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January 8, 2007

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: No. CSM. 03-TC-02
Uniform Complaint Procedures (K-12)

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 5, CCR, sections included in the test claim.

Sincerely,



Keith B. Petersen

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8 BEFORE THE
9 COMMISSION ON STATE MANDATES
10 STATE OF CALIFORNIA

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|----|---------------------------------|---|--|
| 11 | Supplement to the: |) | No. CSM. 03-TC -02 |
| 12 | |) | |
| 13 | Test Claim Filed July 28, 2003 |) | <u>Uniform Complaint Procedures (K-12)</u> |
| 14 | |) | |
| 15 | |) | History Index for |
| 16 | |) | Title 5, California Code of Regulations |
| 17 | by Solana Beach School District |) | |
| 18 | |) | |
| 19 | |) | Section 4600 |
| 20 | |) | Section 4610 |
| 21 | |) | Section 4611 |
| 22 | |) | Section 4620 |
| 23 | |) | Section 4621 |
| 24 | |) | Section 4622 |
| 25 | |) | Section 4630 |
| 26 | |) | Section 4631 |
| 27 | |) | Section 4632 |
| 28 | |) | Section 4640 |
| 29 | |) | Section 4650 |
| 30 | |) | Section 4651 |
| 31 | |) | Section 4652 |
| 32 | |) | Section 4660 |
| 33 | |) | Section 4661 |
| 34 | |) | Section 4662 |
| 35 | |) | Section 4663 |
| 36 | |) | Section 4664 |
| 37 | |) | Section 4665 |
| 38 | |) | Section 4670 |
| 39 | |) | |
| 40 | |) | |

1 SUPPLEMENTAL INFORMATION

2 This supplement to the test claim provides an index and copy of each change to
3 the Title 5, CCR, sections included in the test claim. The Registers cited are attached
4 as Exhibit A. Amended language is underlined (new language) or stricken out (deleted
5 language).

6 HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

- 7 **Register 92-03** § 4600: New section added.
8 § 4610: New section added.
9 § 4611: New section added.
10 § 4620: New section added.
11 § 4621: New section added.
12 § 4622: New section added.
13 § 4630: New section added.
14 § 4631: New section added.
15 § 4632: New section added.
16 § 4640: New section added.
17 § 4650: New section added.
18 § 4651: New section added.
19 § 4652: New section added.
20 § 4660: New section added.
21 § 4661: New section added.
22 § 4662: New section added.

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CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and complete to the best of my own knowledge or information or belief, and that the attached regulations are true and correct copies of documents from archives of a recognized law library.

EXECUTED this 8th day of January 2008, at Sacramento, California



FOR THE TEST CLAIMANT

Keith Petersen, President

SixTen and Associates

ATTACHMENT

Exhibit A Title 5, CCR Registers

Title 5, CCR, 92-03

§ 4600
§ 4610
§ 4611
§ 4620
§ 4621
§ 4622
§ 4630
§ 4632
§ 4640
§ 4650

§ 4651
§ 4652
§ 4660
§ 4661
§ 4662
§ 4663
§ 4664
§ 4665
§ 4670

(2) The plan has been approved by the school advisory council established under Section 4423;

(3) In the case of a school district in which there are one or more schools described in subsection (b) and there are also one or more other participating schools, the local educational agency makes EIA funds available for children in such schools described in subsection (b) in amounts which, per educationally disadvantaged child served, equal or exceed the amount of such funds made available per educationally disadvantaged child served in such other schools;

(4) EIA funds may be provided to such schools in amounts which, per child served who is not educationally disadvantaged, equal the amount of funds provided under this section which, per educationally disadvantaged child served, are made available for children in such schools; and

(5) The average per-pupil expenditure in schools described in subsection (b) (excluding amounts expended under this section) for the fiscal year in which the plan is to be carried out will not be less than such expenditure in such schools in the previous fiscal year.

(d) The Superintendent of Public Instruction may approve the plan of any local educational agency for a schoolwide program if that plan meets the requirements of subsection (c).

(e) For any school with an approved plan under this section, the local school district shall be relieved of requirements with respect to:

- (1) Maintaining separate accounting records for each funding source,
- (2) Identifying particular students as being eligible to participate, and
- (3) Demonstrating that services provided from those funding sources are supplementary to the base program. The local district shall, however, demonstrate that the services provided in such schools are substantially greater than services furnished to schools without funding and shall meet all other school plan requirements contained in law and regulations.

NOTE: Authority cited: Sections 54004-54005, Education Code. Reference: 20 U.S.C. 2753.

Article 2. School Security

§ 4502. Improvement of School Security.

School districts may request that the Superintendent of Public Instruction approve a specific portion of the EIA funds they receive be designated for expenditure for noninstructional costs to improve school security. Such noninstructional expenditures may be used to meet costs arising from incidents of vandalism, necessary security costs, insurance costs, and/or other costs directly related to school security. In such application, school districts will specify the amounts of such funds and the purpose of such expenditures. No school district shall request an amount for such purposes which exceeds the portion of \$2,000,000 that the student population (K-12) of such district represents of the student population (K-12) of the state.

NOTE: Authority cited: Section 54007, Education Code. Reference: Section 54007, Education Code.

§ 4503. Alternative Program Options for Special Needs.

(a) EIA funds may be used to carry out any or all of the three alternative special program options permitted by this section subject to the provisions of subsection (b).

(b) Program options permitted by subsections (c), (d), and (e) of this section may only be exercised if:

(1) The school parent advisory council has approved and the district parent advisory council has reviewed the implementation of such option.

(2) The school proposing to exercise such option is a school which is participating in the state compensatory education program.

(3) Not more than 25 percent of a district's EIA allocation is expended to carry out the program options authorized by this section and the schoolwide program options authorized by Sections 4500 and 4501.

(4) A schoolwide needs assessment has been conducted to determine the necessity of providing such option(s).

(c) Students who have been eligible and have participated in compensatory education programs in accordance with the objective criterion est-

ablished by the district pursuant to Sections 4414 and 4415 may continue to participate in such services, even though such student no longer meets the objective criterion, if such student met the objective criterion in either of the two preceding fiscal years.

(d) In schools with more than 50 percent of their students from low income families (determined in accordance with Section 4412), students who do not meet the objective criterion established by the district pursuant to Sections 4414 and 4415, but who test below the 90th percentile (as established through the use of the appropriate test instruments pursuant to Section 4414) may be eligible to receive excess cost services in order that they may be assisted in reaching their full potential.

(e) If adequately documented in a schoolwide needs assessment, a participating SCE school may use EIA funds to conduct a schoolwide project which is explicitly designed to provide assistance to the educationally disadvantaged students attending such schools.

NOTE: Authority cited: Section 54005, Education Code. Reference: Section 54004.1, Education Code.

Subchapter 8. Bilingual Education Programs

NOTE: Authority cited: Section 54020, Education Code. Reference: Section 54004.7, Education Code.

HISTORY

1. Repealer of Chapter 8 (Sections 4300-4305) filed 9-5-79; effective thirtieth day thereafter (Register 79, No. 36). For history of former chapter, see Registers 78, No. 20; 77, No. 39; and 75, No. 21.

Subchapter 9. Bilingual-Bicultural Education Programs

NOTE: Authority cited: Section 54020, Education Code. Reference: Section 54004.7, Education Code.

HISTORY

1. Repealer of Chapter 9 (Articles 1-4; Sections 4310-4322, not consecutive) filed 9-5-79; effective thirtieth day thereafter (Register 79, No. 36). For history of former chapter, see Registers 78, No. 20; 77, No. 39; and 77, No. 13.

Chapter 5.1. Uniform Complaint Procedures

Subchapter 1. Complaint Procedures

Article 1. Definitions

§ 4600. General Definitions.

As used in this Chapter, the term:

(a) "Appeal" means a request made in writing to a level higher than the original reviewing level by an aggrieved party requesting reconsideration or a reinvestigation of the lower adjudicating body's decision.

