



# Law Office of Marleen L. Sacks

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May 7, 2021

Lynn A. Ryan, Uniform Complaint Compliance Officer  
San Diego Unified School District  
4100 Normal Street, Room 2129  
San Diego, CA 92169

Sent via email: [lryan@sandi.net](mailto:lryan@sandi.net)

Re: Transfer of Uniform Complaint Submitted by CFER

Dear Ms. Ryan:

This office represents the California Foundation for Equal Rights Foundation ("CFER"). I am responding to your two letters to Wenyuan Wu dated May 5, 2021. In brief, we are requesting that the District properly investigate the complaint filed by CFER on April 9, 2021, as a prompt, thorough and neutral investigation is clearly required by existing District policy and state law.

In your letter, you claim that, in sum and substance, CFER's complaint outlined an allegation of employment discrimination, and pursuant to California Code of Regulations, transfer to the DFEH is appropriate. You go on to state: "You have the right to appeal your complaint to the California Department of Education..." While you do not explicitly state that the District is dismissing the complaint, and refusing to investigate, I can only assume, from the above verbiage, that this is your intention. For the reasons outlined in detail below, the District is not permitted to dismiss the complaint with no investigation. We believe that the District's apparent dismissal of the complaint, with no effort to investigate whatsoever, demonstrates a manifest lack of good faith compliance with clear law and District policy, and possibly even a deliberate attempt to violate the law.

## A. California Code of Regulation Requirements

Contrary to the assertions set forth in your letter, the CFER complaint did not simply allege "employment discrimination." Rather, the letter alleged systematic violations of state and federal law prohibiting race discrimination, racial harassment, bullying and intimidation, as well as multiple violations of Board Policy. The letter alleged that specific employees of the District violated these laws and policies.

California Code of Regulations Title 5, Section 4619 provides: "The Uniform Complaint Procedures in this chapter shall apply to complaints relating to all of the matters addressed in Education Code section 33315(a)(1)." It also provides: "Nothing in these regulations shall prevent an LEA from using its local uniform complaint procedure to address complaints not described in subsection (b)."

Education Code Section 33315(a)(1) (F) specifically makes the Uniform Complaint Procedure applicable to: "The filing of complaints that allege unlawful discrimination, harassment, intimidation, or bullying against any protected group as identified under Sections 200 and 220 and Section 11135 of the Government Code, including any actual or perceived characteristic as set forth in Section 422.55 of the Penal Code...in any program or activity conducted by an educational institution." Clearly, a complaint that alleges the type of allegations set forth in CFER's complaint, and which CFER alleged created a hostile environment based on race, meets the criteria for a "complaint alleging unlawful discrimination, harassment, and intimidation/bullying." Therefore, the District clearly has a legal obligation to investigate the complaint under UCP guidelines.

Title 5, Section 4630(c) provides in relevant part: "A complaint of alleged unlawful discrimination, harassment, intimidation or bullying may be filed by an individual who alleges that that individual has personally suffered unlawful discrimination, harassment, intimidation or bullying, or by one who believes any specific class of individuals has been subjected to discrimination, harassment, intimidation or bullying prohibited by this part, or by a duly authorized representative who alleges that an individual student has been subjected to discrimination, harassment, intimidation, or bullying." As noted above, CFER is alleging that a group of individuals has been subject to discrimination, harassment, intimidation and bullying. The regulation clearly encompasses this sort of complaint. The regulation goes on to outline the District's responsibility to investigate the complaint by providing: "An investigation of a discrimination, harassment, intimidation or bullying complaint shall be conducted in a manner that protects confidentiality of the parties and maintains the integrity of the process."

Title 5, Section 4631 provides: "Upon receipt of a complaint, the LEA person responsible for the investigation of the complaint...shall conduct and complete an investigation of

the complaint in accordance with the local procedures adopted...and prepare a written LEA Investigation Report. This 60-day time period may be extended with the written agreement of the complainant."

Section (b) provides: "The investigation shall include an opportunity for the complainant...to present evidence or information leading to evidence to support the allegations of non-compliance with state and federal laws and/or regulations."

Again, the regulations make clear that the District itself has the obligation to investigate these types of complaints. To our knowledge, the District has not even commenced its investigation, and 30 days of the 60-day timeline have already passed.

