



TO: SBSD Board Members, Dr. Brian Sarvis, Robin Sawaske

FROM: Tom Guajardo, Special Education Executive Director

DATE: January 29, 2010

RE: Board Member Request for Information on Retaliation

We were asked to define our position as to whether we need to add another policy prohibiting retaliation practices. This suggestion came forward from a community advocate. As you can see from the attached policies and regulations, we already have these in place. To single out only Special Education for additional policies would not be advisable. These existing policies and regulations cover all staff.

The work that needs to be done at this point is ensure that these are understood and acted upon. We are starting by bringing them forward to our staff and discussing them in meetings. For my part, I will take these to our Directors, Program Specialists, SPED Department Chairs, Psychology Department, Nurses, and Speech Language Pathologists. We will also share these with Principals, the PAC, DELAC, and the ELAC's. We have already discussed them in Superintendent's Cabinet and the Superintendent made it clear that we cannot tolerate any retaliation.

In order to obtain more information as to whether staff felt there is retaliation, I intend to gather more information through surveys. I was recently told by a high ranking teacher's association member that the question of whether there was retaliation was posed in representative leadership meeting. I was told that there was not one person that felt this way in said meeting. However, we will further gauge this on an ongoing basis through surveys and focus groups. This way we will be able to also address teacher morale.

In summary, we feel we have the necessary policies and regulations in place. We now need to ensure they are followed.

Cc: attachments

Adams Elementary School
Cesar Chavez Charter School
Cleveland Elementary School
Franklin Elementary School

Harding Elementary School
McKinley Elementary School
Monroe Elementary School
Open Alternative School

Peabody Charter School
Roosevelt Elementary School
Santa Barbara Charter School
Santa Barbara Community Academy
Washington Elementary School

Goleta Valley Junior High School
La Colina Junior High School
La Cumbre Junior High School
Santa Barbara Junior High School

Dos Pueblos High School
La Cuesta Continuation High School
San Marcos High School
Santa Barbara High School

Santa Barbara School Districts

Board Policy

BP 1312.1

Community Relations

COMPLAINTS CONCERNING DISTRICT EMPLOYEES OR POLICIES

The Governing Board desires to provide a means by which the public can hold employees accountable for their actions. The Board desires that complaints be resolved expeditiously without disrupting the educational process.

The Superintendent or designee shall develop regulations which permit the public to submit complaints against district employees or district policies in an appropriate way. These regulations shall protect the rights of involved parties.

(cf. 1312.2 - Complaints Concerning Instructional Material)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 3515.2 - Disruptions)

The Board prohibits retaliation against complainants. The Superintendent or designee at his/her discretion may keep a complainant's identity confidential, except to the extent necessary to investigate the complaint. The district will not investigate anonymous complaints unless the Superintendent or designee so desires.

Legal Reference:

EDUCATION CODE

33308.1 *Guidelines on procedure for filing child abuse complaints*

35146 *Closed sessions*

44031 *Personnel file contents and inspection*

44811 *Disruption of public school activities*

44932-44949 *Resignation, dismissal and leaves of absence (rights of employee; procedures to follow)*

48987 *Child abuse guidelines*

GOVERNMENT CODE

54957 *Closed session; complaints re employees*

54957.6 *Closed session; salaries or fringe benefits*

PENAL CODE

273 *Cruelty or unjustifiable punishment of child*

11164-11174.3 *Child Abuse and Neglect Reporting Act*

WELFARE AND INSTITUTIONS CODE

300 *Minors subject to jurisdiction of juvenile court*

Policy: SANTA BARBARA SCHOOL DISTRICTS
Adopted: September 9, 2008 Santa Barbara, California

Santa Barbara School Districts

Administrative Regulation

AR 1312.1

Community Relations

COMPLAINTS CONCERNING DISTRICT EMPLOYEES OR POLICIES

The Superintendent or designee shall determine whether a complaint should be considered a complaint against the district and/or an individual employee, and whether it should be resolved by the district's process for complaints concerning personnel and/or other district procedures.