(b) "Complainant" means any individual, including a person's duly authorized representative or an interested third party, public agency, or organization who files a written complaint alleging violation of federal or state laws or regulations, including allegations of unlawful discrimination in programs and activities funded directly by the state or receiving any financial assistance from the state.

(c) "Complaint" means a written and signed statement alleging a violation of a federal or state law or regulation, which may include an allegation of unlawful discrimination. If the complainant is unable to put the complaint in writing, due to conditions such as illiteracy or other handicaps, the public agency shall assist the complainant in the filing of the complaint.

(d) "Complaint Investigation" means an administrative process used by the Department or local agency for the purpose of gathering data regarding the complaint.

(e) "Complaint Procedure" means an internal process used by the Department or local agency to process and resolve complaints.

(f) "Compliance Agreement" means an agreement between the Department and a local agency, following a finding of noncompliance by the Department, developed by the local agency and approved by Department to resolve the noncompliance.

(g) "Days" means calendar days unless designated otherwise.

(h) "Department" means the California Department of Education.

(i) "Direct State Intervention" means the steps taken by the Department to initially investigate complaints or effect compliance.

(j) "Local Agency" means a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services. "Local educational agency" includes any public school district and county office of education.

(k) "Mediation" means a problem-solving activity whereby a third party assists the parties to a dispute in resolving the problem.

(l) "State Mediation Agreement" means a written, voluntary agreement, approved by the Department, which is developed by the local agency and complainant with assistance from the Department to resolve an allegation of noncompliance.

(m) "State Agency" means the State Departments of Mental Health or Health Services or any other state administrative unit that is or may be required to provide special education or related services to handicapped pupils pursuant to Government Code section 7570 et seq.

(n) "Superintendent" means the Superintendent of Public Instruction or his or her designee.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 210, 220, and 260, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 2. Purpose and Scope

§ 4610. Purpose and Scope.

(a) This Chapter applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination, in accordance with the provisions of Title 34, CFR, Sections 76.780-783 and 106.8; Title 22, CCR, Sections 98300-98382; and California Education Code Sections 49556 and 8257. The purpose of this Chapter is to establish a uniform system of complaint processing for specified programs or activities which receive state or federal funding.

(b) This Chapter applies to the following programs administered by the Department:

(i) Adult Basic Education established pursuant to Education Code sections 8500 through 8538 and 52500 through 52616.5;

(ii) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a);

(iii) Migrant Education established pursuant to Education Code sections 54440 through 54445;

(iv) Vocational Education established pursuant to Education Code sections 52300 through 52480;

(v) Child Care and Development programs established pursuant to Education Code sections 8200 through 8493;

(vi) Child Nutrition programs established pursuant to Education Code sections 49490 through 49560; and

(vii) Special Education programs established pursuant to Education Code sections 56000 through 56885 and 59000 through 59300.

(c) This Chapter also applies to the filing of complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or

activity conducted by a local agency, which is funded directly by, or that receives or benefits from any state financial assistance.

NOTE: Authority cited: Sections 232, 8261, 33031, 49531, 49551, 54445, 52355, 52451, and 56100(a) and (j), Education Code; Section 11138, Government Code. Reference: Sections 210, 220, 260, and 49556, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4611. Referring Complaint Issues to Other Appropriate State or Federal Agencies.

The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this Chapter unless these procedures are made applicable by separate interagency agreements:

(a) Allegations of child abuse shall be referred to the applicable County Department of Social Services (DSS), Protective Services Division or appropriate law enforcement agency.

(b) Health and safety complaints regarding a Child Development Program shall be referred to Department of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.

(c) Discrimination issues involving Child Nutrition Programs or Title IX of the Educational Amendments of 1972 shall be referred to the U.S. Office of Civil Rights (OCR). Title IX complainants will only be referred to the OCR if there is no state discrimination law or regulation at issue. Unless otherwise negotiated through a memorandum of understanding/agreement, a preliminary inquiry and/or investigation concerning these complaints will be conducted by OCR. The complainant shall be notified by certified mail if his or her complaint is transferred to OCR by the Superintendent.

(d) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to Title 22, CCR, Section 98410. The complainant shall be notified by certified mail of any DFEH transferral.

(e) Allegations of fraud shall be referred to the responsible Department Division Director and the Department's Legal Office.

NOTE: Authority cited: Section 33031, Education Code; Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 3. Local Agency Compliance

§ 4620. Local Educational Agency Responsibilities.

Each local education agency shall have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Each local educational agency shall investigate complaints alleging failure to comply, and seek to resolve those complaints in accordance with the procedures set out in this Chapter.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4621. District Policies and Procedures.

(a) Each local educational agency shall adopt policies and procedures consistent with this Chapter for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remain confidential as appropriate. School Districts and County Offices of Education shall submit their policies and procedures to the local governing board for adoption within one year from the effective date of this chapter. Upon adoption, the district may forward a copy to the Superintendent.

(b) Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) re-

responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. The local educational agency's policies shall ensure that the person(s), employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4622. Notice; Notice Recipients; Notice Requirements.

Each local educational agency shall annually notify in writing, as applicable, its students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties of their local educational agency complaint procedures, including the opportunity to appeal to the Department and the provisions of this Chapter. The notice shall include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of the notice of any civil law remedies that may be available, and of the appeal and review procedures contained in sections 4650, 4652, and 4671 of this Chapter. This notice shall be in English, and when necessary, in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135 and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 4. Local Complaint Procedures

§ 4630. Filing a Local Complaint; Procedures, Time Lines.

(a) For other than discrimination complaints, any individual, public agency or organization may file a written complaint with the administrator/superintendent of the local educational agency, alleging a matter which, if true, would constitute a violation by that local educational agency of federal or state law or regulation governing the programs listed in section 4610(b) of this Chapter.

(b) An investigation of alleged unlawful discrimination shall be initiated by filing a complaint not later than six months from the date the alleged discrimination occurred, or the date the complainant first obtained knowledge of the facts of the alleged discrimination unless the time for filing is extended by the Superintendent, upon written request by the complainant setting forth the reasons for the extension. Such extension by the Superintendent shall be made in writing. The period for filing may be extended by the Superintendent for good cause for a period not to exceed 90 days following the expiration of the time allowed. The Superintendent shall respond immediately upon receipt of requests for extensions.

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who believes an individual or any specific class of individuals has been subjected to discrimination prohibited by this part.

(2) The complaint shall be filed with the local educational agency director/district superintendent or his or her designee, unless the complainant requests direct intervention by the Department pursuant to Article 6 of this Chapter.

(3) An investigation of a discrimination complaint shall be conducted in a manner that protects confidentiality of the parties and the facts.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4631. Responsibilities of the Local Agency.

(a) Within 60 days from receipt of the complaint, the local educational agency superintendent or his or her designee shall complete the investigation of the complaint in accordance with the local procedures developed pursuant to section 4621 and prepare a written Local Educational Agency Decision. This time period may be extended by written agreement of the complainant.

(b) The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, and local educational agency representatives to present information relevant to the complaint. The investigation may include an opportunity for the parties to the dispute to meet to discuss the complaint or to question each other or each other's witnesses.

(c) The Local Educational Agency Decision (the Decision), shall be in writing and sent to the complainant within sixty (60) days from receipt of the complaint by the local agency. The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the Department, and the procedures to be followed for initiating an appeal to the Department.

(d) Local Educational Agencies may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation. Conducting local mediation shall not extend the local time lines for investigating and resolving complaints at the local level unless the complainant agrees, in writing, to the extension of the time line. In no event shall mediation be mandatory in resolving complaints.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4632. Forward to Superintendent.

Upon notification by the Superintendent that the Local Educational Agency Decision has been appealed to the state level pursuant to section 4652, the local educational agency shall forward the following to the Superintendent:

- (a) The original complaint;
- (b) A copy of the Local Educational Agency Decision;
- (c) A summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision;
- (d) A report of any action taken to resolve the complaint;
- (e) A copy of the local educational agency complaint procedures; and
- (f) Such other relevant information as the Superintendent may require.

