



**DATE:** May 2, 2018

**TO:** All Fremont Unified School District Staff

**FROM:** Denise Herrmann, Ed.D., Associate Superintendent, Instructional Services  
Matthew Campbell, Ed.D., Director, Student Support Services

**RE:** Guidance Memorandum on Procedures for Processing, Investigating and Resolving Complaints or Reports of Discrimination Based Upon Race, Color or National Origin

## Introduction

Pursuant to Title VI of the 1964 Civil Rights Act (42 U.S.C. § 2000d) (“Title VI”), “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” The Fremont Unified School District (“District”) is responsible for ensuring compliance with Title VI and related state laws that prohibit discrimination, including harassment and bullying, based upon race, color or national origin. (See Ed. Code, §§ 200, 220, 234.1; Gov. Code, § 11135.) Consistent with this legal responsibility and the District’s commitment to nondiscrimination in District schools, programs and activities, this memorandum provides guidance to all District staff regarding the District’s procedures for processing, investigating and resolving complaints or reports of discrimination, harassment or bullying based upon race, color or national origin.

## Applicable District Policies and Regulations

The District maintains and is otherwise in the process of updating and/or adopting various Board Policies (“BP”) and Administrative Regulations (“AR”) that set forth policy and procedures for processing, investigating and resolving complaints or reports of discrimination, harassment or bullying based upon race, color or national origin. These BPs and ARs include:

- BP 1300— Nondiscrimination in District Programs and Activities;
- BP and AR 1312.3—Uniform Complaint Procedure;
- BP and AR 5131—Student Bullying; and
- BP and AR 5145.3— Nondiscrimination/Harassment.<sup>1</sup>

These District BPs and ARs are consistent with Title VI with respect to their prohibition on discrimination, harassment and bullying based upon discrimination, harassment or bullying based

1. Bullying based on race, color or national origin may be a form of discriminatory harassment.

Note: These BPs and ARs also address District policy and procedures for processing, investigating and resolving complaints or reports of discrimination, harassment or bullying based on disability, sex, gender, gender identity, or gender expression. Additional District BPs and ARs addressing discrimination, harassment and bullying based on sex, gender, gender identity or gender expression include BP and AR 5145.5—Transgender and Gender Variant Students, and BP and AR 5145.7—Sexual Harassment.

upon race, color or national origin. Additionally, BP and AR 5145.3 include specific procedures and instructions for processing, investigating and resolving complaints and reports of this nature, including the direction that such complaints may be subject to the District's Uniform Complaint Procedure and its appeal process pursuant to BP and AR 1312.3.

## **Governing District Procedures**

### **A. District Coordinator of Nondiscrimination/Compliance Officer**

The District's designated Coordinator of Nondiscrimination/Compliance Officer ("Compliance Officer") for complaints of discrimination, harassment or bullying based upon race, color or national origin is as follows:

Assistant Superintendent, Human Resources  
Fremont Unified School District  
4210 Technology Drive  
Fremont, CA 94538  
510.657.2350

### **B. Responsibilities Regarding Reporting Discrimination, Harassment or Bullying for All District Staff**

Any District staff member or school employee that *receives a complaint* of discrimination, harassment, or bullying should notify the Compliance Officer or site principal within a school day. Any District staff member or school employee who *observes* an incident that the staff member or school employee perceives to be discriminatory, including discriminatory harassment, intimidation, retaliation, or bullying, or to whom such an incident is reported shall report the incident to the Compliance Officer or principal within a school day whether or not the alleged victim files a complaint. (AR 5145.3 – Nondiscrimination/Harassment.)

### **C. What types of Conduct May Constitute Discriminatory Harassment or Bullying?**

Such conduct may include, but is not limited to, derogatory language (including racial epithets), intimidation and threats, unwanted physical contact and/or physical voice, and the use of derogatory language and images in graffiti, pictures or drawings, notes, emails, posting on the Internet and social networking sites, text messages, or voicemails, based on race, color or national origin. Specifically, such conduct may include disparaging comments or conduct regarding 1) the taste, smell, type, or color of food brought to school; 2) students' actual or perceived national origin or cultural background; 3) students' English Learner status, level of English language proficiency, or accent/intonation reflective of native language when speaking English; 4) students' names; 5) skin color; 6) articles of clothing; 7) cultural stereotypes or perceptions.

