Information Sheet – 10/13/2020 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.1

FR: Celli Coeville

DATE: October 8, 2020

RE: Revised Board Policy, BP 3555 & New Exhibit, E 3555, Nutrition Program Compliance, Consider for Adoption

Board Policy BP 3555 has been updated to reflect New State Regulations (Register 2020, No. 21) which provide that complaints regarding meal counting and claiming, reimbursable meals, eligibility of children or adults, or use of cafeteria funds and allowable expenses should be submitted directly to the California Department of Education (CDE), and complaints alleging discrimination on the basis of race, color, national origin, sex, age, or disability should be submitted to the U.S. Department of Agriculture (USDA). Complaints regarding other program requirements or other bases for discrimination are to be investigated and resolved at the district level. The new policy also deletes the USDA nondiscrimination statement that must be included on all forms of communication regarding program availability, which is now presented in the accompanying exhibit.

New Exhibit 3555 presents the USDA statement, formerly in BP 3555, which must be included on all forms of communication available to the public regarding the availability of child nutrition programs in order to advise the public of the district's status as an equal opportunity provider and the address of the agency with responsibility to handle complaints against the district.

I have highlighted the proposed changes and indicated the differences in red font.

Recommended Action: Approve Revised BP 3555 and new E 3555, Nutrition Program Compliance

Nutrition Program Compliance

Note: The following policy is required for any district whose child nutrition programs (i.e., National School Lunch Program, School Breakfast Program, Special Milk Program, and/or other child nutrition program) receive state or federal funding. During the California Department of Education's (CDE) Administrative Review of the district's child nutrition programs, CDE will review whether the district has a written procedure that complies with requirements pertaining to civil rights and nondiscrimination.

Various state and federal laws prohibit discrimination in district programs and activities on the basis of actual or perceived race, color, ancestry, nationality**,** national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information; a perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. See BP 0410 - Nondiscrimination in District Programs and Activities.

CDE's Civil Rights and Complaint Procedures for the U.S. Department of Agriculture Child Nutrition Programs and **the U.S. Department of Agriculture's (USDA)** FNS Instruction 113-1, Civil Rights Compliance and Enforcement - Nutrition Programs and Activities, provide guidance to districts on how best to comply with federal law.

The Governing Board recognizes the district's responsibility to comply with state and federal nondiscrimination laws as they apply to the district's nutrition programs. The district shall not deny any individual the benefits or service of any nutrition program or discriminate ~~against him/her~~ on any basis prohibited by law.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 3550 - Food Service/Child Nutrition Program)
(cf. 3552 - Summer Meal Program)
(cf. 3553 - Free and Reduced Price Meals)
(cf. 5030 - Student Wellness)

Compliance Coordinator

Note: According to CDE's Civil Rights and Complaint Procedures for the Child Nutrition Programs, districts are required to appoint a coordinator to be responsible for ensuring district compliance with law governing child nutrition programs. The following paragraph may be revised to reflect district practice.

The Board shall designate~~s~~ a compliance coordinator for nutrition programs, who may also be the compliance officer(s) specified in AR 1312.3 - Uniform Complaint Procedures, ~~as the district's civil rights coordinator~~ to ensure compliance with the laws governing ~~it's~~ the district's nutrition programs. ~~and to investigate any related complaints.~~

Note: Items #1-10 below reflect the duties of the coordinator as provided in CDE's Civil Rights and Complaint Procedures for the Child Nutrition Programs.

The responsibilities of the compliance ~~officer/~~coordinator include, but are not limited to:

1. Providing the name of the ~~civil rights~~ compliance coordinator, and the Section 504 coordinator, and Title IX coordinator, if different from the ~~civil rights~~ compliance coordinator, to

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the California Department of Education (CDE) and other interested parties

(cf. 6164.6 - Identification and Education Under Section 504)

2. Annually providing mandatory civil rights training to all frontline staff who interact with program applicants or participants and to those who supervise frontline staff

   The subject matter of such training shall include, but not be limited to, collection and use of data, effective public notification systems, complaint procedures, compliance review techniques, resolution of noncompliance, requirements for reasonable accommodation of persons with disabilities, requirements for language assistance, conflict resolution, and customer service.

Note: FNS Instruction 113-1 lists required components of training that must be provided to nutrition program staff, as provided below.