NOTE: Authority cited: Section 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 5. State Complaint Procedures

§ 4640. Filing a State Complaint That Has Not First Been Filed at the Local Agency; Time Lines, Notice, Appeal Rights.

(a) Referral to the Local Educational Agency for Local Resolution.

(1) If a complaint is erroneously first sent to the Superintendent without local educational agency investigation, the Superintendent shall immediately forward the complaint to the local educational agency for processing in accordance with Article 4 of this Chapter, unless circumstances necessitating Department intervention as described at Section 4650 exist.

(2) The complainant(s) shall be sent a letter to notify him, her, or them of 1) the referred complaint, 2) the State request for local educational agency resolution, and 3) to advise of Department appeal procedures.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 6. Direct State Intervention

§ 4650. Basis of Direct State Intervention.

(a) The Superintendent shall directly intervene without waiting for local agency action if one or more of the following conditions exists:

(i) The complaint includes an allegation, and the Department verifies, that a local educational agency failed to comply with the complaint procedures required by this Chapter;

(ii) Discrimination is alleged by the complainant and the facts alleged indicate that the complainant will suffer an immediate loss of some benefit such as employment or education if the Department does not intervene. However, nothing in this section gives the Department jurisdiction over employment discrimination claims.

(iii) The complaint relates to agencies other than local educational agencies funded through the Child Development and Child Nutrition Programs;

(iv) The complainant requests anonymity and presents clear and convincing evidence and the Department verifies that he or she would be in danger of retaliation if a complaint were filed locally, or has been retaliated against because of past or present complaints;

(v) The complainant alleges that the local educational agency failed or refused to implement the final decision resulting from its local investigation or local Mediation Agreement;

(vi) The local agency refuses to respond to the Superintendent's request for information regarding a complaint;

(vii) The complainant alleges and the Department verifies, or the Department has information that no action has been taken by the local educational agency within 60 calendar days of the date the complaint was filed locally.

(viii) For complaints relating to special education the following shall also be conditions for direct state intervention:

(A) The complainant alleges that a public agency, other than a local educational agency, as specified in Government Code section 7570 et seq., fails or refuses to comply with an applicable law or regulation relating to the provision of free appropriate public education to handicapped individuals;

(B) The complainant alleges that the local educational agency or public agency fails or refuses to comply with the due process procedures established pursuant to federal and state law and regulation; or has failed or refused to implement a due process hearing order;

(C) The complainant alleges facts that indicate that the child or group of children may be in immediate physical danger or that the health, safety or welfare of a child or group of children is threatened.

(D) The Complainant alleges that a handicapped pupil is not receiving the special education or related services specified in his or her Individualized Educational Program (IEP).

(E) The complaint involves a violation of federal law governing special education, 20 U.S.C. section 1400 et seq., or its implementing regulations.

(b) The complaint shall identify upon which basis, as described in paragraph (a) of this section, that direct filing to the State is being made.
NOTE: Authority cited: Section 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4651. Direct State Intervention Time Line.

When the Superintendent receives a complaint requesting direct State intervention, the Superintendent shall determine whether the complaint meets one or more of the criterion specified in Section 4650 for direct

State intervention and shall immediately notify the complainant by mail of his or her determination. If the complaint is not accepted, it shall be referred for local investigation pursuant to section 4631, or referred to another agency pursuant to Section 4611.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4652. Appealing Local Agency Decisions.

(a) Any complainant(s) may appeal a Local Educational Agency Decision to the Superintendent by filing a written appeal with the Superintendent within (15) days of receiving the Local Educational Agency Decision. Extensions for filing appeals may be granted, in writing, for good cause.

(b) The complainant shall specify the reason(s) for appealing the local educational agency decision.

(c) The appeal shall include:

(1) a copy of the locally filed complaint; and

(2) a copy of the Local Educational Agency Decision.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 7. State Resolution Procedures

§ 4660. Department Resolution Procedures.

(a) When direct State intervention is warranted pursuant to any provision of section 4650, or when an appeal has been filed of a local agency decision pursuant to Section 4652, the following procedures shall be used to resolve the issues of the complaint:

(1) The Department shall offer to mediate the dispute which may lead to a state mediation agreement; and

(2) The Department shall conduct an on-site investigation if either the district or the complainant waives the mediation process or the mediation fails to resolve the issues.

(b) If the complaint involves several issues, nothing shall prohibit the parties from agreeing to mediate some of the issues while submitting the remainder for Department investigation. Mediation shall be conducted within the 60 day time line specified in Section 4662(d), and

(c) Mediation shall not exceed thirty (30) days unless the local or public agency and the complainant agree to an extension.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4661. Mediation Procedures; State Mediation Agreements; Notice.

(a) Initial process.

(1) Agency and Complainant(s) Notification. Each party in the dispute shall be contacted by the Department and offered the mediation process as a possible means of resolving the complaint. Should the parties agree to enter into mediation, written confirmation shall be sent indicating the time and place of the mediation conference, and the allegations to be addressed.

(2) Upon local agency and complainant acceptance of the Department's offer to mediate, the allegations to be addressed shall be sent by certified mail to each party.

(3) The Superintendent shall appoint a trained mediator or mediation team to assist the parties in reaching a voluntary agreement.

(b) Mediation Results - State Mediation Agreement.

(1) The mediation results will be documented in a state mediation agreement and signed by the involved parties to the dispute using the fol-

lowing forms as appropriate. (Stipulation to Initiate Mediation, Form CS-19; Signed Mediation Agreement Letter to District, Form CS-24; and Mediation Process Agreement, Form CS-25).

(2) The mediator or mediation team shall confirm that the agreement is consistent with all applicable state and federal laws and regulations.

(3) A copy of the written state mediation agreement shall be sent to each party.

(4) The compliance status of a local agency will revert to noncompliance if the local agency does not perform the provisions of the mediation agreement within the time specified in the mediation agreement.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4662. On-Site Investigation Process; Appointment, Notification, Time Line; Extending Investigation Time Lines.

(a) If either party waives mediation or the mediation fails, in part or in whole, those remaining unresolved issues shall be addressed through the investigation process.

(b) Appointment.

If an on-site investigation is necessary, an investigator(s) shall be appointed by the Superintendent.

(c) Agency and Complainant(s) Notification

At least two weeks prior to the date of an investigation, each party in the dispute shall be sent written notification by the Department of the name(s) of the investigator(s) and the investigation date(s). The notice shall explain the investigation process.

(d) Time line.

An investigation shall be completed within sixty (60) days after receiving a request for direct intervention or an appeal request, unless the parties have agreed to mediate and agree to extend the time lines. The Superintendent or his or her designee may grant extensions for the investigation only if exceptional circumstances exist with respect to the particular complaint, and provided that the complainant is informed of the extension and the reasons therefore and provided that the facts supporting the extension are documented and maintained in the complaint file.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4663. Department Investigation Procedures.

(a) The investigator(s) shall request all documentation regarding the allegations. The investigator(s) shall interview the complainant(s), agency administrators, staff, related committees/groups, and any other involved persons, as appropriate, to determine the facts in the case. An opportunity shall be provided for the complainant(s), or the complainant's(s') representative, or both, and the agency involved to present information.

(b) Refusal by the local agency or complainant to provide the investigator with access to records and other information relating to the complaint which the investigator is privileged to review, or any other obstruction of the investigative process shall result in either a dismissal of the complaint or imposition of official applicable sanctions against the local agency.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4664. Department Investigation Report.

An investigation report shall be submitted to the Superintendent for review and approval. The investigation report shall include the following information:

(1) A transmittal Letter that includes information about how the agency or the complainants may appeal the decision to the Office of the State Superintendent;

(2) General procedures of the investigation;

(3) Citations of applicable law and regulations;

(4) Department findings of facts;

(5) Department conclusions;

(6) Department required actions, if applicable;

(7) Department recommended actions, if applicable; and

(8) Time line for corrective actions, if applicable.

