Person who alleges personally suffered unlawful discrimination;
 - Person who believes a specific class of individuals subjected to unlawful discrimination;
 - Duly authorized representative alleging that an individual student has been subjected to discrimination, harassment, intimidation, or bullying
 - Complaint can be filed anonymously
 - Investigation or other response should be pursued as appropriate, depending on the specificity and reliability of the information provided and the seriousness of the allegation

1312.3 UCP Process - Jurisdiction

- Unless otherwise excluded, e.g., Title IX, UCPs are for investigating and resolving violation(s) of federal or state law or regulations governing educational programs and other specified subject matter, as described in subsection
- Discrimination claims must therefore be based on a protected characteristic
 - Protected characteristics – real or perceived race or ethnicity, color, ancestry, nationality, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, 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 his/her association with a person or group with one or more of these actual or perceived characteristics.

1312.3 UCP Process - Jurisdiction

- Discrimination Defined:
 - Treating a person differently based on their membership in any protected classification
 - Prohibited by both state and federal law.
 - Cal. Educ. Code § 220;
 - 5 CCR §§ 4900-4965;
 - Title VI of the Civil Rights Act of 1964 (race, nation of origin);
 - **Title IX of the Education Amendments of 1972 (sex);**
 - Section 504 of the Rehabilitation Act of 1973
 - Title II of the Americans with Disabilities Act of 1990 (disability)

1312.3 UCP Process - Jurisdiction

- Harassment
 - Federal and state anti-discrimination laws are also violated where student-on-student harassment creates a hostile educational environment, the district is on notice, and it does not act to address it.
 - Harassing conduct may include verbal acts, graphic and written statements, or other conduct that may be physically threatening, harmful, or humiliating, regardless of the form it is transmitted.
 - Does not have to include intent to harm the victim, and need not be directed at a specific person or group of people over a prolonged period of time (severe or pervasive).
 - It is not the label for the conduct that determines whether it is harassment, but whether the conduct creates a hostile environment for the protected class of students

1312.3 UCP Process - Jurisdiction

- Harassment (Continued)
 - Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the district's services, activities, or opportunities.
 - A district is not responsible for the actions of the student, but for its own discrimination in failing to respond adequately.
 - Once a district has notice of harassment, the responsibility to take appropriate and effective action is the school's responsibility, whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.
 - Notice to an agent or responsible employee of a district is notice to the district

1312.3 UCP Process - Jurisdiction

- Bullying
 - Ed. Code section 48900(r)(1): Any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils as defined in
 - **Section 48900.2 [sexual harassment]**,
 - 48900.3 [hate violence],
 - 48900.4 [harassment, threats, or intimidation]

1312.3 UCP Process - Jurisdiction

- Bullying (Continued)
 - Directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:
 - Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property;
 - Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health;
 - Causing a reasonable pupil to experience substantial interference with his or her academic performance;
 - Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

1312.3 UCP Process - Jurisdiction

- Bullying (Continued)
 - “Reasonable pupil” means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.

1312.3 UCP Process – Summary Break

- All UCP complaints must be in writing and investigated and resolved within 60 calendar days of receipt unless complainant agrees in writing to an extension. (5 CCR 4631)
- Begin investigation within 10 days of receipt of complaint; meet with complainant no later than the 11th day of the investigation
- Notify all parties when a complaint is filed and a decision is made.
- For complaints of retaliation, harassment, discrimination, or bullying, make sure other avenues of investigation and resolution are utilized as appropriate
- Complaints of retaliation, discrimination shall be confidential as appropriate.

1312.3 UCP Process – Investigation

- Determine if interim measures are necessary during the investigation and while the result is pending
 - Typically Bullying / Harassment Cases
 - Interim measures remain in place until the compliance officer determines no longer necessary or issues final written decision
 - Requirement to address / eradicate hostile educational environment
- Investigation can be delegated so long as employees assigned to investigate and resolve complaints receive training and are knowledgeable about the laws and programs at issue.
 - Current state and federal laws and regulations governing the program
 - Applicable processes for investigating and resolving complaints,
 - Applicable standards for reaching decisions on complaints and appropriate corrective measures.
 - Assigned employees may have access to legal counsel

1312.3 UCP Process – Investigation

- Within 10 business days begin investigation.
- Within 1 business day of starting investigation, offer complainant the opportunity to provide evidence or information at any time during the investigation.
 - Meeting with the complainant to (1) determine scope of complaint / investigation and (2) collect evidence / information
- Collect and review all documents, records, and statements.
 - Continue to collect evidence / information from complainant as appropriate
- Interview all witnesses with information “pertinent to the complaint.”
- Visit all sites involved as appropriate and available.

1312.3 UCP Process – Investigation

- At appropriate intervals, inform the parties of the status of the investigation.
- For UCPs alleging retaliation or unlawful discrimination, harassment, intimidation, or bullying:
 - Interview the alleged victim(s), any alleged offender(s), and other relevant witnesses privately, separately, and in a confidential manner.
 - Additional staff or legal counsel may conduct or support the investigation.
- Refusal by complainant to provide investigator with documents or other evidence / to cooperate / or obstruction may result in the dismissal of the complaint because of a lack of evidence. (5 CCR § 4631).
 - Written warning
 - Stop investigation?
 - Applies to the District (May result in finding based on evidence that a violation has occurred and the imposition of a remedy in favor of the complainant)

1312.3 UCP Process – Query Break

Why Conduct an Investigation?