(cf. 1312.2 - Complaints Concerning Instructional Materials)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 4144/4244/4344 - Complaints)

To promote prompt and fair resolution of the complaint, the following procedures shall govern the resolution of complaints against district employees:

1. Every effort should be made to resolve a complaint at the earliest possible stage. Whenever possible, the complainant should communicate directly to the employee in order to resolve concerns.
2. If a complainant is unable or unwilling to resolve the complaint directly with the employee, he/she may submit a written complaint to the employee's immediate supervisor or the principal.
3. All complaints related to district personnel other than administrators shall be submitted in writing to the principal or immediate supervisor. If the complainant is unable to prepare the complaint in writing, administrative staff shall help him/her to do so. Complaints related to a principal or central office administrator shall be initially filed in writing with the Superintendent or designee. Complaints related to the Superintendent shall be initially filed in writing with the Board, and the Board's decision will be final.
4. When a written complaint is received, the employee shall be notified within five days or in accordance with collective bargaining agreements.
5. A written complaint shall include:
 - a. The full name of each employee involved
 - b. The full name of the complainant
 - c. A brief but specific summary of the complaint and the facts surrounding it
 - d. A specific description of any prior attempt to discuss the complaint with the employee and the failure to resolve the matter

6. Staff responsible for investigating complaints shall attempt to resolve the complaint to the satisfaction of the parties involved within 30 days.
7. Both the complainant and the employee against whom the complaint was made may appeal a decision by the principal or immediate supervisor to the Superintendent or designee, who shall attempt to resolve the complaint to the satisfaction of the person involved within 30 days. Parties should consider and accept the Superintendent or designee's decision as final.

Any complaint of child abuse or neglect alleged against a district employee shall be reported to the appropriate local agencies in accordance with law, Board policy and administrative regulation.

(cf. 5141.4 - Child Abuse Prevention and Reporting)

Regulation: SANTA BARBARA SCHOOL DISTRICTS
Adopted: September 9, 2008 Santa Barbara, California

Santa Barbara School Districts

Board Policy

BP 1312.3

Community Relations

UNIFORM COMPLAINT PROCEDURES

The Governing Board recognizes that the districts are primarily responsible for complying with applicable state and federal laws and regulations governing educational programs. The district shall investigate complaints alleging failure to comply with such laws and/or alleging discrimination and shall seek to resolve those complaints in accordance with the procedures set out in Sections 4600-4687 of the Title 5 regulations and in accordance with the district's uniform complaint policies and procedures. (T5 CCR 4620)

The district shall follow uniform complaint procedures when addressing complaints alleging unlawful discrimination against any protected group as identified under Education Code 200 and 220 and Government Code 11135, including actual or perceived sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability, or age, 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 district program or activity that receives or benefits from state financial assistance. (T5 CCR 4610)

Uniform complaint procedures shall also be used when addressing complaints alleging failure to comply with state and/or federal laws in adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and career technical and technical training programs, child care and development programs, child nutrition programs, and special education programs. (T5 CCR 4610)

Complaints related to sufficiency of textbooks or instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of students or staff, and teacher vacancies and misassignments shall be investigated pursuant to the district's Williams uniform complaint procedure (AR 1312.4).

The Board encourages the early, informal resolution of complaints at the site level whenever possible.

The Board acknowledges and respects every individual's right to privacy. Discrimination complaints shall be investigated in a manner that protects the confidentiality of the parties and the integrity of the process. This may include keeping the identity of the complainant confidential, as appropriate and except to the extent necessary to carry out the investigation or proceedings, as determined by the Superintendent or designee, on a case-by-case basis.

The Board prohibits any form of retaliation against any complainant in the complaint process, including but not limited to a complainant's filing of a complaint or the reporting of instances of discrimination. Such participation shall not in any way affect the status, grades, or work assignments of the complainant.

The Board recognizes that a neutral mediator can often suggest a compromise that is agreeable to all parties in a dispute. In accordance with uniform complaint procedures, whenever all parties to a complaint agree to try resolving their problem through mediation, the Superintendent or designee shall initiate that process. The Superintendent or designee shall ensure that the results are consistent with state and federal laws and regulations.