(c) Report Time line.

An investigation report shall be mailed to the parties within sixty (60) days from the date of receipt of the request for direct state intervention or an appeal, unless the parties have participated in mediation and agreed to an extension of the mediation time lines or the Superintendent has granted an extension pursuant to Section 4662(d).

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4665. Discretionary Reconsideration or Appeal of SDE Investigation Report.

(a) Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The Superintendent may, within fifteen (15) days of receipt of the request, respond in writing to the parties either modifying the conclusions or required corrective actions of the Department report or denying the request outright. During the pending of the Superintendent's reconsideration, the Department report remains in effect and enforceable.

(b) Appeals by private agencies regarding Child Care Food Programs shall be made to the State Office of Administrative Hearings in accordance with applicable laws rather than the Superintendent. Appeals from investigations of complaints involving Child Development contractors, whether public or private, shall be made to the Superintendent of Public Instruction as provided in subsection (a) except as otherwise provided in Division 19 of Title 5 of the Code of California Regulations.

(c) For those programs governed by Part 76 of Title 34 of the Code of Federal Regulations, the parties shall be notified of the right to appeal to the United States Secretary of Education.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.1 and 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 8. Enforcement—State Procedures to Effect Compliance

§ 4670. Enforcement.

(a) Upon determination that a local agency violated the provisions of this chapter, the Superintendent shall notify the local agency of the action he or she will take to effect compliance. The Superintendent may use any means authorized by law to effect compliance, including:

(1) The withholding of all or part of the local agency's relevant state or federal fiscal support;

(2) Probationary eligibility for future state or federal support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state or federal funding to a local agency under this chapter shall be made until the Superintendent has determined that compliance cannot be secured by voluntary means.

(c) If the Superintendent determines that a Child Development Contractor's Agreement shall be terminated, the procedures set forth in sections 8257(d) or 8400 et seq. of the Education Code and the regulations

promulgated pursuant thereto (Chapter 19 of Title 5, CCR, commencing with section 17906), shall be followed.

(d) If the Superintendent determines that a school district or county office has failed to comply with any provision of sections 49550 through 49554 of the Education Code, the Superintendent shall certify such non-compliance to the Attorney General for investigation pursuant to section 49556 of the Education Code.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4671. Federal Review Rights.

If the Superintendent elects to withhold funds from a local agency that refuses or fails to comply in a program governed by 34 CFR Part 76, the Superintendent shall notify the local agency of the decision to withhold funding and of the local agency's rights of appeal pursuant to 34 CFR section 76.401.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Chapter 5.2. Improvement of Elementary and Secondary Education

NOTE: Authority cited: Section 52039, Education Code. Reference: Sections 52013 and 52039(b)(2), Education Code.

HISTORY

1. Expired by own terms 12-31-78 (Register 80, No. 25). For prior history, see Register 77, No. 47.

Chapter 6. Certified Personnel

Subchapter 1. General Provisions

Article 1. Code of Ethics of the Teaching Profession

HISTORY

1. Amendment and renumbering of Article 1 (Sections 5480-5485) to Article 7 (Sections 80130-80132) of Chapter 1 of Part VII, filed 12-16-77; effective thirtieth day thereafter (Register 77, No. 51). For prior history, see Register 77, No. 21; and Register 70, No. 17.

Article 2. Employment and Dismissal

§ 5500. Statement a Condition to Employment.

The governing board shall not employ a person in a position requiring certification qualifications unless the person first files with the governing board his statement in writing that he has not entered into a valid contract

[The next page is 53.]

Title 5, CCR, Register 92-18

§ 4611

(e) "Complaint Procedure" means an internal process used by the Department or local agency to process and resolve complaints.

(f) "Compliance Agreement" means an agreement between the Department and a local agency, following a finding of noncompliance by the Department, developed by the local agency and approved by Department to resolve the noncompliance.

(g) "Days" means calendar days unless designated otherwise.

(h) "Department" means the California Department of Education.

(i) "Direct State Intervention" means the steps taken by the Department to initially investigate complaints or effect compliance.

(j) "Local Agency" means a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services. "Local educational agency" includes any public school district and county office of education.

(k) "Mediation" means a problem-solving activity whereby a third party assists the parties to a dispute in resolving the problem.

(l) "State Mediation Agreement" means a written, voluntary agreement, approved by the Department, which is developed by the local agency and complainant with assistance from the Department to resolve an allegation of noncompliance.

(m) "State Agency" means the State Departments of Mental Health or Health Services or any other state administrative unit that is or may be required to provide special education or related services to handicapped pupils pursuant to Government Code section 7570 et seq.

(n) "Superintendent" means the Superintendent of Public Instruction or his or her designee.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 210, 220, and 260, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 2. Purpose and Scope

§ 4610. Purpose and Scope.

(a) This Chapter applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination, in accordance with the provisions of Title 34, CFR, Sections 76.780-783 and 106.8; Title 22, CCR, Sections 98300-98382; and California Education Code Sections 49556 and 8257. The purpose of this Chapter is to establish a uniform system of complaint processing for specified programs or activities which receive state or federal funding.

(b) This Chapter applies to the following programs administered by the Department:

- (i) Adult Basic Education established pursuant to Education Code sections 8500 through 8538 and 52500 through 52616.5;
- (ii) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a);
- (iii) Migrant Education established pursuant to Education Code sections 54440 through 54445;
- (iv) Vocational Education established pursuant to Education Code sections 52300 through 52480;
- (v) Child Care and Development programs established pursuant to Education Code sections 8200 through 8493;
- (vi) Child Nutrition programs established pursuant to Education Code sections 49490 through 49560; and
- (vii) Special Education programs established pursuant to Education Code sections 56000 through 56885 and 59000 through 59300.

(c) This Chapter also applies to the filing of complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or

activity conducted by a local agency, which is funded directly by, or that receives or benefits from any state financial assistance.

NOTE: Authority cited: Sections 232, 8261, 33031, 49531, 49551, 54445, 52355, 52451, and 56100(a) and (j), Education Code; Section 11138, Government Code. Reference: Sections 210, 220, 260, and 49556, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4611. Referring Complaint Issues to Other Appropriate State or Federal Agencies.

The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this Chapter unless these procedures are made applicable by separate interagency agreements:

(a) Allegations of child abuse shall be referred to the applicable County Department of Social Services (DSS), Protective Services Division or appropriate law enforcement agency. However, nothing in this section relieves the Department from investigating complaints pursuant to section 4650(a)(viii)(C).

(b) Health and safety complaints regarding a Child Development Program shall be referred to Department of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.

(c) Discrimination issues involving Child Nutrition Programs or Title IX of the Educational Amendments of 1972 shall be referred to the U.S. Office of Civil Rights (OCR). Title IX complainants will only be referred to the OCR if there is no state discrimination law or regulation at issue. Unless otherwise negotiated through a memorandum of understanding/agreement, a preliminary inquiry and/or investigation concerning these complaints will be conducted by OCR. The complainant shall be notified by certified mail if his or her complaint is transferred to OCR by the Superintendent.

(d) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to Title 22, CCR, Section 98410. The complainant shall be notified by certified mail of any DFEH transferral.

(e) Allegations of fraud shall be referred to the responsible Department Division Director and the Department's Legal Office.

NOTE: Authority cited: Sections 33031, 71020 and 71025, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136 and 11138, Government Code; 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).
2. Amendment of subsection (a) and NOTE filed 4-27-92 as an emergency; operative 4-27-92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 8-25-92 or emergency language will be repealed by operation of law on the following day.

Article 3. Local Agency Compliance

§ 4620. Local Educational Agency Responsibilities.

Each local education agency shall have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Each local educational agency shall investigate complaints alleging failure to comply, and seek to resolve those complaints in accordance with the procedures set out in this Chapter.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4621. District Policies and Procedures.