### **D. Initiation of Investigative Responsibilities by Site Principal and/or Compliance Officer**

When a verbal report of discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, is made to or received by the Compliance Officer or site principal, they shall encourage the student or parent/guardian to file the complaint in writing, pursuant to the provisions in AR 1312.3 – Uniform Complaint Procedure (UCP). Regardless of whether the student or parent/guardian chooses to file a written complaint or a UCP, oral reports are considered official and activate the District's complaint investigation procedures. In response to

any oral report alleging discriminatory conduct, as described above, the Compliance Officer or site principal must fill out the District complaint form.

### **E. District Process for Investigating Complaints/Reports of Discrimination Harassment, or Bullying.**

When a complaint or report of discrimination, harassment or bullying based upon race, color or national origin (or any other protected classification) is received by the principal, the principal or designee is required to investigate, and the following timelines will generally apply:

- Within a school day, if not sooner, staff report incident of discrimination, harassment or bullying to the site principal;
- Within 3 school days, site administration investigate, develop, and prepare a plan of action to address complaint; and
- Within 5 school days, site administration prepares a summary of their investigation report and forward findings and other documentation to District Student Support Services (“SSS”).

For an overview of bullying/harassment and to understand staff responsibilities, District staff should refer to the “FUSD Staff Guide,” a copy of which accompanies this guidance. This one-page resource delineates for staff:

- The types of bullying/harassment
- When bullying might be discriminatory
- Where bullying/harassment might occur
- How staff may learn of bullying/harassment
- How staff can intervene if they observe bullying/harassment
- Staff responsibilities with respect to reporting bullying/harassment
- Administrators’ investigative steps

To better understand District’s procedures, District staff should also refer to the **“FUSD Harassment/Bullying Investigation Protocol,” a copy of which accompanies this guidance.** This one-page resource summarizes FUSD Harassment/Bullying Investigation Protocol. The principal or principal’s designee will abide by the following procedures:

- The principal or designee shall promptly investigate all complaints of discrimination, harassment and bullying, and shall immediately notify the student complainant that an investigation will be conducted.
- As part of the investigation, the principal or designee shall talk individually with:
  - The complainant;
  - The respondent (person accused) of discrimination and/or harassment;<sup>2</sup>
  - Witnesses who saw the discrimination and/or harassment take place; and
  - Witnesses mentioned as having related information.
- The complainant and the respondent shall have an opportunity to describe the incident, present witnesses and other evidence of the discrimination and/or harassment, and put their complaint or response in writing.

---

<sup>2</sup> As used in this memorandum, “harassment” includes both harassment and conduct that might otherwise be characterized as bullying.

- The principal or designee shall discuss the complaint only with the people described above. When necessary to carry out the investigation or for other good reasons that apply to the particular situation, the principal or designee also may discuss the complaint with the following persons:
  - The Superintendent or designee;
  - The parent/guardian of the complainant;
  - The parent/guardian of the respondent of discrimination and/or harassment
  - A teacher or staff member whose knowledge of the students involved may help in determining who is telling the truth;
  - Child protective agencies responsible for investigating child abuse reports; and
  - Legal counsel for the District
- The principal or designee shall consider and implement any reasonable means to prevent further incidents of discrimination and/or harassment.
- When the complainant and the respondent of discrimination and/or harassment so agree, the principal or designee may arrange for them to resolve the complaint informally with the help of a counselor, teacher, administrator or trained mediator. The complainant shall never be asked to work out the problem directly with the accused person unless such help is provided.
- The principal or designee shall inform the student complainant, and when appropriate their parent or guardian, that they have the right to file a uniform complaint at any time in accordance with the District's Uniform Complaint Procedures – BP and AR 1312.3. If the student wishes to file a uniform complaint, the principal or designee shall assist the student in doing this.
- In reaching a decision about the complaint, the principal or designee may take into account:
  - Statements made by the persons identified above;
  - The details and consistency of each person's account;
  - Evidence of how the complainant reacted to the incident;
  - Evidence of past instances of discrimination and/or harassment by the accused person; and
  - Evidence of past discrimination and/or harassment complaints that were found to be untrue
- To judge the severity of the discrimination and/or harassment, the principal or designee may take into consideration:
  - How the misconduct affected one or more students' education;
  - The type, frequency and duration of the misconduct;
  - The number of persons involved;
  - The age and sex of the person accused of discrimination and/or harassment;
  - The subject(s) of the discrimination and/or harassment;
  - The place and situation where the incident occurred; and
  - Other incidents at the school
- Depending upon the extent and complexity of the investigation, within a reasonable period of time (approximately two weeks) after receiving the complaint, the principal or designee

