

## DRAFT

Yosemite USD

Administrative Regulation

AR 1312.1.1 (*Number not currently used*)

Community Relations

Alternate Complaint Process

The Governing Board (“Board”) recognizes the value of providing an alternate complaint process (“ACP”) to resolve certain complaints.

The Board intends that this ACP shall be used only in the unusual circumstances when a complaint relates to or arises from a District employee or employees whom the Board has excepted from the prohibitions of Board Policy 4112.8/4212.8/4312.8 and in accord with AR 1312.1.

The Board shall designate one or more qualified persons, with demonstrable experience and/or training in mediation, conciliation, employee discipline and public administration services, to serve as the District’s consultant (“Consultant”) under this ACP. The Consultant is authorized to investigate and mediate Complaints under this regulation. The Consultant, in consultation with the District’s legal counsel, is also authorized to prepare matters for disciplinary action. Such preparation includes, but is not limited to, reviewing personnel files and other documents, conducting further investigation, making disciplinary recommendations to the Board, and/or taking all other necessary action to prosecute employee discipline. The Consultant’s recommendations concerning employee discipline shall have the full force and effect as if made by the Superintendent.

No person who serves as a Consultant under this regulation shall be a District employee.

The ACP shall consist of the following procedures:

1. Informal Resolution. The Complainant shall make every effort to resolve a complaint at the earliest possible stage. Whenever feasible, the Complainant should communicate directly with the involved employee against whom the complaint is filed (“Respondent”) in order to resolve the Complainant’s concerns.
2. Written Complaint. If a Complainant is unable or unwilling to resolve the complaint directly with the Respondent, he/she may file a written complaint, submitted in a sealed envelope marked “Alternate Complaint Process,” with the Director of Human Resources. If the Complainant is unable to prepare the complaint in writing, a member of the administrative staff shall help him/her to do so upon request. A written complaint shall include:

- a. The full name and position of each employee involved;
- b. A brief but specific summary of the complaint and the facts surrounding it;
- c. A specific description of any prior attempt to discuss the complaint with the employee and reasons for the failure to resolve the matter at that level; and,
- d. A specific description of the requested remedy.

3. Referral to Consultant. The written complaint shall not be opened by the Human Resources Director, but shall be sent promptly to the Consultant. The Consultant shall promptly confirm his/her receipt of a written complaint with the Human Resources Director, whom shall then provide contact information to the Consultant for all employee(s) involved in the incident(s) identified in the complaint. The Human Resources Director shall then notify the Respondent of the complaint as soon as practicable or as otherwise required under any collective bargaining agreement that may be applicable to Respondent.

4. Investigation. The Consultant shall conduct any investigation needed to determine the facts surrounding the complaint. The Consultant is authorized to retain a private investigation firm on behalf of the District, if necessary, to provide assistance with an investigation. However, prior to retaining a private investigation firm, the Consultant shall advise the District's Chief Business Officer of the estimated cost of retaining such firm. Information disclosed during any investigation shall be confidential to the extent permitted by law.

5. Mediation. If, after conducting an investigation, the Consultant believes that the complaint may be resolved through mediation, the Consultant shall convene one or more meetings with the Complainant, Respondent and others, as needed, and shall serve as mediator for the dispute. If mediation resolves the complaint, the matter shall be deemed concluded.

(a) If, during mediation, the Consultant believes that additional information is necessary to resolve the complaint, the Consultant may conduct any additional investigation that is needed to resolve the complaint, including retaining a private investigation firm, as set forth in paragraph four (4).

(b) If mediation does not resolve the complaint, the Consultant shall prepare and submit a Mediation Report ("Report"), including findings of fact and a recommended resolution of the complaint, to the Complainant, Respondent and the Board. If either of the parties are not satisfied with the Report, they may continue with the ACP in accordance with paragraph seven (7) below.

6. Discipline. If, after conducting an investigation of the complaint, the Consultant believes there is a reasonable basis for the District to impose discipline against any employee, the Consultant, after consultation with the District's legal representatives, shall

provide all necessary notices of intended discipline and related materials to the affected employee(s), as required by law. In prosecuting employee discipline discovered through the ACP, the Consultant, District and Board shall follow all applicable provisions of the Education Code, Board Policies, Administrative Regulations, and/or collective bargaining agreements.

7. Request for Board Conference. If either the Complainant and/or the Respondent are not satisfied with the Consultant's Report and recommended resolution under paragraph 5(b) of this regulation, the Complainant and/or the Respondent may request a conference before the Board regarding the complaint by making such request within 15 work days after the Consultant placed the Report in the mail. The failure to make a timely request for a conference before the Board waives the right to a conference.

8. Conference. The Board may, at its sole discretion, hold a conference regarding the complaint. The conference shall take place in closed session with the parties. The Board may ask the parties to attend the conference to clarify the issues regarding complaint. No party may call witnesses on their behalf. Upon conclusion of the conference and after deliberations, the Board may draft its own Report, including findings of fact, or may adopt, modify, or reject the Consultant's Report and recommended resolution. Notice of the Board's action shall be mailed to the Complainant and Respondent within 5 work days after such action is taken. The decision of the Board shall be final.

9. Adoption of Report. The Board may also adopt the Consultant's Report and recommended resolution without holding a conference with the parties, in which case written notice of the Board's action shall be mailed to the Complainant and Respondent within 5 work days after such action is taken. The decision of the Board shall be final.

10. Retaliation Prohibited. In accordance with applicable law, the Governing Board prohibits retaliation against any District employee on the basis that they have complained, testified, or in any way participated in this ACP. However, an individual's participation in this ACP does not immunize him/her from discipline if he/she has engaged in conduct that would subject the employee to discipline.

Legal references:

GOVERNMENT CODE

1090-1097 Prohibitions applicable to specified officers

1125-1128 Incompatible activities

12940 Unlawful employment practices, exceptions

CALIFORNIA CODE OF REGULATIONS

Cal. Code Regs., tit. 2 sections 7286, 7292,

Education Code

35160 Permissive education code