(a) Each local educational agency shall adopt policies and procedures consistent with this Chapter for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remain confidential as appropriate. School Districts and County Of-

nces of Education shall submit their policies and procedures to the local governing board for adoption within one year from the effective date of this chapter. Upon adoption, the district may forward a copy to the Superintendent.

(b) Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. The local educational agency's policies shall ensure that the person(s), employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4622. Notice; Notice Recipients; Notice Requirements.

Each local educational agency shall annually notify in writing, as applicable, its students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties of their local educational agency complaint procedures, including the opportunity to appeal to the Department and the provisions of this Chapter. The notice shall include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of the notice of any civil law remedies that may be available, and of the appeal and review procedures contained in sections 4650, 4652, and 4671 of this Chapter. This notice shall be in English, and when necessary, in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135 and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 4. Local Complaint Procedures

§ 4630. Filing a Local Complaint; Procedures, Time Lines.

(a) For other than discrimination complaints, any individual, public agency or organization may file a written complaint with the administrator/superintendent of the local educational agency, alleging a matter which, if true, would constitute a violation by that local educational agency of federal or state law or regulation governing the programs listed in section 4610(b) of this Chapter.

(b) An investigation of alleged unlawful discrimination shall be initiated by filing a complaint not later than six months from the date the alleged discrimination occurred, or the date the complainant first obtained knowledge of the facts of the alleged discrimination unless the time for filing is extended by the Superintendent, upon written request by the complainant setting forth the reasons for the extension. Such extension by the Superintendent shall be made in writing. The period for filing may be extended by the Superintendent for good cause for a period not to exceed 90 days following the expiration of the time allowed. The Superintendent shall respond immediately upon receipt of requests for extensions.

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who believes an individual or any specific class of individuals has been subjected to discrimination prohibited by this part.

(2) The complaint shall be filed with the local educational agency director/district superintendent or his or her designee, unless the complainant requests direct intervention by the Department pursuant to Article 6 of this Chapter.

(3) An investigation of a discrimination complaint shall be conducted in a manner that protects confidentiality of the parties and the facts.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4631. Responsibilities of the Local Agency.

(a) Within 60 days from receipt of the complaint, the local educational agency superintendent or his or her designee shall complete the investigation of the complaint in accordance with the local procedures developed pursuant to section 4621 and prepare a written Local Educational Agency Decision. This time period may be extended by written agreement of the complainant.

(b) The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, and local educational agency representatives to present information relevant to the complaint. The investigation may include an opportunity for the parties to the dispute to meet to discuss the complaint or to question each other or each other's witnesses.

(c) The Local Educational Agency Decision (the Decision), shall be in writing and sent to the complainant within sixty (60) days from receipt of the complaint by the local agency. The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the Department, and the procedures to be followed for initiating an appeal to the Department.

(d) Local Educational Agencies may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation. Conducting local mediation shall not extend the local time lines for investigating and resolving complaints at the local level unless the complainant agrees, in writing, to the extension of the time line. In no event shall mediation be mandatory in resolving complaints.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4632. Forward to Superintendent.

Upon notification by the Superintendent that the Local Educational Agency Decision has been appealed to the state level pursuant to section 4652, the local educational agency shall forward the following to the Superintendent:

- (a) The original complaint;
- (b) A copy of the Local Educational Agency Decision;
- (c) A summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision;
- (d) A report of any action taken to resolve the complaint;
- (e) A copy of the local educational agency complaint procedures; and
- (f) Such other relevant information as the Superintendent may require.

NOTE: Authority cited: Section 232 and 33031; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 5. State Complaint Procedures

§ 4640. Filing a State Complaint That Has Not First Been Filed at the Local Agency; Time Lines, Notice, Appeal Rights.

(a) Referral to the Local Educational Agency for Local Resolution.

(1) If a complaint is erroneously first sent to the Superintendent without local educational agency investigation, the Superintendent shall immediately forward the complaint to the local educational agency for processing in accordance with Article 4 of this Chapter, unless

circumstances necessitating Department intervention as described at Section 4650 exist.

(2) The complainant(s) shall be sent a letter to notify him, her, or them of 1) the transferred complaint, 2) the State request for local educational agency resolution, and 3) to advise of Department appeal procedures.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 6. Direct State Intervention

§ 4650. Basis of Direct State Intervention.

(a) The Superintendent shall directly intervene without waiting for local agency action if one or more of the following conditions exists:

(i) The complaint includes an allegation, and the Department verifies, that a local educational agency failed to comply with the complaint procedures required by this Chapter;

(ii) Discrimination is alleged by the complainant and the facts alleged indicate that the complainant will suffer an immediate loss of some benefit such as employment or education if the Department does not intervene. However, nothing in this section gives the Department jurisdiction over employment discrimination claims.

(iii) The complaint relates to agencies other than local educational agencies funded through the Child Development and Child Nutrition Programs;

(iv) The complainant requests anonymity and presents clear and convincing evidence and the Department verifies that he or she would be in danger of retaliation if a complaint were filed locally, or has been retaliated against because of past or present complaints;

(v) The complainant alleges that the local educational agency failed or refused to implement the final decision resulting from its local investigation or local Mediation Agreement;

(vi) The local agency refuses to respond to the Superintendent's request for information regarding a complaint;

(vii) The complainant alleges and the Department verifies, or the Department has information that no action has been taken by the local educational agency within 60 calendar days of the date the complaint was filed locally.

(viii) For complaints relating to special education the following shall also be conditions for direct state intervention:

(A) The complainant alleges that a public agency, other than a local educational agency, as specified in Government Code section 7570 et seq., fails or refuses to comply with an applicable law or regulation relating to the provision of free appropriate public education to handicapped individuals;

(B) The complainant alleges that the local educational agency or public agency fails or refuses to comply with the due process procedures established pursuant to federal and state law and regulation; or has failed or refused to implement a due process hearing order;

(C) The complainant alleges facts that indicate that the child or group of children may be in immediate physical danger or that the health, safety or welfare of a child or group of children is threatened.

(D) The Complainant alleges that a handicapped pupil is not receiving the special education or related services specified in his or her Individualized Educational Program (IEP).

(E) The complaint involves a violation of federal law governing special education, 20 U.S.C. section 1400 et seq., or its implementing regulations.

(b) The complaint shall identify upon which basis, as described in paragraph (a) of this section, that direct filing to the State is being made.

NOTE: Authority cited: Section 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4651. Direct State Intervention Time Line.

When the Superintendent receives a complaint requesting direct State intervention, the Superintendent shall determine whether the complaint meets one or more of the criterion specified in Section 4650 for direct State intervention and shall immediately notify the complainant by mail of his or her determination. If the complaint is not accepted, it shall be referred for local investigation pursuant to section 4631, or referred to another agency pursuant to Section 4611.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4652. Appealing Local Agency Decisions.

(a) Any complainant(s) may appeal a Local Educational Agency Decision to the Superintendent by filing a written appeal with the Superintendent within (15) days of receiving the Local Educational Agency Decision. Extensions for filing appeals may be granted, in writing, for good cause.

(b) The complainant shall specify the reason(s) for appealing the local educational agency decision.

(c) The appeal shall include:

(1) a copy of the locally filed complaint; and

(2) a copy of the Local Educational Agency Decision.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 7. State Resolution Procedures

§ 4660. Department Resolution Procedures.

(a) When direct State intervention is warranted pursuant to any provision of section 4650, or when an appeal has been filed of a local agency decision pursuant to Section 4652, the following procedures shall be used to resolve the issues of the complaint:

(1) The Department shall offer to mediate the dispute which may lead to a state mediation agreement; and

(2) The Department shall conduct an on-site investigation if either the district or the complainant waives the mediation process or the mediation fails to resolve the issues.

(b) If the complaint involves several issues, nothing shall prohibit the parties from agreeing to mediate some of the issues while submitting the remainder for Department investigation. Mediation shall be conducted within the 60 day time line specified in Section 4662(d), and

(c) Mediation shall not exceed thirty (30) days unless the local or public agency and the complainant agree to an extension.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4661. Mediation Procedures; State Mediation Agreements; Notice.