## B. District Policy Requirements

District Board Policy 1312.3 governs the Uniform Complaint process for your District. Section 2 outlines the District's obligation to process Uniform Complaints alleging "the occurrence of unlawful discrimination (such as discriminatory harassment, intimidation or bullying) in district programs...against any person, based on his/her actual or perceived characteristics...based on the following protected groups: (\*) color; (\*) ethnicity (\*) ethnic group identification; (\*) race).

The policy also provides: "The District must investigate all allegations of discrimination and implement effective corrective actions whenever necessary and appropriate and maintain documentation of complaints and their resolution..."

The policy provides: "When an allegation that is not subject to the UCP is included in a UCP complaint, the District shall refer the non-UCP allegation to the appropriate staff or agency and shall investigate and, if appropriate, resolve the UCP-related allegation(s) through the District's UCP."

Lastly, the policy provides: "Any complaint alleging employment discrimination shall be sent to the Human Resources Department for review and investigating [sic] who shall notify the complainant of the transfer."

Administrative Regulation 1312.3 provides additional details regarding how complaints must be investigated. It provides: "Within 10 business days after the compliance officer receives the complaint, the compliance officer shall begin an investigation into the complaint. Within three business days of initiating the investigation, the compliance officer shall provide the complainant and/or his/her representative with the opportunity to present the information contained in the complaint to the compliance officer..." To our knowledge, the District has not yet begun its investigation of the complaint, and has

not complied with any of the other procedural requirements. To our knowledge, the District has taken no action whatsoever to correct or otherwise address the racially discriminatory environment described in the complaint. The District only has approximately 30 days left to complete its investigation, and it has not yet even begun. While we are willing to grant an extension to ensure that a complete and professional investigation is conducted, we must be assured that the District is proceeding in good faith, and is truly committed to complying with the legally mandated process.

It should also be noted that the District has other Board policies that make it clear that the District has an obligation to conduct its own investigation. See e.g., Administrative Regulation 9430 (Citizen complaints against District employees). See also Administrative Regulation 4030, which provides: "All allegations of discrimination in employment...shall be investigated and resolved in accordance with procedures specified in this Administrative Regulation." This regulation provides: "The coordinator shall initiate an impartial investigation of an allegation of discrimination or harassment within five business days of receiving notice of the alleged discriminatory or harassing behavior, regardless of whether a written complaint has been filed... The coordinator shall meet with the complainant to describe the district's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The coordinator shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough, and will be conducted in a manner that provides all the parties due process and reaches reasonable conclusions based on the evidence collected... If the coordinator determines that a detailed fact-finding investigation is necessary, he/she shall initiate the investigation immediately. As part of this investigation, the coordinator ...should interview the complainant, the person accused, and other persons who could be expected to have relevant information."

As far as we are aware, the District has complied with none of these requirements. The policy makes clear that filing a complaint with the DFEH is optional; the District does not simply have the option of unilaterally referring a complaint to the DFEH and refusing to investigate the complaint itself.

### C. Additional Policy Violations

In reviewing the District's board policies, it is evident that the conduct alleged in the CFER complaint also states a violation of Administrative Procedure 7046, which provides in relevant part: "During assigned hours of duty, political activities are prohibited." It also provides: "Instructors and teachers are free to follow their own political or religious beliefs without interference. However, when such subjects are properly a matter of class concern, instructors or teachers must present opposing viewpoints fully without attempting to indoctrinate students with their own personal beliefs."

In conclusion, we request that the District commence an investigation into the CFER complaint immediately, as required by existing policies and procedures. We ask that the investigation be conducted by a trained attorney investigator with experience in conducting investigations such as this, who has the relevant training and expertise. We ask that you contact either me or Wenyuan immediately to advise as to the following: (1) the name and contact information for the retained investigator; (2) the anticipated timeline for the investigation; (3) a confirmation that the investigation will be conducted in a prompt, thorough and neutral manner, as required by law.

We look forward to hearing from you soon.

Very truly yours,

A handwritten signature in black ink that reads "Marleen L. Sacks". The signature is written in a cursive, flowing style.

Marleen L. Sacks

Cc: Acacia Thede (via email)  
Andra Michele Green (via email)