3. Establishing admission and enrollment procedures that do not restrict enrollment of students on the basis of race, ethnicity, national origin, or disability, including preventing staff from incorrectly denying applications and ensuring that such persons have equal access to all programs

(cf. 6159 - Individualized Education Program)

4. Sending a public release announcing the availability of the child nutrition programs and/or changes in the programs to public media and to community and grassroots organizations that interact directly with eligible or potentially eligible participants

5. Communicating the program's nondiscrimination policy and applicable complaint procedures, as provided in the section "Notifications" below

6. Providing appropriate translation services when a significant number of persons in the surrounding population have limited English proficiency

7. Ensuring that every part of a facility is accessible to and usable by persons with disabilities and that participants with disabilities are not excluded from the benefits or services due to inaccessibility of facilities

8. Ensuring that special meals are made available to participants with disabilities who have a medical statement on file documenting that their disability restricts their diet

(cf. 5141.27 - Food Allergies/Special Dietary Needs)

9. Implementing procedures to process and resolve civil rights (discrimination) complaints and program-related complaints, including maintaining a complaint log, ~~and~~ working with the

Nutrition Program Compliance (continued)

appropriate person to resolve any complaint, and referring the complainant to the appropriate state or federal agency when necessary

Note: Districts receiving federal financial assistance are required to request racial/ethnic data of all program applicants and participants for purposes of determining whether the program reaches potential eligible persons, identifying areas where additional outreach is needed, selecting locations for compliance reviews, and completing required reports. According to FNS Instruction 113-1, using the applicant's self-identification or self-reporting is the preferred method of obtaining racial and ethnic data.

When requesting such information, districts should be careful to not request any information in regard to the immigration status of students or their family members and, if such information is inadvertently received, to not disclose it to immigration enforcement authorities without parental consent, a court order, or judicial subpoena. See AR 5145.13 - Response to Immigration Enforcement.

10. Developing a method, which preferably uses self-identification or self-reporting, to collect racial and ethnic data for potentially eligible populations, applicants, and participants

(cf. 5022 - Students and Family Privacy Rights)
(cf. 5125 - Student Records)
(cf. 5145.13 – Response to Immigration Enforcement)

Notifications

The compliance coordinator shall ensure that the U.S. Department of Agriculture's (USDA) "And Justice for All" civil rights poster or a substitute poster approved by the USDA's Food and Nutrition Service ~~shall be~~ is displayed in areas visible to the district's nutrition program participants, such as food service areas and school offices.

Note: FNS Instruction 113-1 requires districts to notify nutrition program applicants, participants, and potentially eligible persons of program availability, rights, and responsibilities and to advise them at each service delivery site (e.g., the school) regarding the procedure for filing a complaint. Such notice may be distributed through student and parent/guardian handbooks or other method of parental notifications.

The compliance coordinator shall notify the public, all program applicants, participants, and potentially eligible persons of their ~~program~~ rights and responsibilities and steps necessary ~~for participation~~ to participate in the nutrition programs. Applicants, participants, and the public also shall be advised of their right to file a complaint, how to file a complaint, the complaint procedures, and that a complaint may be file anonymously or by a third party.

(cf. 5145.6 - Parental Notifications)

Note: As part of its instructions to all recipients of federal funds, USDA requires that all forms of communication available to the public regarding program availability also contain information about that recipient's status as an equal opportunity provider and the address of the agency with responsibility to handle complaints made against the recipient. USDA provides specific language for the notification and prohibits its modification in any way. The required language is available on USDA's web site and in the accompanying exhibit.

In addition, the compliance coordinator shall ensure that all forms of communication available to

Nutrition Program Compliance (continued)

the public regarding program availability shall contain, in a prominent location, ~~the following statement:~~ a statement provided by USDA about the district's status as an equal opportunity provider and the address of the agency with responsibility to handle complaints made against the district.

~~"In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.~~

~~Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.~~

~~To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:~~

~~(1) mail: U.S. Department of Agriculture~~
~~Office of the Assistant Secretary for Civil Rights~~
~~1400 Independence Avenue, SW~~
~~Washington, D.C. 20250-9410;~~

~~(2) fax: (202) 690-7442; or~~

~~(3) email: program.intake@usda.gov.~~

~~This institution is an equal opportunity provider."~~

Forms of communication requiring this nondiscrimination statement include, but are not limited to, web sites, public information releases, publications, and posters, but exclude ~~menus~~ items such as cups, buttons, magnets, and pens that identify the program when the size or configuration makes it impractical. The nondiscrimination statement need not be included on every page of program information on the district's or school's web site, but the statement or a link to the statement shall be included on the home page of the program information.

Nutrition Program Compliance (continued)

A short version of the nondiscrimination statement, stating ~~"This institution is an equal opportunity provider,"~~ as provided by USDA, may be used on pamphlets, brochures, and flyers in the same print size as the rest of the text.