(a) Initial process.

(1) Agency and Complainant(s) Notification. Each party in the dispute shall be contacted by the Department and offered the mediation process as a possible means of resolving the complaint. Should the parties agree to enter into mediation, written confirmation shall be sent indicating the time and place of the mediation conference, and the allegations to be addressed.

(2) Upon local agency and complainant acceptance of the Department's offer to mediate, the allegations to be addressed shall be sent by certified mail to each party.

(3) The Superintendent shall appoint a trained mediator or mediation team to assist the parties in reaching a voluntary agreement.

(b) **Mediation Results – State Mediation Agreement.**

(1) The mediation results will be documented in a state mediation agreement and signed by the involved parties to the dispute using the following forms as appropriate. (Stipulation to Initiate Mediation, Form CS-19; Signed Mediation Agreement Letter to District, Form CS-24; and Mediation Process Agreement, Form CS-25).

(2) The mediator or mediation team shall confirm that the agreement is consistent with all applicable state and federal laws and regulations.

(3) A copy of the written state mediation agreement shall be sent to each party.

(4) The compliance status of a local agency will revert to noncompliance if the local agency does not perform the provisions of the mediation agreement within the time specified in the mediation agreement.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4662. On-Site Investigation Process; Appointment, Notification, Time Line; Extending Investigation Time Lines.

(a) If either party waives mediation or the mediation fails, in part or in whole, those remaining unresolved issues shall be addressed through the investigation process.

(b) **Appointment.**

If an on-site investigation is necessary, an investigator(s) shall be appointed by the Superintendent.

(c) **Agency and Complainant(s) Notification**

At least two weeks prior to the date of an investigation, each party in the dispute shall be sent written notification by the Department of the name(s) of the investigator(s) and the investigation date(s). The notice shall explain the investigation process.

(d) **Time line.**

An investigation shall be completed within sixty (60) days after receiving a request for direct intervention or an appeal request, unless the parties have agreed to mediate and agree to extend the time lines. The Superintendent or his or her designee may grant extensions for the investigation only if exceptional circumstances exist with respect to the particular complaint, and provided that the complainant is informed of the extension and the reasons therefore and provided that the facts supporting the extension are documented and maintained in the complaint file.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4663. Department Investigation Procedures.

(a) The investigator(s) shall request all documentation regarding the allegations. The investigator(s) shall interview the complainant(s), agency administrators, staff, related committees/groups, and any other involved persons, as appropriate, to determine the facts in the case. An opportunity shall be provided for the complainant(s), or the complainant's(s') representative, or both, and the agency involved to present information.

(b) Refusal by the local agency or complainant to provide the investigator with access to records and other information relating to the complaint which the investigator is privileged to review, or any other obstruction of the investigative process shall result in either a dismissal of the complaint or imposition of official applicable sanctions against the local agency.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4664. Department Investigation Report.

An investigation report shall be submitted to the Superintendent for review and approval. The investigation report shall include the following information:

(1) A transmittal Letter that includes information about how the agency or the complainants may appeal the decision to the Office of the State Superintendent;

(2) General procedures of the investigation;

(3) Citations of applicable law and regulations;

(4) Department findings of facts;

(5) Department conclusions;

(6) Department required actions, if applicable;

(7) Department recommended actions, if applicable; and

(8) Time line for corrective actions, if applicable.

(c) **Report Time line.**

An investigation report shall be mailed to the parties within sixty (60) days from the date of receipt of the request for direct state intervention or an appeal, unless the parties have participated in mediation and agreed to an extension of the mediation time lines or the Superintendent has granted an extension pursuant to Section 4662(d).

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4665. Discretionary Reconsideration or Appeal of SDE Investigation Report.

(a) Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The Superintendent may, within fifteen (15) days of receipt of the request, respond in writing to the parties either modifying the conclusions or required corrective actions of the Department report or denying the request outright. During the pending of the Superintendent's reconsideration, the Department report remains in effect and enforceable.

(b) Appeals by private agencies regarding Child Care Food Programs shall be made to the State Office of Administrative Hearings in accordance with applicable laws rather than the Superintendent. Appeals from investigations of complaints involving Child Development contractors, whether public or private, shall be made to the Superintendent of Public Instruction as provided in subsection (a) except as otherwise provided in Division 19 of Title 5 of the Code of California Regulations.

(c) For those programs governed by Part 76 of Title 34 of the Code of Federal Regulations, the parties shall be notified of the right to appeal to the United States Secretary of Education.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.1 and 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 8. Enforcement—State Procedures to Effect Compliance

§ 4670. Enforcement.

(a) Upon determination that a local agency violated the provisions of this chapter, the Superintendent shall notify the local agency of the action he or she will take to effect compliance. The Superintendent may use any means authorized by law to effect compliance, including:

(1) The withholding of all or part of the local agency's relevant state or federal fiscal support;

(2) Probationary eligibility for future state or federal support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state or federal funding to a local agency under this chapter shall be made until the Superintendent has determined that compliance cannot be secured by voluntary means.

(c) If the Superintendent determines that a Child Development Contractor's Agreement shall be terminated, the procedures set forth in sections 8257(d) or 8400 et seq. of the Education Code and the regulations promulgated pursuant thereto (Chapter 19 of Title 5, CCR, commencing with section 17906), shall be followed.

(d) If the Superintendent determines that a school district or county office has failed to comply with any provision of sections 49550 through 49554 of the Education Code, the Superintendent shall certify such non-compliance to the Attorney General for investigation pursuant to section 49556 of the Education Code.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4671. Federal Review Rights.

If the Superintendent elects to withhold funds from a local agency that refuses or fails to comply in a program governed by 34 CFR Part 76, the Superintendent shall notify the local agency of the decision to withhold funding and of the local agency's rights of appeal pursuant to 34 CFR section 76.401.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Chapter 5.2. Improvement of Elementary and Secondary Education

NOTE: Authority cited: Section 52039, Education Code. Reference: Sections 52013 and 52039(b)(2), Education Code.

HISTORY

1. Expired by own terms 12-31-78 (Register 80, No. 25). For prior history, see Register 77, No. 47.

Chapter 6. Certified Personnel

Subchapter 1. General Provisions

Article 1. Code of Ethics of the Teaching Profession

HISTORY

1. Amendment and renumbering of Article 1 (Sections 5480-5485) to Article 7 (Sections 80130-80132) of Chapter 1 of Part VIII, filed 12-16-77; effective thirtieth day thereafter (Register 77, No. 51). For prior history, see Register 77, No. 21; and Register 70, No. 17.

Article 2. Employment and Dismissal

§ 5500. Statement a Condition to Employment.

The governing board shall not employ a person in a position requiring certification qualifications unless the person first files with the governing board his statement in writing that he has not entered into a valid contract

[The next page is 53.]

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§ 4611

(e) "Complaint Procedure" means an internal process used by the Department or local agency to process and resolve complaints.

(f) "Compliance Agreement" means an agreement between the Department and a local agency, following a finding of noncompliance by the Department, developed by the local agency and approved by Department to resolve the noncompliance.

(g) "Days" means calendar days unless designated otherwise.

(h) "Department" means the California Department of Education.

(i) "Direct State Intervention" means the steps taken by the Department to initially investigate complaints or effect compliance.

(j) "Local Agency" means a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services. "Local educational agency" includes any public school district and county office of education.

(k) "Mediation" means a problem-solving activity whereby a third party assists the parties to a dispute in resolving the problem.

(l) "State Mediation Agreement" means a written, voluntary agreement, approved by the Department, which is developed by the local agency and complainant with assistance from the Department to resolve an allegation of noncompliance.

(m) "State Agency" means the State Departments of Mental Health or Health Services or any other state administrative unit that is or may be required to provide special education or related services to handicapped pupils pursuant to Government Code section 7570 et seq.