Legal Reference:

EDUCATION CODE

| | |
|----------------|---|
| 200-262.4 | Prohibition of discrimination |
| 8200-8498 | Child care and development programs |
| 8500-8538 | Adult basic education |
| 18100-18203 | School libraries |
| 32289 | School safety plan, uniform complaint procedure |
| 35186 | Williams uniform complaint procedure |
| 41500-41513 | Categorical education block grants |
| 48985 | Notices in language other than English |
| 49060-49079 | Student records |
| 49490-49590 | Child nutrition programs |
| 52160-52178 | Bilingual education programs |
| 52300-52499.6 | Career-technical education |
| 52500-52616.24 | Adult schools |
| 52800-52870 | School-based coordinated programs |
| 54000-54041 | Economic impact aid programs |
| 54100-54145 | Miller-Unruh Basic Reading Act |
| 54400-54425 | Compensatory education programs |
| 54440-54445 | Migrant education |
| 54460-54529 | Compensatory education programs |
| 56000-56885 | Special education programs |
| 59000-59300 | Special schools and centers |
| 64000-64001 | Consolidated application process |

CODE OF REGULATIONS, TITLE 5

| | |
|-----------|--|
| 3080 | Application of section |
| 4600-4687 | Uniform complaint procedures |
| 4900-4965 | Nondiscrimination in elementary and secondary programs |

PENAL CODE

| | |
|-------|---|
| 422.6 | Interference with constitutional right or privilege |
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UNITED STATES CODE, TITLE 20

| | |
|------------|--|
| 6301-6577 | Title I basic programs |
| 6601-6777 | Title II preparing and recruiting high quality teachers and principals |
| 6801-6871 | Title III language instruction for limited English proficient and immigrant students |
| 7101-7184 | Safe and Drug-Free Schools and Communities Act |
| 7201-7283g | Title V promoting informed parental choice and innovative programs |
| 7301-7372 | Title V rural and low-income school programs |

Policy: SANTA BARBARA SCHOOL DISTRICTS
Adopted: August 26, 1992 Santa Barbara, California
Revised: December 12, 2001; May 22, 2002; May 9, 2006

Santa Barbara School Districts

Administrative Regulation

AR 1312.3

Community Relations

UNIFORM COMPLAINT PROCEDURES

Compliance Officers

The Governing Board designates the following compliance officer(s) to receive and investigate complaints and to ensure district compliance with law:

Director of Compliance and Categoricals *or*
Assistant Superintendent, Elementary *or*
Assistant Superintendent, Secondary
Santa Barbara School Districts
720 Santa Barbara Street
Santa Barbara, CA 93101
(805) 963-4331

The Superintendent or designee shall ensure that employees designated to investigate complaints are knowledgeable about the laws and programs for which they are responsible. Designated employees may have access to legal counsel as determined by the Superintendent or designee.
(cf. 9124 - Attorney)

Notifications

The Superintendent or designee shall annually provide written notification of the district's uniform complaint procedures to students, employees, parents/guardians, district advisory committees, school advisory committees, appropriate private school officials or representatives, and other interested parties. (T5 CCR 4622)

The Superintendent or designee shall make available copies of the district's uniform complaint procedures free of charge. (T5 CCR 4622)

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

- 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 timeline
- c. An unlawful discrimination complaint must be filed not later than six months from the date the alleged discrimination occurs, or six months from the date the complainant first obtains knowledge of the facts of the alleged discrimination
- d. The complainant has a right to appeal the district's decision to the CDE by filing a written appeal within 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
(cf. 5145.6 - Parental Notifications)

Procedures

The following procedures shall be used to address all complaints, which allege that the district has violated federal or state laws or regulations governing educational programs. Compliance officers shall maintain a record of each complaint and subsequent related actions, including all information required for compliance with T5 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. (T5 CCR 4630)

A complaint alleging unlawful discrimination shall be initiated no later than six months from the date when the alleged discrimination occurred, or six months from the date when the complainant first obtained knowledge of the facts of the alleged discrimination. A complaint may be filed 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. (T5 CCR 4630)

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. (T5 CCR 4600)

Step 2: Mediation

Within three days of receiving the complaint, the compliance officer may informally discuss with the complainant the possibility of using mediation. If the complainant agrees to mediation, the compliance officer shall make all arrangements for this process.

Before initiating the mediation of a discrimination complaint, the compliance officer shall ensure that all parties agree to make the mediator a party to related confidential information.

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 district's timelines for investigating and resolving the complaint unless the complainant agrees in writing to such an extension of time. (T5 CCR 4631)

Step 3: Investigation of Complaint

The compliance officer is encouraged to hold an investigative meeting within five days of receiving the complaint or an unsuccessful attempt to mediate the complaint. This meeting shall provide an opportunity for the complainant and/or his/her representative to repeat the complaint orally.