- Required by Board Policy.
- Required by state or federal law.
- Required under ‘just cause’ analysis for discipline.
- Proactive means to manage and lessen liabilities.
- Brings allegations (e.g. bullying) to a resolution that we can utilize for future planning / decisions.

1312.3 UCP Process - Decision and Report

- Shall prepare and send to the complainant a written report of investigation and decision
 - Due 60 calendar days of the district's receipt of the complaint - unless extended by written agreement with the complainant. (5 CCR 4631)
- Contents of written Decision and Report dictated specifically by UCP regulations (5 CCR § 4631) and AR 1312.3
- In consultation with district legal counsel as appropriate, information about the relevant part of a decision may be communicated to a victim who is not the complainant and to other parties that may be involved in implementing the decision or affected by the complaint, as long as the privacy of the parties is protected.

1312.3 UCP Process - Decision and Report

Elements of Written Decision and Report

1. Factual Findings based on the evidence gathered
2. Conclusion providing clear determination as to each allegation as to whether the school district is in compliance with the relevant law (Conclusions of Law)
3. Corrective actions (if the school district finds merit to the complaint)
4. Notice of the Right to Appeal the Report to CDE (unless district has used UCP for complaint not covered by 5 CCR § 4610)
5. Procedures for Initiating an Appeal to CDE

1312.3 UCP Process – Decision and Report

Written report must contain “factual findings” based on the evidence gathered

- Preponderance of the evidence standard
 - Allegation is more likely to be true than not.
 - Not the criminal standard – “beyond a reasonable doubt.”
- For a factual finding, the following factors may be taken into account:
 - Statements made by any witnesses
 - The relative credibility of the individuals involved
 - How the complaining individual reacted to the incident
 - Any documentary or other evidence relating to the alleged conduct
 - Past instances of similar conduct by any alleged offenders
 - Past false allegations made by the complainant

1312.3 UCP Process – Decision and Report

Written report must contain “conclusions of law” determining whether each allegation is sustained or denied

- Rely on District’s Board policies, administrative regulations, the Education Code, and federal or state law
 - Best place to start is the District’s policies and administrative regulations;
 - Most frequently used are 1000 (Community) 5000 (Pupils) 6000 (Instruction)
- Apply the policy, regulation, statute, case law to the factual finding for each allegation to make a factual determination
 - Decisions can be split (sustained in part, denied in part)
 - For allegations that are sustained, will need to come up with a corrective action

1312.3 UCP Process – Decision and Report

Corrective Actions

- When support by investigation, the Written Report must include corrective action(s) permitted by law.
 - Could be imposed even if the allegation is not sustained
 - Could be developed for issues discovered during investigation that were not raised by the complainant
- Appropriate corrective actions that focus on the larger school or district environment may include, but are not limited to, actions to reinforce district policies, training for faculty, staff, and students, updates to school policies, or school climate surveys.

1312.3 UCP Process – Decision and Report

For complaints involving discrimination, harassment, or bullying, appropriate remedies that may be offered to the victim but not communicated to the respondent may include, but are not limited to:

- Counseling
- Academic support
- Health services
- Assignment of an escort to allow the victim to move safely about campus
- Information re available resources and reporting similar incidents or retaliation
- Separation of the victim from other individuals involved, provided the action does not penalize the victim
- Restorative justice
- Follow-up inquiries to ensure that the conduct has stopped and there has been no retaliation

1312.3 UCP Process – Decision and Report

Complaints of discrimination, harassment, or bullying involving a student as the respondent, appropriate corrective actions that may be provided to the student include, but are not limited to:

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

1312.3 UCP Process - Decision and Report

For complaints of retaliation, discrimination, harassment, or bullying

- The disposition shall include a determination for each allegation as to whether it occurred.
- The written report shall also include a notice to the complainant that:
 - The complainant may pursue available civil law remedies outside the district's complaint procedures, including, but not limited to, injunctions, restraining orders or other remedies or orders, 60 calendar days after the filing of an appeal with CDE. (Education Code 262.3)
 - 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)
 - 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 within 180 days of the alleged discrimination.

1312.3 UCP Process – Decision and Report

Written Report must include notice of right to appeal to the CDE:

- Any complainant who is dissatisfied with the District’s final written decision on a complaint regarding any specified federal or state educational program subject to UCP may file an appeal in writing with CDE within 60 calendar days of receiving the district's investigation report. (5 CCR 4632)
 - Bullying?
 - Harassment?
 - Special Education complaints?
 - Williams complaints?
 - Grades?
 - Graduation?

1312.3 UCP Process – Decision and Report

The appeal shall be sent to CDE with a copy of the original locally filed complaint and a copy of the district's investigation report for that complaint. The complainant shall specify and explain the basis for the appeal, including at least one of the following: (5 CCR 4632)

1. The district failed to follow its complaint procedures.
2. Relative to the allegations of the complaint, the district's investigation report lacks material findings of fact necessary to reach a conclusion of law.
3. The material findings of fact in the district's investigation report are not supported by substantial evidence.
4. The legal conclusion in the district's investigation report is inconsistent with the law.
5. In a case in which the district found noncompliance, the corrective actions fail to provide a proper remedy.



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Thank you!



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