(n) "Superintendent" means the Superintendent of Public Instruction or his or her designee.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 210, 220, and 260, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 2. Purpose and Scope

§ 4610. Purpose and Scope.

(a) This Chapter applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination, in accordance with the provisions of Title 34, CFR, Sections 76.780-783 and 106.8; Title 22, CCR, Sections 98300-98382; and California Education Code Sections 49556 and 8257. The purpose of this Chapter is to establish a uniform system of complaint processing for specified programs or activities which receive state or federal funding.

(b) This Chapter applies to the following programs administered by the Department:

(i) Adult Basic Education established pursuant to Education Code sections 8500 through 8538 and 52500 through 52616.5;

(ii) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a);

(iii) Migrant Education established pursuant to Education Code sections 54440 through 54445;

(iv) Vocational Education established pursuant to Education Code sections 52300 through 52480;

(v) Child Care and Development programs established pursuant to Education Code sections 8200 through 8493;

(vi) Child Nutrition programs established pursuant to Education Code sections 49490 through 49560; and

(vii) Special Education programs established pursuant to Education Code sections 56000 through 56885 and 59000 through 59300.

(c) This Chapter also applies to the filing of complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or

activity conducted by a local agency, which is funded directly by, or that receives or benefits from any state financial assistance.

NOTE: Authority cited: Sections 232, 8261, 33031, 49531, 49551, 54445, 52355, 52451, and 56100(a) and (l), Education Code; Section 11138, Government Code. Reference: Sections 210, 220, 260, and 49556, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4611. Referring Complaint Issues to Other Appropriate State or Federal Agencies.

The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this Chapter unless these procedures are made applicable by separate interagency agreements:

(a) Allegations of child abuse shall be referred to the applicable County Department of Social Services (DSS), Protective Services Division or appropriate law enforcement agency. However, nothing in this section relieves the Department from investigating complaints pursuant to section 4650(a)(viii)(C).

(b) Health and safety complaints regarding a Child Development Program shall be referred to Department of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.

(c) Discrimination issues involving Child Nutrition Programs or Title IX of the Educational Amendments of 1972 shall be referred to the U.S. Office of Civil Rights (OCR). Title IX complainants will only be referred to the OCR if there is no state discrimination law or regulation at issue. Unless otherwise negotiated through a memorandum of understanding/agreement, a preliminary inquiry and/or investigation concerning these complaints will be conducted by OCR. The complainant shall be notified by certified mail if his or her complaint is transferred to OCR by the Superintendent.

(d) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to Title 22, CCR, Section 98410. The complainant shall be notified by certified mail of any DFEH transferral.

(e) Allegations of fraud shall be referred to the responsible Department Division Director and the Department's Legal Office.

NOTE: Authority cited: Sections 33031, 71020 and 71025, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136 and 11138, Government Code; 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

2. Amendment of subsection (a) and NOTE filed 4-27-92 as an emergency; operative 4-27-92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 8-25-92 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 4-27-92 order transmitted to OAL 10-15-92 and filed 10-28-92 (Register 92, No. 44).

Article 3. Local Agency Compliance

§ 4620. Local Educational Agency Responsibilities.

Each local education agency shall have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Each local educational agency shall investigate complaints alleging failure to comply, and seek to resolve those complaints in accordance with the procedures set out in this Chapter.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4621. District Policies and Procedures.

(a) Each local educational agency shall adopt policies and procedures consistent with this Chapter for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimina-

tion remain confidential as appropriate. School Districts and County Offices of Education shall submit their policies and procedures to the local governing board for adoption within one year from the effective date of this chapter. Upon adoption, the district may forward a copy to the Superintendent.

(b) Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. The local educational agency's policies shall ensure that the person(s), employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4622. Notice; Notice Recipients; Notice Requirements.

Each local educational agency shall annually notify in writing, as applicable, its students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties of their local educational agency complaint procedures, including the opportunity to appeal to the Department and the provisions of this Chapter. The notice shall include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of the notice of any civil law remedies that may be available, and of the appeal and review procedures contained in sections 4650, 4652, and 4671 of this Chapter. This notice shall be in English, and when necessary, in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135 and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 4. Local Complaint Procedures

§ 4630. Filing a Local Complaint; Procedures, Time Lines.

(a) For other than discrimination complaints, any individual, public agency or organization may file a written complaint with the administrator/superintendent of the local educational agency, alleging a matter which, if true, would constitute a violation by that local educational agency of federal or state law or regulation governing the programs listed in section 4610(b) of this Chapter.

(b) An investigation of alleged unlawful discrimination shall be initiated by filing a complaint not later than six months from the date the alleged discrimination occurred, or the date the complainant first obtained knowledge of the facts of the alleged discrimination unless the time for filing is extended by the Superintendent, upon written request by the complainant setting forth the reasons for the extension. Such extension by the Superintendent shall be made in writing. The period for filing may be extended by the Superintendent for good cause for a period not to exceed 90 days following the expiration of the time allowed. The Superintendent shall respond immediately upon receipt of requests for extensions.

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who believes an individual or any specific class of individuals has been subjected to discrimination prohibited by this part.

(2) The complaint shall be filed with the local educational agency director/district superintendent or his or her designee, unless the complainant requests direct intervention by the Department pursuant to Article 6 of this Chapter.

(3) An investigation of a discrimination complaint shall be conducted in a manner that protects confidentiality of the parties and the facts.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4631. Responsibilities of the Local Agency.

(a) Within 60 days from receipt of the complaint, the local educational agency superintendent or his or her designee shall complete the investigation of the complaint in accordance with the local procedures developed pursuant to section 4621 and prepare a written Local Educational Agency Decision. This time period may be extended by written agreement of the complainant.

(b) The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, and local educational agency representatives to present information relevant to the complaint. The investigation may include an opportunity for the parties to the dispute to meet to discuss the complaint or to question each other or each other's witnesses.

(c) The Local Educational Agency Decision (the Decision), shall be in writing and sent to the complainant within sixty (60) days from receipt of the complaint by the local agency. The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the Department, and the procedures to be followed for initiating an appeal to the Department.

(d) Local Educational Agencies may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation. Conducting local mediation shall not extend the local time lines for investigating and resolving complaints at the local level unless the complainant agrees, in writing, to the extension of the time line. In no event shall mediation be mandatory in resolving complaints.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4632. Forward to Superintendent.

Upon notification by the Superintendent that the Local Educational Agency Decision has been appealed to the state level pursuant to section 4652, the local educational agency shall forward the following to the Superintendent:

- (a) The original complaint;
- (b) A copy of the Local Educational Agency Decision;
- (c) A summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision;
- (d) A report of any action taken to resolve the complaint;
- (e) A copy of the local educational agency complaint procedures; and
- (f) Such other relevant information as the Superintendent may require.

NOTE: Authority cited: Section 232 and 33031; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 5. State Complaint Procedures

§ 4640. Filing a State Complaint That Has Not First Been Filed at the Local Agency; Time Lines, Notice, Appeal Rights.

(a) Referral to the Local Educational Agency for Local Resolution.

(1) If a complaint is erroneously first sent to the Superintendent without local educational agency investigation, the Superintendent shall immediately forward the complaint to the local educational agency for processing in accordance with Article 4 of this Chapter, unless

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§ 4611

(e) "Complaint Procedure" means an internal process used by the Department or local agency to process and resolve complaints.

(f) "Compliance Agreement" means an agreement between the Department and a local agency, following a finding of noncompliance by the Department, developed by the local agency and approved by Department to resolve the noncompliance.

(g) "Days" means calendar days unless designated otherwise.

(h) "Department" means the California Department of Education.

(i) "Direct State Intervention" means the steps taken by the Department to initially investigate complaints or effect compliance.

(j) "Local Agency" means a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services. "Local educational agency" includes any public school district and county office of education.

(k) "Mediation" means a problem-solving activity whereby a third party assists the parties to a dispute in resolving the problem.

(l) "State Mediation Agreement" means a written, voluntary agreement, approved by the Department, which is developed by the local agency and complainant with assistance from the Department to resolve an allegation of noncompliance.

