

West Contra Costa USD

Administrative Regulation

Discrimination, Harassment, Intimidation, And/Or Bullying Complaint Procedures

AR 5145.3

Students

Purpose and Authority

1. The West Contra Costa Board of Education (hereinafter referred to as the Board) recognizes that the District must comply with applicable federal and/or state laws and regulations governing discrimination, harassment, intimidation, and/or bullying. The District shall investigate complaints alleging failure to comply with applicable federal and/or state laws and regulations.
2. The District's obligations include identifying, investigating and documenting possible discrimination, harassment, intimidation, and/or bullying based on real or perceived race, ethnic group identification, national origin, immigration status, ancestry, sex, gender, gender identity, gender expression, sexual orientation, physical or mental disability, marital or parental status, or religion in any District program or activity. The District shall follow this Administrative Regulation 5145.3 (AR5145.3) to address allegations of such conduct.
3. The Superintendent shall ensure that employees designated to investigate and resolve complaints are knowledgeable about relevant laws and the programs for which they are responsible. Such employees may have access to legal counsel as determined by Superintendent or designee.
4. The Board recognizes that a neutral mediator can often suggest a resolution that is agreeable to all parties. The Superintendent or designee shall ensure that the mediation results are consistent with federal and/or state laws and regulations. Complainants will be informed of the option to participate in mediation, but are not obligated to do so. The complainant will never be asked to work out the problem directly with the person accused; rather, a trained individual will facilitate the mediation process. Complainants have right to end the process at any time and request an investigation. Mediation is never appropriate in the case of sexual assault.

Compliance Officer

The Board designates the following Compliance Officer to receive and investigate complaints and ensure District compliance with the law:

Rhonda Haney
Director, Title IX Educational Equity
West Contra Costa Unified School District
1108 Bissell Avenue
Richmond, CA 94801
(510) 307-4538
rhaney@wccusd.net

The Compliance Officer may designate an individual or individuals to investigate complaints under her supervision.

Notifications

This complaint procedure and corresponding complaint form (Attachment A) shall be distributed to every student and family in the Parent/Student Handbook that is sent home every year, and distributed at parent-teacher meetings, site council meetings, and to new students as part of the enrollment process. This

procedure and the complaint form shall be available at every school site and to every ethnic group in the District, from charter school administrators, from the following administrative offices: Bilingual; Transfer; Preschool; Student Welfare and Attendance; and from Executive Directors and Assistant Superintendents. This procedure and the complaint form shall be distributed to classified and certificated employees at their annual meetings at the beginning of each school year. This procedure shall be distributed in different languages to students of schools where 15% of more students speak a primary language other than English. The District will make additional copies of this procedure and the complaint form available free of charge.

Complaint Procedure

The following procedure shall be used to address all complaints that allege a violation of federal and/or state laws or regulations governing discrimination, harassment, intimidation, and/or bullying.

1. Filing of a Complaint

Any student, parent/guardian, third party, other individual, or public agency or organization may file a complaint with the Compliance Officer. Complaints alleging discrimination, harassment, intimidation, and/or bullying, including conduct prohibited by the District's Nondiscrimination/Harassment Policy - BP 5145.3, Sexual Harassment Policy - BP 5145.7, and Hate-Motivated Behavior Policy 5145.9, must be made no later than six months from later of (a) the date of the last act of alleged discrimination, harassment, intimidation, and/or bullying, or (b) the date the complainant became aware of the last alleged act. Complaints should be made in writing when possible, preferably using the complaint form provided by the District (Attachment A). If the Compliance Officer or designee receives a report of discrimination, harassment, intimidation or bullying, the Compliance Officer or designee shall inform the individual making the report of the resolution options under this procedure. If the complainant is unable to put a complaint in writing due to reasons such as illiteracy or disability, the Compliance Officer or designee shall help the complainant file the complaint. If a complaint is presented in another written

format, such as a letter or email, the District may request that the complainant complete the form. If there is a delay in obtaining a completed form, or the complainant refuses to transfer the information or otherwise complete the form but wishes to pursue the formal complaint process, the District may attach the letter to the form and open an investigation. The District will investigate reports of discrimination, harassment, intimidation or bullying falling under this procedure regardless of whether they are made in writing.

Consistent with the Board's Policies on Nondiscrimination/Harassment - BP 5145.3, Sexual and Gender-Based Harassment - BP 5145.7, and Hate-Motivated Behavior - BP 5145.9, any employee who receives such a complaint, or becomes aware of discrimination, harassment, intimidation or bullying, shall immediately report it to the Compliance Officer or principal or vice principal of the relevant school site. If the principal or vice principal receives such a report, they shall immediately inform the Compliance Officer so that the District may ensure it provides an appropriate response to the incident. If the incident involves a sexual assault, the Compliance Officer will contact law enforcement immediately if the principal or vice principal has not already done so.