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. (T5 CCR 4631)

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. (T5 CCR 4631)

The district's refusal to provide the investigator with access to records and/or other information related to the allegation in the complaint, or its failure or refusal to cooperate in the investigation or its engagement in any other obstruction of the investigation, may result in a finding, based on evidence collected, that a violation has occurred and may result in the imposition of a remedy in favor of the complainant. (T5 CCR 4631)

Step 4: Response

Within 30 days of receiving the complaint, the compliance officer shall prepare and send to the complainant a written report of the district's investigation and decision, as described in Step #5 (below). If the complainant is dissatisfied with the compliance officer's decision, he/she may, within five 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 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 60 days of the district's initial receipt of the complaint or within the time period that has been specified in a written agreement with the complainant. (T5 CCR 4631)

Step 5: Final Written Decision

The district's decision shall be in writing and sent to the complainant. (T5 CCR 4631)

The district's decision shall be written in English and in the language of the complainant whenever feasible or as required by law. If it is not feasible to write this report in the complainant's primary language, the District shall arrange a meeting at which a community member will interpret for the complainant.

The decision shall include:

1. The findings of fact based on the evidence gathered (T5 CCR 4631)
2. The conclusion(s) of law (T5 CCR 4631)
3. Disposition of the complaint (T5 CCR 4631)
4. Rationale for such disposition (T5 CCR 4631)
5. Corrective actions, if any are warranted (T5 CCR 4631)
6. Notice of the complainant's right to appeal the district's decision **within 15 days** to the CDE and procedures to be followed for initiating such an appeal (T5 CCR 4631)
7. For discrimination complaints, notice that the complainant must wait until 60 days have elapsed from the filing of an appeal with the CDE before pursuing civil law remedies (Education Code 262.3)

If an employee is disciplined as a result of the complaint, the decision shall simply state that effective action was taken and that the employee was informed of district expectations. The report shall not give any further information as to the nature of the disciplinary action.

Appeals to the California Department of Education

If dissatisfied with the district's decision, the complainant may appeal in writing to the California Department of Education **within 15 days** of receiving the district's decision. When appealing to the California Department of Education, the complainant must specify the basis for the appeal of the decision and whether the facts are incorrect and/or the law has been misapplied. The appeal shall be accompanied by a copy of the locally filed complaint and the District's decision. (T5 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: (T5 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

The CDE may directly intervene in the complaint without waiting for action by the district when one of the conditions listed in T5 CCR 4650 exists, including cases in which the district has not taken action within 60 days of the date the complaint was filed with the district.

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 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 T5 CCR 4622.

Regulation: SANTA BARBARA SCHOOL DISTRICTS
Adopted: August 26, 1992 Santa Barbara, California
Revised: December 12, 2001; May 22, 2002; May 9, 2006

Santa Barbara School Districts

Board Policy

BP 4030

Personnel

NONDISCRIMINATION IN EMPLOYMENT

The Governing Board prohibits unlawful discrimination against and/or harassment of district employees and job applicants on the basis of race, color, national origin, ancestry, religious creed, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, and actual or perceived sexual orientation, at any district site and/or activity. The Board also prohibits retaliation against any district employee or job applicant who complains, testifies or in any way participates in the district's complaint procedures instituted pursuant to this policy.

Any district employee who engages in unlawful discrimination or harassment shall be subject to disciplinary action up to and including dismissal.

Any district employee who permits unlawful discrimination or harassment may be subject to disciplinary action up to and including dismissal. A district employee shall be deemed to have permitted unlawful discrimination or harassment if he/she fails to report an observed incident of discrimination and/or harassment, whether or not the victim complains.

The Superintendent or designee shall regularly publicize this nondiscrimination policy and the availability of complaint procedures throughout the district and the community. He/she shall provide district employees and job applicants with copies of this policy, district regulations and complaint procedures as necessary.