(m) "State Agency" means the State Departments of Mental Health or Health Services or any other state administrative unit that is or may be required to provide special education or related services to handicapped pupils pursuant to Government Code section 7570 et seq.

(n) "Superintendent" means the Superintendent of Public Instruction or his or her designee.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 210, 220, and 260, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 2. Purpose and Scope

§ 4610. Purpose and Scope.

(a) This Chapter applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination, in accordance with the provisions of Title 34, CFR, Sections 76.780-783 and 106.8; Title 22, CCR, Sections 98300-98382; and California Education Code Sections 49556 and 8257. The purpose of this Chapter is to establish a uniform system of complaint processing for specified programs or activities which receive state or federal funding.

(b) This Chapter applies to the following programs administered by the Department:

(i) Adult Basic Education established pursuant to Education Code sections 8500 through 8538 and 52500 through 52616.5;

(ii) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a);

(iii) Migrant Education established pursuant to Education Code sections 54440 through 54445;

(iv) Vocational Education established pursuant to Education Code sections 52300 through 52480;

(v) Child Care and Development programs established pursuant to Education Code sections 8200 through 8493;

(vi) Child Nutrition programs established pursuant to Education Code sections 49490 through 49560; and

(vii) Special Education programs established pursuant to Education Code sections 56000 through 56885 and 59000 through 59300.

(c) This Chapter also applies to the filing of complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or

activity conducted by a local agency, which is funded directly by, or that receives or benefits from any state financial assistance.

NOTE: Authority cited: Sections 232, 8261, 33031, 49531, 49551, 54445, 52355, 52451, and 56100(a) and (j), Education Code; Section 11138, Government Code. Reference: Sections 210, 220, 260, and 49556, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4611. Referring Complaint Issues to Other Appropriate State or Federal Agencies.

The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this Chapter unless these procedures are made applicable by separate interagency agreements:

(a) Allegations of child abuse shall be referred to the applicable County Department of Social Services (DSS), Protective Services Division or appropriate law enforcement agency. However, nothing in this section relieves the Department from investigating complaints pursuant to section 4650(a)(viii)(C).

(b) Health and safety complaints regarding a Child Development Program shall be referred to Department of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.

(c) Discrimination issues involving Title IX of the Educational Amendments of 1972 shall be referred to the U.S. Office of Civil Rights (OCR). Title IX complainants will only be referred to the OCR if there is no state discrimination law or regulation at issue. Unless otherwise negotiated through a memorandum of understanding/agreement, a preliminary inquiry and/or investigation concerning these complaints will be conducted by OCR. The complainant shall be notified by certified mail if his or her complaint is transferred to OCR by the Superintendent.

(d) Complaints of discrimination involving Child Nutrition Programs administered by the Department from program participants or applicants shall be referred to either Administrator, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302 or Secretary of Agriculture, Washington, D.C. 20250. Discrimination complaints received by a local agency or the Department shall be immediately directed to U.S. Department of Agriculture, Food and Nutrition Service, Western Regional Office.

(e) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to Title 22, CCR, Section 98410. The complainant shall be notified by certified mail of any DFEH transferral.

(f) Allegations of fraud shall be referred to the responsible Department Division Director and the Department's Legal Office.

NOTE: Authority cited: Sections 33031, 71020 and 71025, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136 and 11138, Government Code; 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).
2. Amendment of subsection (a) and NOTE filed 4-27-92 as an emergency; operative 4-27-92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 8-25-92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4-27-92 order transmitted to OAL 10-15-92 and filed 10-28-92 (Register 92, No. 44).
4. Change without regulatory effect amending subsection (c), adopting new subsection (d) and relettering subsections filed 12-16-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 51).

Article 3. Local Agency Compliance

§ 4620. Local Educational Agency Responsibilities.

Each local education agency shall have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Each local educational agency shall investigate complaints alleging failure to comply, and seek to resolve those complaints in accordance with the procedures set out in this Chapter.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4621. District Policies and Procedures.

(a) Each local educational agency shall adopt policies and procedures consistent with this Chapter for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remain confidential as appropriate. School Districts and County Offices of Education shall submit their policies and procedures to the local governing board for adoption within one year from the effective date of this chapter. Upon adoption, the district may forward a copy to the Superintendent.

(b) Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. The local educational agency's policies shall ensure that the person(s), employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4622. Notice; Notice Recipients; Notice Requirements.

Each local educational agency shall annually notify in writing, as applicable, its students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties of their local educational agency complaint procedures, including the opportunity to appeal to the Department and the provisions of this Chapter. The notice shall include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of the notice of any civil law remedies that may be available, and of the appeal and review procedures contained in sections 4650, 4652, and 4671 of this Chapter. This notice shall be in English, and when necessary, in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135 and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 4. Local Complaint Procedures

§ 4630. Filing a Local Complaint; Procedures, Time Lines.

(a) For other than discrimination complaints, any individual, public agency or organization may file a written complaint with the administrator/superintendent of the local educational agency, alleging a matter which, if true, would constitute a violation by that local educational agency of federal or state law or regulation governing the programs listed in section 4610(b) of this Chapter.

(b) An investigation of alleged unlawful discrimination shall be initiated by filing a complaint not later than six months from the date the alleged discrimination occurred, or the date the complainant first obtained knowledge of the facts of the alleged discrimination unless the time for filing is extended by the Superintendent, upon written request by the complainant setting forth the reasons for the extension. Such extension by the Superintendent shall be made in writing. The period for filing may be extended by the Superintendent for good cause for a period not to exceed 90 days following the expiration of the time allowed. The Superin-

endent shall respond immediately upon receipt of requests for extensions.

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who believes an individual or any specific class of individuals has been subjected to discrimination prohibited by this part.

(2) The complaint shall be filed with the local educational agency director/district superintendent or his or her designee, unless the complainant requests direct intervention by the Department pursuant to Article 6 of this Chapter.

(3) An investigation of a discrimination complaint shall be conducted in a manner that protects confidentiality of the parties and the facts.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4631. Responsibilities of the Local Agency.

(a) Within 60 days from receipt of the complaint, the local educational agency superintendent or his or her designee shall complete the investigation of the complaint in accordance with the local procedures developed pursuant to section 4621 and prepare a written Local Educational Agency Decision. This time period may be extended by written agreement of the complainant.

(b) The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, and local educational agency representatives to present information relevant to the complaint. The investigation may include an opportunity for the parties to the dispute to meet to discuss the complaint or to question each other or each other's witnesses.

(c) The Local Educational Agency Decision (the Decision), shall be in writing and sent to the complainant within sixty (60) days from receipt of the complaint by the local agency. The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the Department, and the procedures to be followed for initiating an appeal to the Department.

(d) Local Educational Agencies may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation. Conducting local mediation shall not extend the local time lines for investigating and resolving complaints at the local level unless the complainant agrees, in writing, to the extension of the time line. In no event shall mediation be mandatory in resolving complaints.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4632. Forward to Superintendent.

Upon notification by the Superintendent that the Local Educational Agency Decision has been appealed to the state level pursuant to section 4652, the local educational agency shall forward the following to the Superintendent:

- (a) The original complaint;
- (b) A copy of the Local Educational Agency Decision;
- (c) A summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision;
- (d) A report of any action taken to resolve the complaint;
- (e) A copy of the local educational agency complaint procedures; and
- (f) Such other relevant information as the Superintendent may require.

NOTE: Authority cited: Section 232 and 33031; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

(1) If a complaint is erroneously first sent to the Superintendent without local educational agency investigation, the Superintendent shall immediately forward the complaint to the local educational agency for processing in accordance with Article 4 of this Chapter, unless

Article 5. State Complaint Procedures

§ 4640. Filing a State Complaint That Has Not First Been Filed at the Local Agency; Time Line, Notice, Appeal Rights.

(a) Referral to the Local Educational Agency for Local Resolution.

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