Complaints of Discrimination

Note: 5 CCR 4610, as amended by Register 2020, No. 21, reduces the applicability of the district's uniform complaint procedures (UCP) for complaints regarding child nutrition programs. 5 CCR 15582, as added by Register 2020, No. 21, requires allegations of discrimination based on race, color, national origin, sex, age, or disability to be referred to USDA. Complaints of discrimination on any other basis are addressed through the district's UCP; see BP/AR 1312.3 - Uniform Complaint Procedures.

For information about compliance complaints, see the section below on "Complaints Regarding Noncompliance with Program Requirements."

~~Any complaint concerning the district's nutrition programs shall be investigated using the process identified in AR 1312.3 - Uniform Complaint Procedures.~~

~~*(cf. 1312.3 – Uniform Complaint Procedures)*~~

~~When a complaint alleging discrimination of the basis of race, color, national origin, sex, age, or disability is unresolved at the district level, the coordinator shall notify the complainant of the option to contact and/or forward his/her complaint to one of the following agencies:~~ A complaint alleging discrimination in the district's nutrition program(s) on the basis of race, color, national origin, sex, age or disability shall, within 180 days of the alleged discriminatory act, be filed or referred to USDA at: (5 CCR 15582)

~~1. Child Nutrition Program Civil Rights and Program Complaint Coordinator, California Department of Education, Nutrition Services Division, 1430 N Street, Room 4503, Sacramento, CA 95814-2342 or call (916) 323-8531 or (800) 952-5609~~

~~2.~~ U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410, (866) 632-9992, (800) 877-8339 (Federal Relay Service – English, deaf, hard of hearing, or speech disabilities), (800) 845-6136 (Federal Relay Service - Spanish), fax (202) 690-7442, or email program.intake.usda.gov.

Complaints of discrimination on any other basis shall be investigated by the district using the process identified in AR 1312.3- Uniform Complaint Procedures.

(cf. 1312.3 – Uniform Complaint Procedures)

Complaints Regarding Noncompliance with Program Requirements

Nutrition Program Compliance (continued)

Note: 5 CCR 15580-15584, as added by Register 2020, No. 21, require complaints regarding meal counting and claiming, reimbursable meals, eligibility of children or adults, or use of cafeteria funds and allowable expenses to be referred to CDE. During the investigation, the complainant will have the opportunity to present information or evidence to support the allegations, and the district will have the opportunity to respond to the complaint. The district may also be subject to an on-site investigation, which may be unannounced. CDE's written decision will be issued within 90 days of receipt of the complaint.

Complaints regarding noncompliance with other nutrition program requirements are addressed locally as described below.

Any complaint alleging that the district has not complied with program requirements pertaining to meal counting and claiming, reimbursable meals, eligibility of a child or adult, use of cafeteria funds and allowable expenses shall be filed with or referred to CDE. (Education Code 49556; 5 CCR 15584)

Complaints of noncompliance with any other nutrition program requirements shall be submitted to and investigated by the district using the following procedures.

Complaints may be filed by a student or the student's parent/guardian by phone, email, or letter. The complaint shall be submitted within one year from the date of the alleged violation and shall include the following: (5 CCR 15581)

1. A statement that the district has violated a law or regulation relating to its child nutrition program

2. The facts on which the statement is based

3. The name of the district or the school against which the allegations are made

4. The complainant's contact information

5. The name of the student if alleging violations regarding a specific student

Note: Pursuant to 5 CCR 15583, as added by Register 2020, No. 21, districts are required to investigate and issue a written report within the 60-day timeline provided within 5 CCR 4631, and the complainant may appeal the district's report to CDE within the 30-day timeframe provided within 5 CCR 4632

The district shall investigate and prepare a written report pursuant to 5 CCR 4631. (5 CCR 15583)

Note: Option 1 below is for districts that do not allow complainants to appeal the compliance coordinator's decision to the Governing Board. Option 2 is for districts that allow appeals to the Board, and requires the coordinator's decision within 30 calendar days so that the Board's decision can still be given within the 60-day time limit.

Nutrition Program Compliance (continued)

OPTION 1:

Unless extended by written agreement with the complainant, the district's compliance coordinator shall investigate the complaint and prepare a written report to be sent to the complainant within 60 days of the district's receipt of the complaint. (5 CCR 15583; 5 CCR 4631)

OPTION 2:

Unless extended by written agreement with the complainant, the district's compliance coordinator shall investigate the complaint and prepare a written report to be sent to the complainant within 30 calendar days of the district's receipt of the complaint. If the complainant is dissatisfied with the compliance coordinator's decision, the complainant may, within five business days, file the complaint in writing with the Board.
The Board shall consider the matter at its next regular Board meeting or at a special Board meeting convened in order to meet the 60-day time limit within which the complaint must be answered pursuant to 5 CCR 4631. When required by law, the matter shall be considered in closed session. The Board may decide not to consider the complaint, in which case the coordinator's decision shall be final.