The Board designates the following positions as Coordinators for Nondiscrimination in Employment:

Personnel Coordinator: Certificated and Classified
720 Santa Barbara Street
Santa Barbara, CA 93101
(805) 963-4331 ext. 237 (Certificated) 239 (Classified)

An employee may, in addition to filing a discrimination complaint with the district, file a complaint with either the Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). The time limits for filing such complaints are as follows:

1. To file a valid complaint with EEOC, the employee must file his/her complaint with 300 days of the alleged discriminatory act(s). (42 USC 2000e-5)

2. To file a valid complaint with DFEH, the employee must file his/her complaint within one year of the alleged discriminatory act(s). Government Code 12960)

Legal Reference:

GOVERNMENT CODE

11135 Unlawful discrimination
12900-12996 Fair Employment and Housing Act

LABOR CODE

1102.1 Employment discrimination: sexual orientation

CODE OF REGULATIONS, TITLE 2

7287.6 Terms, conditions and privileges of employment

UNITED STATES CODE, TITLE 20

1681 - 1688 Discrimination based on sex or blindness, Title IX

UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000d - 2000d-7 Title VI, Civil Rights Act of 1964

2000e - 2000e-17 Title VII, Civil Rights Act of 1964 as amended

2000h-2 - 2000h-6 Title IX, 1972 Education Act Amendments

12101 – 12213 Americans With Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 Compliance information

104.8 Notice

106.8 Designation of responsible employee and adoption of grievance procedures

106.9 Dissemination of policy

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, March, 1999

OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Protecting Students from Harassment and Hate Crime, January, 1999

WEB SITES

EEOC: <http://www.eeoc.gov>

OCR: <http://www.ed.gov/offices/OCR>

Policy: SANTA BARBARA ELEMENTARY/HIGH SCHOOL DISTRICTS
Adopted: February 27, 1975 Santa Barbara, California
Revised: December 9, 1976, September 1, 1977; May 22, 1980, February 16, 1984,
May 8, 1991, March 8, 2000

Santa Barbara School Districts

Administrative Regulation

AR 4030

Personnel

NONDISCRIMINATION IN EMPLOYMENT

Unlawful discrimination or harassment of an individual includes:

1. Slurs, epithets, threats or verbal abuse.
2. Derogatory or degrading comments, descriptions, drawings, pictures or gestures.
3. Unwelcome jokes, stories, teasing or taunting.
4. Any other verbal, written, visual or physical conduct against the individual which:
 - a. Adversely affects his/her employment opportunities, or
 - b. Has the purpose or effect of unreasonably interfering with his/her work performance or creating an intimidating, hostile or offensive work environment.

Any employee or job applicant who feels that he/she has been or is being unlawfully discriminated against or harassed should immediately contact his/her supervisor, the nondiscrimination coordinator or the Superintendent in order to obtain procedures for reporting a complaint. Such complaints shall be filed in accordance with AR 4031 - Complaints Concerning Discrimination in Employment. An employee may bypass his/her supervisor when the supervisor is the alleged offender.

Any supervisor who receives a discrimination/harassment complaint shall immediately notify the nondiscrimination coordinator or the Superintendent, who shall ensure that the complaint is appropriately investigated in accordance with district policy and regulations.

The Superintendent or designee shall ensure that annual training is provided to all employees regarding the issues of discrimination.

Regulation: SANTA BARBARA ELEMENTARY/HIGH SCHOOL DISTRICTS
Approved: March 8, 2000 Santa Barbara, California

Santa Barbara School Districts

Administrative Regulation

AR 4031

Personnel

COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT

The following procedures shall be used when a district employee or job applicant has a complaint alleging that a specific action, policy, procedure or practice discriminates against him/her on any basis specified in the district's nondiscrimination policies.

1. The complaint should be initiated promptly after a complainant knew, or should have known, of the alleged discrimination.
2. All parties involved in allegations of discrimination shall be notified when a complaint is filed, when a complaint meeting or hearing is scheduled, and when a decision or ruling is made. The parties also shall be notified of their right to appeal the decision to the next level.
3. When a complaint is brought against the individual responsible for the complaint process at any level, the complainant may address the complaint directly to the next appropriate level.
4. Meetings related to a complaint shall be held at times the district determines appropriate to the circumstances.
5. For the protection of all the parties involved, complaint proceedings shall be kept confidential insofar as appropriate.
6. All documents, communications and records dealing with the investigation of the complaint shall be placed in a confidential district personnel complaint file and not in the employee's individual personnel file.
7. Time limits specified in these procedures may be revised only by written agreement of all parties involved. If the district fails to respond within a specified or adjusted time limit, a complainant may proceed to the next level. If a complainant fails to take the complaint to the next step within the prescribed time, the complaint shall be considered settled at the preceding step.

