

Policy 1312.1: Complaints Concerning District Employees

Status: ADOPTED

Original Adopted Date: 06/01/1993 | **Last Revised Date:** 05/01/2019 | **Last Reviewed Date:** 05/01/2019

CSBA NOTE: The following Board policy may be subject to collective bargaining and should be revised to reflect district practice. See the accompanying administrative regulation for a sample complaint procedure.

The Governing Board recognizes its accountability to the public for the quality of the district's educational program and the performance of district employees. The district shall provide a process by which a complaint submitted by any person regarding an employee can be resolved impartially, expeditiously, and with minimal disruption to district operations and the educational program.

CSBA NOTE: In *Baca v. Moreno Valley Unified School District*, a federal district court found that a district policy barring criticism of employees at public board meetings violated the plaintiff's First Amendment rights by restricting the content of speech. The court further noted that the district could not legally prevent a person from speaking in open session, even if the speech was clearly defamatory. Thus, although the Governing Board may inform the speaker of appropriate district complaint procedures, it cannot prohibit public criticism of district employees. See BB 9323 - Meeting Conduct.

When a concern regarding an employee is presented during a Board meeting or to an individual Board member or employee outside of a Board meeting, the complainant shall be informed of the appropriate complaint procedure.

Any complaint regarding the Superintendent shall be initially filed in writing with the Board. The Board shall consult with legal counsel or appoint an appropriate agent to conduct the investigation.

The Superintendent or designee shall determine whether a complaint against any other employee 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. Any complaint of child abuse or neglect alleged against a district employee shall be reported to the appropriate local agencies in accordance with law. Any complaint alleging that an employee engaged in unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) in district programs and activities shall be filed in accordance with BP/AR 1312.3 - Uniform Complaint Procedures. Any complaint by an employee, job applicant, volunteer, intern, or independent contractor alleging unlawful discrimination or harassment by an employee shall be filed in accordance with AR 4030 - Nondiscrimination in Employment.

Any complaint subject to this policy and the accompanying administrative regulation shall be investigated by the principal, the employee's immediate supervisor, the Superintendent or designee, legal counsel, agent of the Board, and/or other appropriate person who is not the subject of the complaint or subordinate to the employee charged in the complaint. The complainant and the employee shall have an opportunity to present information relevant to the complaint.

CSBA NOTE: The following paragraph may be revised to reflect district practice. It is recommended that districts investigate all complaints, including those submitted anonymously, since failure to do so may subject the district to liability depending on the nature of the allegation. For example, the district can be held liable for civil damages for the sexual harassment of a student by an employee if the district is found to have been "deliberately indifferent" in its response to a complaint; see BP 5145.7 - Sexual Harassment.

A complaint that is filed anonymously may be investigated by the Superintendent or designee depending on the specificity and reliability of the information.

If a complainant requests confidentiality, the Superintendent or designee shall inform the complainant that the request may limit the district's ability to investigate the employee's conduct or take other necessary action. However, the Superintendent or designee shall take all reasonable steps to investigate and resolve the complaint without divulging the complainant's identity.

The Board prohibits retaliation against complainants.

Appeals

CSBA NOTE: The following optional section is for use by districts that allow appeals to the Board and may be revised to reflect district practice.

If either the complainant or the employee submits an appeal of the Superintendent's decision to the Board, the Board shall determine whether to uphold the Superintendent's decision without hearing the complaint, appoint an

appeals committee to advise the Board, or hear the appeal itself.

CSBA NOTE: Government Code 54957 authorizes the use of closed session for hearing specific complaints or charges against employees, unless the employee requests an open session. For detailed procedures and notice requirements, see BB 9321 - Closed Session Purposes and Agendas.

If the Board decides to hear the complaint, the matter shall be addressed in closed session in accordance with Government Code 54957 unless the employee requests that it be heard in open session. The Board shall review the original complaint and additional information provided by the Superintendent or designee regarding the steps taken to resolve the issue.

The Board's decision shall be final.