2. Investigation of Discrimination, Harassment, Intimidation, And/Or Bullying Complaints

a. Within 10 calendar days of receiving the complaint, the Compliance Officer or designee shall meet with the complainant by telephone or in person allow the complainant and/or their representative(s) an opportunity to present the complaint and any evidence, or information that may lead to evidence, to support the allegation(s) in the complaint.

b. During the course of the investigation, the Compliance Officer or designee shall collect relevant documents, consider available physical evidence, and interview witnesses with information pertinent to the complaint.

c. Alternatively or in addition, the complainant or complainant's representative or the other

witnesses may also present information relevant to the complaint in writing to the Compliance Officer or designee.

d. The Compliance Officer or designee may obtain statements from other individuals who were witnesses to the alleged violation or who can provide relevant information concerning the alleged violation and review documents that may provide information relevant to the alleged violation.

e. Refusal by the complainant to provide the Compliance Officer or designee 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 allegations.

f. Refusal by the District to provide the Compliance Officer or designee 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 the evidence collected that the violation has occurred and may result in the imposition of a remedy in favor of the complainant.

g. Throughout the investigation, the Compliance Officer or Designee will maintain ongoing contact with the student allegedly targeted.

3. Confidentiality

The District respects students' and employees' rights to privacy. Discrimination complaints shall be investigated in a manner that protects the confidentiality of the parties and the facts to the extent possible. This includes keeping the identity of the complainant confidential except as necessary to carry out the investigation and implement remedies, as determined by the Compliance Officer or Designee on a case-by-case basis. The Compliance Officer or designee will inform witnesses and others involved in the resolution process of the importance of maintaining confidentiality.

If a complainant requests that the District not reveal their name or other identifiable information to the alleged perpetrator or that no investigation or disciplinary action be pursued, then the Compliance Officer or designee will inform the complainant that honoring the request may limit the ability to respond effectively, and that the District prohibits retaliation. If the complainant continues to request confidentiality, the Compliance Officer or designee must evaluate the request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students; the Compliance Officer will consider factors such as the seriousness of the alleged harassment, the complainant's age, and whether there have been other harassment complaints about the same individual.

If the Compliance Officer or designee determines that the District can honor the student's confidentiality request, the District will take reasonable steps to respond to the complaint consistent with the request. This may include, for example, increasing monitoring, supervision, or security where the misconduct occurred; providing

relevant education for students and employees; counseling the alleged perpetrator if this may be done without indirectly revealing the identity of the complainant; and actions to protect the complainant, such as providing support services, or changing schedules, assignments, or tests.

4. Interim Measures

The Compliance Officer or designee will consider whether, prior to the final outcome of the investigation, interim steps are necessary to protect the student allegedly targeted and the broader school community. Examples of interim measures include, but are not limited to:

a. Notifying the student targeted of how to receive mental and other health services, counseling, and other victim services;

- b. Providing academic support services to the student targeted;
- c. Ensuring no contact between the student targeted and alleged perpetrator in District programs and activities (e.g., through stay away orders); the District will take care to minimize the burden of such steps on the student targeted;
- d. Informing student targeted of option to transfer to a new school or academic program, if desired; and
- e. Informing the student targeted of how to report any recurring conduct or retaliation.

In the case of alleged sexual assault, the Compliance Officer or designee will take additional steps as necessary to ensure the targeted student is safe. This may include, for example, creating a safety plan and designating an individual at the site level to act as a support person during the investigation.

If the circumstances suggest a threat to others, the Compliance Officer or designee will ensure that the District informs relevant members of the school community. This may include, for example, notifying parents and employees if a student is sexually assaulted on the way home from school, or notifying employees of areas where harassment frequently occurs.

5. Referral to Law Enforcement, Other Agencies

Some alleged conduct may constitute both a violation of District policies and criminal activity. The Compliance Officer or designee will refer matters to law enforcement and other agencies as appropriate under the law or District policy, and inform the complainant of the right to file a criminal complaint.

The Compliance Officer or designee will follow this procedure regardless of whether the alleged conduct is also being investigated by another agency, unless the fact finding process would impede a law enforcement investigation. In such cases, the Compliance Officer or designee will determine whether interim measures to protect the well-being of the complainant and the school community and prevent retaliation are needed while the law enforcement agency's fact-gathering is in progress. Once notified that law enforcement has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the Compliance Officer or designee will promptly resume and complete its investigation.

6. Resolution of Complaint

The Compliance Officer or designee will review all relevant evidence gathered to: make factual determinations based on a preponderance of the evidence¹ for each allegation; reach conclusions regarding whether any substantiated conduct constituted discrimination, harassment, intimidation or bullying; and, where discrimination, harassment, intimidation or bullying is found, determine the appropriate remedial action. Remedial action will be designed to end the conduct, prevent its recurrence and address its effects on the student targeted and the broader school community.

Where remedial action includes proposed discipline of an employee, the District's Human Resources Department will give substantial weight to the factual findings, legal conclusions and recommendations of the Compliance Officer or designee in the disciplinary process; consult with the Compliance Officer or designee during the disciplinary process; and inform the Compliance Officer or designee of the final outcome of the disciplinary process.