Level I

The complainant shall first meet informally with his/her supervisor or the administrator of the school where the alleged discriminatory act occurred. A complaint regarding discrimination away from the school site should be discussed informally with the complainant's supervisor. If the complainant's concerns are not clear or cannot be resolved through informal discussion, the supervisor or other administrator shall prepare, within 10 working days, a written summary of his/her meeting(s) with the complainant. This report shall be made available to the nondiscrimination coordinator (coordinator) designated by the Governing Board in BP 4030 - Nondiscrimination in Employment.

Level II

If a complaint cannot be resolved to the satisfaction of the complainant at Level I, he/she may submit a formal written complaint to the coordinator within 10 working days of his/her attempt to resolve the complaint informally. The written complaint shall include the following:

1. The complainant's name, address, and telephone number.
2. The name and work location of the district staff member who committed the alleged violation.
3. A description of the alleged discriminatory act(s) or omission(s).
4. The discriminatory basis alleged.
5. A specific description of the time, place, nature, participants in and witnesses to the alleged violation.
6. Other pertinent information which may assist in investigating and resolving the complaint.
7. The complainant's signature or that of his/her representative.

The coordinator shall assign a staff member to assist the complainant with this writing if such help is needed. The coordinator shall respond to the complaint in writing within 10 working days.

The coordinator shall conduct any investigation necessary to respond to the complaint, including discussion with the complainant, person(s) involved, appropriate staff members and students, and review of the Level I report and all other relevant documents. If a response from third parties is necessary, the coordinator may designate up to 10 additional working days for investigation of the complaint.

Level III

If the complaint cannot be resolved at Level II, either party may present the complaint to the Superintendent or designee within 10 working days. The Superintendent or designee shall review the Level II investigation file, including the written complaint and all responses from district staff. The Superintendent or designee shall respond to the complaint in writing within 10 working days.

If the Superintendent or designee finds it necessary to conduct further investigation, he/she may designate up to 10 additional working days for such investigation and shall respond to the complaint in writing within 10 working days of completing the investigation.

Level IV

If the matter is not resolved at Level III, either party may file a written appeal to the Board within 10 working days after receiving the Level III response. The Superintendent or designee shall provide the Board with all information presented at previous levels.

The Board shall grant the hearing request for the next regular Board meeting for which the matter can be placed on the agenda. Any complaint against a district employee shall be addressed in closed session in accordance with law. The Board shall render its decision within 10 working days.

The Board may appoint a hearing panel to review the complaint and previous decisions and make recommendations to the Board. The panel shall hear the appeal and render its decision within 10 working days.

Other Remedies

Complainants may appeal the Board's action to the California Department of Education. The Superintendent or designee shall ensure that complainants are informed that injunctions, restraining orders and other civil law remedies may also be available to them. This information shall be published with the district's nondiscrimination complaint procedures and included in any related notices. (Education Code 262.3)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

GOVERNMENT CODE

12920-12921 Nondiscrimination

12940-12948 Discrimination prohibited; unlawful practices, generally

UNITED STATES CODE, TITLE 29

621-634 Age Discrimination in Employment Act

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act of 1964

2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended

2000h-2-2000h-6 Title IX, 1972 Education Act Amendments

12101 – 12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, March, 1999

OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Protecting Students from Harassment and Hate Crime, January, 1999

WEB SITES

EEOC: <http://www.eeoc.gov>

OCR: <http://www.ed.gov/offices/OCR>

Regulation: SANTA BARBARA ELEMENTARY/HIGH SCHOOL DISTRICTS

Approved: March 8, 2000 Santa Barbara, California

Santa Barbara School Districts

Board Policy

BP 4144

Personnel

4244

4344

COMPLAINTS

The Board of Education recognizes the need to establish a process to allow employees and job applicants to have their concerns heard in an expeditious and unbiased manner. The Board expects that employees will make every effort to resolve complaints and disagreements informally before filing a formal complaint.

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

(cf. 3320 - Claims and Actions against the District)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

The Board prohibits retaliation against complainants. The Superintendent or designee shall keep a complainant's identity confidential, except to the extent necessary to investigate the complaint.

(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

All matters related to a complaint shall be kept confidential and any document, communication, or record regarding the complaint shall be placed in a separate file and shall not be placed in an employee's personnel file.

