

Los Gatos-Saratoga Union HSD

Administrative Regulation

Uniform Complaint Procedures

AR 1312.3

Community Relations

Except as the Board of Trustees may otherwise specifically provide in other district policies, these general uniform complaint procedures ("UCP") shall be used to investigate and resolve only the complaints specified in BP 1312.3.

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.2 - Complaints Concerning Instructional Materials)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

Compliance Officers

The Board of Trustees designates the individual identified below as the employee responsible for coordinating the district's response to complaints and to ensure district compliance with the law:

Assistant Superintendent - Human Resources (CCR Title 5 and Title IX Officer)

17421 Farley Road West

Los Gatos, CA 95030

408-354-2520

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

The compliance officer, his or her designee or an outside investigator shall not be designated to investigate a complaint under this policy if that person (1) is named as being involved with the underlying facts of the complaint or (2) has a conflict of interest that would prohibit that person from fairly and impartially investigating the complaint.

Any complaint filed against or implicating a compliance officer or other assigned investigator may be filed with the Superintendent or designee. Outside investigators who are not employees of the District must be licensed as attorneys or private investigators.

For the purposes of an investigation under the UCP, a conflict of interest includes a personal, professional or financial interest that has the potential to compromise or bias the professional judgment or objectivity of the holder of the interest. The investigator assigned to investigate must disclose to the Superintendent or designee any potential conflicts of interest, including his or her relationship or familiarity with the complainant, respondent and individuals who are likely

to be witnesses, as well as any interest the investigator might have in the outcome of the matter. Because the Board of Trustees is obligated to provide and/or hire an investigator for uniform complaints, the act of paying the investigator's salary or fee is not considered to be an impermissible financial conflict of interest.

If the Superintendent or designee determines that an assigned investigator has a conflict of interest, the complaint and investigation will be delegated to an impartial, trained and available administrator or outside investigator.

(cf. 9124 - Attorney)

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 district issues its final written decision, whichever occurs first.

Notifications

The Superintendent or designee shall annually provide written notification of the district's UCP to students, employees, parents/guardians, the district advisory committee, school advisory committees, appropriate private school officials or representatives, and other interested parties. (Education Code 262.3, 49013, 52075; 5 CCR 4622)

The district's UCP policy and administrative regulation shall be posted in all district schools and offices, including staff lounges and student government meeting rooms. (Education Code 234.1) The Superintendent or designee shall also make available copies of the district's UCP free of charge, including by download from the district's website. (5 CCR 4622)

(cf. 4112/4212.9/4312.9 - Employee Notifications)

(cf. 5145.6 - Parental Notifications)

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 discrimination laws, if applicable.
3. Advise the complainant of the appeal process pursuant to Education Code 262.3, including 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.
4. Include statements that:

- a. The district is primarily responsible for compliance with state and federal laws and regulations governing educational programs.
- b. The complaint review shall be completed within sixty (60) calendar days from the date of receipt of the complaint unless the complainant agrees in writing to an extension of the timeline.
- c. An unlawful discrimination complaint must be filed not later than six (6) months from the date the alleged discrimination occurs, or six (6) months from the date the complainant first obtains knowledge of the facts of the alleged discrimination. The time for filing may be extended for up to ninety (90) days by the Superintendent or designee for good cause upon written request by the complainant setting forth the reasons for the extension.

(cf. 0460 - Local Control and Accountability Plan)
- d. The complainant has a right to appeal the district's decision to the CDE by filing a written appeal within fifteen (15) days of receiving the district's decision.
- e. The appeal to the CDE must include a copy of the complaint filed with the district and a copy of the district's decision.

Complaint/Grievance Procedures

All UCP-related complaints shall be investigated and resolved within sixty (60) calendar days of the district's receipt of the complaint unless the complainant agrees in writing to an extension of the timeline. (5 CCR 4631) Compliance officer shall maintain a record of each complaint and subsequent related actions, including all information required for compliance with 5 CCR 4631 and 4633.

All parties involved in allegations shall be notified when a complaint is filed, when a complaint meeting or hearing is scheduled, and when a decision or ruling is made.

Step 1: Filing of Complaint

Any individual, public agency, or organization may file a written complaint of alleged noncompliance by the district. (5 CCR 4630) A complaint concerning unlawful discrimination may be filed only by a person who alleges that he/she personally suffered unlawful discrimination or by a person who believes that an individual or any specific class of individuals has been subjected to unlawful discrimination.

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.