shall determine whether or not the complainant was discriminated against and/or harassed.

- The principal or designee shall give the Superintendent or designee, i.e., the Director of SSS, a written report of the complaint and investigation. If the principal or designee verifies that discrimination and/or harassment occurred, this report shall describe the actions they took to end the discrimination and/or harassment, remedy the effects of the discrimination and/or harassment on the complaining student, and prevent retaliation or further discrimination and/or harassment. The principal or designee shall retain a copy of the report at the school site and forward a copy to the Compliance Officer.

#### **F. Corrective Actions and/or Remedies.**

Depending upon the results of the investigation by the principal or designee, they may institute corrective actions and/or remedies to address the alleged discrimination, harassment or bullying, including but not limited to:

- Corrective actions imposed on the individual(s) found to have engaged in the conduct that relate directly to the subject of the complaint, including but not limited to:
  - Disciplinary action, such as suspension or expulsion, as permitted by law, and where appropriate under the facts and circumstances.
  - Transfer from a class or school, as permitted by law, and where appropriate under the facts and circumstances;
  - Parent/guardian conference;
  - Education regarding the impact of the conduct on others;
  - Positive behavior support;
  - Counseling;
  - Restorative conversation;
  - Referral to a student success team; and
  - Denial of participation in extracurricular or co-curricular activities or other privileges as permitted by law; and
- Individual remedies offered or provided to the complainant, respondent, or another person who was the subject of the complaint, including but not limited to:
  - Counseling;
  - Academic support;
  - Health services;
  - Information regarding available resources and how to report similar incidents or retaliation;
  - Separation of the victim from any other individuals involved, provided the separation does not penalize the victim;
  - Restorative justice;
  - Follow-up inquiries to ensure that the conduct has stopped and there has been no retaliation; and
  - Determination of whether any past actions of the victim that resulted in discipline were related to the treatment the victim received and described in the complaint.
- Systemic measures the school has taken to eliminate a hostile environment, remedy its effects and prevent its recurrence.

## **G. Procedure for the Appeal**

If dissatisfied with the findings, decision, and/or outcome of an investigation of a complaint of discrimination, harassment or bullying based on race, color or national origin, the complainant or student may appeal that outcome under the District's BP/AR 1312.3 – Uniform Complaint Procedures. Any such appeal may be filed with the District's Compliance officer as identified herein and in AR 1312.3, and will be processed under the procedures set forth in AR 1312.3.

## **H. Ability to File Uniform Complaint at Outset.**

As noted above under Part C., a complainant may file a complaint of harassment or bullying either with the District Compliance Officer pursuant to BP and AR 1312.3 – UCP – or seek investigation and resolution at the site level. Complainants are encouraged to begin by seeking investigation and resolution of harassment and bullying complaints at the site level first. However, complainants may file a UCP at any time.

## **Conclusion**

If you have any questions or concerns regarding any of the guidance provided in this memorandum, please contact your site principal or other immediate supervisor, or the District's Coordinator of Nondiscrimination/Compliance Officer.

Enclosure: FUSD Harassment/Bullying Investigation Protocol  
Board Policy and Administrative Regulation 5145.3  
Board Policy and Administrative Regulation 1312.3  
Board Policy and Administrative Regulation 5131