(cf. 9321 - Closed Session)

If the Board considers the complaint, the Board's decision shall be sent to the complainant within 60 calendar days of the district's initial receipt of the complaint or within the time period that has been specified in a written agreement with the complainant. (5 CCR 4631)

Note: The following paragraph is for use by all districts.

If the complainant is not satisfied with the findings in the district's report, the complainant may appeal the decision to CDE by filing a written appeal within 30 days of receiving the decision. (5 CCR 4632)

Legal References:

EDUCATION CODE
200-262.4 Prohibition of discrimination
42238.01 Definitions for purposes of funding
48985 Notices to parents in language other than English
49060-49079 Student records
49490-49590 Child nutrition programs
PENAL CODE
422.6 Interference with constitutional right or privilege
CODE OF REGULATIONS, TITLE 5
3080 Application of section
4600-4687 Uniform complaint procedures
4900-4965 Nondiscrimination in elementary and secondary education programs

Nutrition Program Compliance (continued)

Legal References, continued:

15580-15584 Child nutrition programs complaint procedures
UNITED STATES CODE, TITLE 20
1400-1482 Individuals with Disabilities ~~in~~ Education Act
1681-1688 Discrimination based on sex or blindness, Title IX
UNITED STATES CODE, TITLE 29
794 Section 504 of the Rehabilitation Act of 1973
UNITED STATES CODE, TITLE 42
2000d-2000d-7 Title VI, Civil Rights Act of 1964
2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended
~~2000h-2000h-6 Title IX~~
12101-12213 Americans with Disabilities Act
CODE OF FEDERAL REGULATIONS, TITLE 7
210.19 National School Lunch Program, additional responsibilities
210.23 National School Lunch Program, district responsibilities
215.7 Special Milk Program, requirements for participation
215.14 Special Milk Program, nondiscrimination
220.7 School Breakfast Program, requirements for participation
220.13 School Breakfast Program, special responsibilities of state agencies
225.3 Summer Food Service Program, administration
225.7 Summer Food Service Program, program monitoring and assistance
225.11 Summer Food Service Program, corrective action procedures
226.6 Child and Adult Care Food Program, state agency administrative responsibilities
250.15 Out-of-condition donated foods, food recalls, and complaints
CODE OF FEDERAL REGULATIONS, TITLE 28
35.101-35.190 Americans with Disabilities Act
36.303 Nondiscrimination on the basis of disability, public accommodations, ~~Aa~~uxiliary aids and services
CODE OF FEDERAL REGULATIONS, TITLE 34
100.1-100.13 Nondiscrimination in federal programs, effectuating Title VI
104.1-104.39 Section 504 of the Rehabilitation Act of 1973
106.1-106.61 Discrimination on the basis of sex, effectuating Title IX, especially:
106.9 Dissemination of policy

Management Resources:
CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS
Civil Rights and Complaint Procedures for the U.S. Department of Agriculture Child Nutrition Programs, June 2018 ~~rev. November 2015~~
U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE PUBLICATIONS
Civil Rights Compliance and Enforcement - Nutrition Programs and Activities, FNS Instruction 113-1, November 2005
U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS
Notice of Non-Discrimination, August 2010
WEB SITES
California Department of Education, Nutrition Services Division: http://www.cde.ca.gov/ls/nu
U.S. Department of Agriculture, Food and Nutrition Services: http://www.fns.usda.gov
U.S. Department of Agriculture, Office for Civil Rights: http://www.ascr.usda.gov
U.S. Department of Education, Office for Civil Rights: http://www2.ed.gov/ocr

NUTRITION PROGRAM COMPLIANCE

NONDISCRIMINATION STATEMENT FOR NUTRITION PROGRAMS

The following statement shall be included, in a prominent location, on all forms available to the public regarding the availability of the district's child nutrition programs:

> "In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.
>
> Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.
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> To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: https://www.ascr.usda.gov/filing-program-discrimination-complaint-usda-customer, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:
>
> (1) mail: U.S. Department of Agriculture
> Office of the Assistant Secretary for Civil Rights
> 1400 Independence Avenue, SW
> Washington, D.C. 20250-9410;
>
> (2) fax: (202) 690-7442; or
>
> (3) email: program.intake@usda.gov
>
> This institution is an equal opportunity provider."
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> On pamphlets, brochures, and flyers, in the same print size as the rest of the text, the district may print a short version of the nondiscrimination statement, as follows:
>
> "This institution is an equal opportunity provider."

Exhibit **JEFFERSON SCHOOL DISTRICT**
Adopted: Tracy, California