If a complainant is unable to put 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. (5 CCR 4600)

Step 2: Mediation

Within three (3) business days of receiving the complaint, the compliance officer may informally discuss with the complainant the possibility of using mediation. 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 complainant agrees to mediation, the compliance officer shall make all arrangements for this process. Before initiating the mediation of a discrimination 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 related confidential information. The compliance officer shall 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 precede with his/her investigation of the complaint.

The use of mediation shall not extend the district's timelines for investigating and resolving the complaint unless the complainant agrees in writing to such an extension of time. (5 CCR 4631) If mediation is successful and the complaint is withdrawn, then the district shall take only the actions agreed to through mediation. If mediation is unsuccessful, the district shall then continue with subsequent steps specified in this administrative regulation.

Step 3: Investigation of Complaint

The compliance officer is encouraged to hold an investigative meeting within ten (10) business days of receiving the complaint or an unsuccessful attempt to mediate the complaint. During this meeting, the complainant and/or his/her representative shall have an opportunity to present the complaint and evidence or information leading to evidence to support the allegations in the complaint. (5 CCR 4631) 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. When gathering evidence in a Title IX or sexual harassment investigation, evidence related to the complainant's past sexual relationships with individuals other than the respondent will be excluded.

The compliance officer 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. 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. At appropriate intervals, the compliance officer shall inform both parties of the status of the investigation.

A complainant's refusal to provide the district's investigator with documents or other evidence related to the allegations in the complaint, or his/her failure or refusal to cooperate in the investigation or his/her 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 respondents refusal to provide the district's investigator with documents or 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)

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.

Step 4: Report of Findings

Unless extended by written agreement with the complainant, a final decision shall be sent to the complainant within sixty (60) calendar days of the district's receipt of the complaint. If the complainant is dissatisfied with the compliance officer's decision, he/she may, within five (5) days, file his/her complaint in writing with the Board.

The Board may consider the matter at its next regular Board meeting or at a special Board meeting convened in order to meet the sixty (60) day time limit within which the complaint must be answered. The Board may decide not to hear the complaint, in which case the compliance officer's decision shall be final.

If the Board hears the complaint, the compliance officer shall send the Board's decision to the complainant within sixty (60) days of the district's initial receipt the complaint or within the time period that has been specified in a written agreement with the complainant. (5 CCR 4631)

Step 5: Final Written Decision

The district's decision shall be in writing and sent to the complaint and respondent. (5 CCR 4631) The decision shall be written in English and, when required by Education Code 48985, it shall be written in the complainant and/or respondent's primary language.

For all complaints the decision shall include: (a) findings of fact based on the evidence gathered, (b) the conclusion(s) of law, (c) disposition of the complaint, (d) rationale for such disposition, (e) corrective actions, if warranted, and (f) a notice of the complainant's right to appeal the district's decision within fifteen (15) days to the CDE and procedures to be followed for initiating such an appeal. (5CCR 4631)

In addition, any decision concerning a discrimination complaint based on state law shall include a notice that the complainant must wait until sixty (60) days have elapsed from the filing of an appeal with the CDE before pursuing civil law remedies. (Education Code 262.3)

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 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.

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 (excluding number six (6) and seven (7)) 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.
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 privileges as permitted by law.
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 district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and the relevant collective bargaining agreement.

If an investigation of a complaint results in discipline to a student or an employee, the decision shall simply state that the effective action was taken and that the student or employee was informed of district expectations. The report shall not give any further information as to the nature of the disciplinary action.

The district 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 district 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 district 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 district 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 (1) year prior to the filing of the complaint. (Education Code 49013; 5 CCR 4600)

Appeals to the California Department of Education

If dissatisfied with the district's decision, the complainant may appeal in writing to the CDE within fifteen (15) days of receiving the district's decision. (Education Code 49013, 52075; 5 CCR 4632) When appealing to the CDE, 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 district's decision. (5 CCR 4632)

Upon notification by the CDE that the complainant has appealed the district'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 decision.
3. A summary of the nature and extent of the investigation conducted by the district, 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 district's complaint procedures.
7. Other relevant information requested by the CDE.

Civil Law Remedies

A complainant may pursue available civil law remedies outside of the district's 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 and restraining orders.

For discrimination complaints, however, a complainant must wait until sixty (60) days have elapsed from the filing of an appeal with the CDE before pursuing civil law remedies. The moratorium does not apply to injunctive relief and is applicable only if the district has appropriately, and in a timely manner, apprised the complainant of his/her right to file a complaint in accordance with 5 CCR 4622.

A student may also file a discrimination complaint based on sex with the federal Office for Civil Rights (OCR). Instructions for filing a complaint can be found at <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

Regulation LOS GATOS-SARATOGA UNION HIGH SCHOOL DISTRICT
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