Examples of appropriate remedial action for harassment, intimidation or bullying include:

- a. Interventions for the individual who engaged in the conduct, such as parent notification, counseling, guidance, education about the impact of the conduct, positive behavior support, referral to a student success team, transfer to alternative programs, denial of participation in extracurricular or co-curricular activities or other privileges, and discipline.

- b. Interventions for the student targeted, such as counseling, academic support, health services, assigning an escort to allow the student to move safely between classes, and instruction on how to report other incidents of harassment or retaliation.
- c. Separating the student targeted and the individual who engaged in the conduct, provided the separation does not penalize the student targeted.
- d. Follow-up inquiries with the student targeted and witnesses to ensure that the conduct has stopped and that they have not experienced any retaliation.
- e. Training or other interventions for the larger school community to ensure that students, staff and parents understand the types of behavior that constitute harassment, intimidation and bullying, that the District does not tolerate it, and how to report it.

The Compliance Officer or designee will contact the student targeted periodically for a reasonable period of time following conclusion of the investigation to determine whether there has been recurrence of the conduct or retaliation, and to assess the effectiveness of the remedial measures.

7. Notice to Complainant of Resolution of Complaint

- a. Within 60 calendar days of receiving the complaint, the Compliance Officer or designee shall prepare and send to the complainant a written report of the findings and decision, unless the complainant agrees in writing to extend the timeline. The timeline may be extended by the Compliance Officer or designee due to extenuating circumstances. If the timeline is extended, the Compliance Officer or designee will inform the complainant in writing of the extension and reason for the extension.

The report shall include:

- (1) A statement of the allegations investigated;
- (2) A summary of the steps taken to investigate the allegations;
- (3) The findings of fact based on a preponderance of the evidence gathered;
- (4) The District's conclusion of whether discrimination, harassment, intimidation or bullying did or did not occur;
- (5) The disposition of the complaint;
- (6) The rationale for the disposition of the complaint;
- (7) If the District concluded discrimination, harassment, intimidation or bullying occurred, a description of the District's response;
- (8) Notice of complainant's right to appeal to the California Department of Education (CDE) within 15 days of receiving the District's final determination and the procedures to be followed for initiating such an appeal. The appeal to CDE must specify the reason(s) for appealing the District's decision and should include a copy of the original complaint and the district's decision resolving the complaint;
- (9) For a complaint alleging conduct based on race, color, national origin, sex, gender, gender identity or disability, notice of the right to file a complaint with the United States Department of Education, Office for Civil Rights, and contact information for that agency; and
- (10) For a discrimination complaint, notice of right to seek civil law remedies no sooner than 60 days after filing an appeal with California Department of Education shall also be provided to the complainant by the District, as described in more detail in Section E of this regulation.

b. If an employee is disciplined as a result of the complaint, the report will specify all sanctions of which the complainant needs to be aware in order for the sanctions to be fully effective, such as requiring that the employee stay away from the complainant, temporarily or permanently prohibiting the employee from coming to work, or transferring the employee to another work location. The report shall otherwise 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.

8. Appeals to the California Department of Education or the Office For Civil Rights

The complainant may appeal the District's decision to the California Department of Education within 15 days of the District's written report of findings and decision and that the appeal must specify the reason(s) for appealing the District's decision and should include a copy of the original complaint and the district's decision resolving the complaint.

The complainant may file a complaint with the U.S. Department of Education, Office for Civil Rights within 60 days of the District's written report of findings or within 180 days of the underlying conduct.

9. Record Keeping

The Compliance Officer or designee will maintain all documentation of complaint investigations and any corrective actions taken in a system that allows the Compliance Officer or others to track incidents by school site and throughout the District.

10. Retaliation

Complainants and those who participate in the complaint resolution process are protected from retaliation by law and District policy. The Compliance Officer or designee will inform all involved individuals that retaliation is prohibited, and that anyone who feels they have experienced harassment, coercion, intimidation, or discrimination for filing a complaint or participating in the resolution process should inform the Compliance Officer or designee. The District will investigate reports of retaliation and, where retaliation is found, take separate remedial action.

11. Civil Law Remedies

Nothing in this administrative regulation precludes a complainant from pursuing available civil law remedies outside of the District's discrimination, harassment, intimidation, and/or bullying complaint procedure. Such remedies may include, but are not limited to, mediation centers, public/private interest attorneys, injunctions, and restraining orders. For discrimination complaints, a complainant must wait until sixty (60) calendar days have elapsed from the filing of an appeal with the California Department of Education before pursuing civil law remedies. The moratorium does not apply to injunctive relief or discrimination complaints under federal law, and is applicable only if the District has appropriately, and in a timely manner, apprised the complainant of their right to file a complaint. If the complainants elect to seek help and or retain the services of these public or private agencies, the District shall not bear the costs for these services.

For assistance you may contact:

The U.S. Department of Education, Office for Civil Rights
American Civil Liberties Union
Contra Costa Legal Services
NAACP Legal Defense Fund

revised: October 17, 2018