(cf. 4112.6/4212.6/4312.6 - Personnel Records)

Legal Reference:

EDUCATION CODE

200-262.4 *Prohibition of discrimination on the basis of sex*

35186 *Williams uniform complaint procedures*

44110-44114 *Reporting by school employees of improper governmental activity*

GOVERNMENT CODE

3543 *Public school employees' rights*

3543.1 *Rights of employee organizations*

53296-53299 *Disclosure of confidential information; whistleblower*

54957 *Closed session; personnel matters*

LABOR CODE

1102.5-1106 *Whistleblower protections*

CODE OF REGULATIONS, TITLE 5

4900-4965 *Nondiscrimination in district programs and activities*

Management Resources:

WEB SITES

CSBA: <http://www.csba.org>

Policy: SANTA BARBARA SCHOOL DISTRICTS

Adopted: November 18, 2008 Santa Barbara, California

Technical Revision: September 25, 2009

Santa Barbara School Districts

Administrative Regulation

AR 4144

Personnel

4244

4344

COMPLAINTS

Except as specified below, the following procedure shall be used for any complaint by an employee alleging misapplication of the district's policies, regulations, rules, or procedures or for "whistleblower" complaints by an employee or job applicant regarding an improper district activity including, but not limited to, an allegation of gross mismanagement, a significant waste of funds, an abuse of authority, or a specific danger to public health or safety.

(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)

Complaints alleging unlawful discrimination on any basis specified in the district's nondiscrimination policies, including complaints of sexual harassment, shall be resolved in accordance with the district's procedure for complaints regarding discrimination in employment.

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

Complaints regarding unlawful discrimination in district programs or the district's failure to comply with state or federal laws regarding educational programs shall be resolved in accordance with the district's Uniform Complaint Procedures. Complaints regarding sufficiency of textbook materials, teacher vacancy or misassignment, an urgent or emergency facility condition, or the failure to provide intensive instruction to students who did not pass the high school exit examination by the end of grade 12 shall be resolved in accordance with the district's Williams Uniform Complaint Procedures.

(Education Code 35186; 5 CCR 4621)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

For complaints regarding working conditions or other subjects of negotiation, the employee shall use the grievance procedure specified in the applicable collective bargaining agreement.

Any of the time limits specified in this procedure may be extended by written agreement between the district and complainant.

Step 1: Informal Complaint Process

Prior to instituting a formal, written complaint, the employee shall first discuss the issue with his/her supervisor or the principal of the school where the alleged act took place. Formal complaint procedures shall not be initiated until the employee has first attempted to resolve the complaint informally.

Step 2: Site Level Formal Complaint Process

If a complaint has not been satisfactorily resolved through the informal process in Step 1, the complainant may file a written complaint with his/her immediate supervisor or principal within 60 days of the act or event which is the subject of the complaint. If an employee fails to file a written complaint within 60 days, the complaint shall be considered settled on the basis of the answer given at the preceding step.

In the written complaint, the employee shall specify the nature of the problem, including names, dates, locations, witnesses, the remedy sought by the employee, and a description of informal efforts to resolve the issue.

Within 10 working days of receiving the complaint, the immediate supervisor or principal shall conduct any necessary investigation and meet with the complainant in an effort to resolve the complaint. Within five working days after the meeting, he/she shall prepare and send a written response to the complainant.

Step 3: District Level Appeal

If a complaint has not been satisfactorily resolved at Step 2, the complainant may file the written complaint with the Superintendent or designee within five working days of receiving the written response from the immediate supervisor or the principal. The complainant shall include all information presented to the immediate supervisor or principal at Step 2.

Within 10 working days of receiving the complaint, the Superintendent or designee shall conduct any necessary investigation, including reviewing the investigation and written response by the immediate supervisor or principal at Step 2, and shall meet with the complainant in an effort to resolve the complaint. Within five working days after the meeting, he/she shall prepare and send a written response to the complainant.

Step 4: Appeal to the Board of Education

If a complaint has not been satisfactorily resolved at Step 3, the complainant may file a written appeal to the Board within five working days of receiving the Superintendent or designee's response. All information presented at Steps 1, 2, and 3 shall be included with the appeal, and the Superintendent or designee shall submit to the Board a written report describing attempts to resolve the complaint and the district's response.

The Board may uphold the findings by the Superintendent or designee without hearing the complaint or the Board may hear the complaint at a regular or special Board meeting. The hearing shall be held in closed session if the complaint relates to matters that may be addressed in closed session in accordance with law.

(cf. 9321 - Closed Session Purposes and Agendas)

The Board shall make its decision within 30 days of the hearing and shall send its decision to all concerned parties. The Board's decision shall be final.

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