

**CALIFORNIA DEPARTMENT OF
EDUCATION**
TONY THURMOND
State Superintendent of Public
Instruction

CA BOARD OF EDUCATION
LINDA DARLING-HAMMOND
President

NOTICE OF PROPOSED RULEMAKING

AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING THE UNIFORM COMPLAINT PROCEDURES

Notice published March 29, 2019

NOTICE IS HEREBY GIVEN that the State Superintendent of Public Instruction (SSPI) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SSPI, will hold a public hearing at 1:30 p.m. on May 13, 2019, at 1430 N Street, Room 1103, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SSPI requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Unruh Civil Rights Act, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Dianna Gutierrez, Education Equity UCP Office, 1430 N Street, Room 5401, Sacramento, CA 95814; telephone, 916-319-8239. It is recommended that assistance be requested at least two weeks prior to the hearing.

Pursuant to Government Code Section 11346.6(a)(3) and (b), because some of these regulations pertain to special education, the following provisions also apply:

Upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, the CDE shall provide that person a narrative description of the additions to, and deletions from, the regulations. The description shall identify each addition to or deletion from the regulations by reference to the subdivision, paragraph, subparagraph, clause, or subclause within the proposed regulation containing the addition or deletion. The description shall provide the express

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language proposed to be added to or deleted from the regulations and any portion of the surrounding language necessary to understand the change in a manner that allows for accurate translation by reading software used by the visually impaired.

The CDE shall provide the information described above within 10 business days, unless the CDE determines that compliance with this requirement would be impractical and notifies the requester of the date on which the information will be provided.

Notwithstanding any other law, if information is provided to a requester as described above, the CDE shall provide that requester at least 45 days from the date upon which the information was provided to the requester to submit a public comment regarding the proposed regulation. The CDE shall not take final action to adopt the regulation until the requester has submitted a public comment or the extended 45-day comment period expires, whichever occurs first.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Patricia Alverson, Regulations Coordinator
Administrative Support and Regulations Adoption Unit
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to regcomments@cde.ca.gov.

Comments must be received by the Regulations Coordinator prior to 5:00 p.m. on May 13, 2019. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SSPI may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

AUTHORITY AND REFERENCE

Authority: Sections 200, 220, 221.1, 222, 262.3, 8235.5, 8261, 33031, 32289, 33031, 33315, 35161, 46015, 48645.7, 48853, 48853.5, 49013, 49069.5, 49531, 49551, 49556, 51223, 51225.1, 51225.2, 51228.3, 52075, 54445, 52355, 52451, 56100, 56500.2, and 56845, Education Code; Section 11138, Government Code; 20 U.S.C. Section 1413; 7 C.F.R. Sections 210.19(a)(4), 215.1(a), 220.13(c), 225.11(b), 226.6(n), and 250.15(d); and 34 C.F.R. Sections 300.151-300.153.

References: Sections 200, 201, 210.1, 220, 222, 234.1, 260, 8235.5, 17002(d), 17592.72, 33126, 33315, 35186, 48987, 49010, 49013, 49556, 52075, 56500.1, 56500.2, and 60010, Education Code; Sections 11135, 11136, 11138, and 12960, Government Code; Section 11166, Penal Code; 7 C.F.R. Sections 210.19(a)(4), 215.1(a), 220.13(c), 225.11(b), 226.6(n), and 250.15(d); and 34 C.F.R. Sections 76.1, 76.783, 106.1-106.8, 299.10-299.11, and 300.151-300.153.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California has Uniform Complaint Procedures (UCP) in Title 5 of the California Code of Regulations, Section 4600 et seq., adopted by the State Board of Education in 1991 pursuant to its general rulemaking authority. These sections describe a system of processing complaints alleging unlawful discrimination or violation of state laws or regulations concerning a number of specific activities or programs that receive state or federal funding. The procedures are required under the Title 34 of the Code of Federal Regulations, Part 299, Subpart F: Complaint Procedures. The 2005 amendments revised the regulations to address the Williams Case Settlement codified at Education Code Section 35186 relating to complaints of deficiencies at schools related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment. The 2005 amendments also addressed and updated terminology in federal and state law; procedures for complaints relating to, and the specific groups entitled to protection from, discrimination; and investigation procedures. The 2013 amendments revised the regulations to address complaints relating to unlawful pupil fee laws codified at Education Code sections 49010 through 49013.

The proposed amendments to Title 5 are needed to address Assembly Bill (AB) 1808 (2018). Section 23 of AB 1808 mandated that the SSPI establish and implement a system of complaint processing known as the Uniform Complaint Procedures for specified programs. The bill also directed CDE to review the existing UCP regulations and commence rulemaking proceedings on or before March 31, 2019, to conform them as necessary to: enumerate additional activities or programs that the Legislature had made subject to the UCP in recent years; reference the federal provisions governing special education and child nutrition program complaints, as well as any UCP provisions

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still applicable to such complaints; and clarify timelines for the CDE's issuance of both direct investigation reports and written appeal decisions. Section 9 of AB 1808 made complaints of health and safety issues in state preschools in license-exempt local educational agencies (LEAs) subject to the UCP.

PROBLEM AGENCY INTENDS TO ADDRESS

These regulations fulfill the Legislature's directives in AB 1808 described above. In doing so, they align the regulations to current law. In addition to fulfilling the specific directives in AB 1808, the CDE takes the opportunity in these regulations to propose other changes that: update terminology; reflect changes in state and federal law; achieve clarity and consistency; and achieve more efficient administration of the UCP.

Determination of Inconsistency/Incompatibility with Existing State Regulations

The CDE reviewed all state regulations relating to complaint processes and found that none exist that are inconsistent or incompatible with these regulations regarding Uniform Complaint Procedures.

DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT

The SSPI has made the following initial determinations:

There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations or class of regulations.

The proposed regulations do not require a report to be made.

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Other non-discretionary costs or savings imposed on local agencies, including local educational agencies: None

Costs or savings in federal funding to the State: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SBE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on housing costs: None

Effect on small businesses: The proposed regulations would not have an effect on any small business because the proposed amendments only affect LEAs, not the private sector.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The SSPI concludes that it is unlikely that these proposed regulations will: 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: Amending these regulations will have specific benefits, including aligning them with current law, providing appropriate clarity and consistency, and ensuring more efficient administration of the UCP.

CONSIDERATION OF ALTERNATIVES

The SSPI must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SSPI, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the content of this regulation should be directed to:

Dianna Gutierrez, Education Administrator I
Education Equity UCP Office
California Department of Education

1430 N Street, Room 5602
Sacramento, CA 95814
Telephone: 916-319-8239

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or the backup contact person, Hillary Wirick, Regulations Analyst, at 916-319-0860.

INITIAL STATEMENT OF REASONS AND INFORMATION

The SBE has prepared an Initial Statement of Reasons for the proposed regulations and has available all the information upon which the proposal is based.

TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at <http://www.cde.ca.gov/re/lr/rr/>.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.