

Sexual Harassment

The Solano County Office of Education (SCOE) is committed to maintaining a safe educational environment that is free from harassment and discrimination. SCOE prohibits sexual harassment of students by other students, employees, or other persons, at school or at school-sponsored or school-related activities. SCOE also prohibits retaliatory behavior or action against any person who reports, files a complaint, testifies about, or otherwise participates in the complaint process alleging sexual harassment.

Instruction/Information

The County Superintendent or designee shall ensure that all SCOE students receive age-appropriate instruction and information on sexual harassment. Such instruction and information shall include:

1. What acts and behavior constitute sexual harassment, including the fact that sexual harassment could occur between people of the same sex and could involve sexual violence
2. A clear message that students do not have to endure sexual harassment under any circumstance
3. Encouragement to report observed instances of sexual harassment, even where the alleged victim of the sexual harassment has not complained
4. A clear message that student safety is of primary concern to SCOE, and that any separate rule violation involving an alleged victim or any other person reporting a sexual harassment incident will be addressed separately and will not affect the manner in which the sexual harassment complaint will be received, investigated, or resolved
5. A clear message that, regardless of a complainant's noncompliance with the writing, timeline, or other formal filing requirements, every sexual harassment allegation that involves a student, whether as the complainant, respondent, or victim of the harassment, shall be investigated and prompt action shall be taken to stop any sexual harassment, prevent recurrence, and address any continuing effect on students
6. Information about SCOE's procedure for investigating complaints and the person(s) to whom a report of sexual harassment should be made
7. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable, including the right to file a civil or criminal complaint while the district investigation of a sexual harassment complaint continues
8. A clear message that, when needed, SCOE will take interim measures to ensure a safe school environment for a student who is the complainant or alleged victim of sexual harassment and/or other students during an investigation and that, to the extent possible, when such interim measures are taken, they shall not disadvantage the complainant or victim of the alleged sexual harassment

Prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex, in the educational setting, under any of the following conditions: (Education Code §212.5; 5 CCR 4916)

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student

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3. The conduct has the purpose or effect of having a negative impact on the student's academic performance, or of creating an intimidating, hostile, or offensive educational environment
4. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through any SCOE program or activity

Examples of types of conduct which are prohibited by SCOE and which may constitute sexual harassment include, but are not limited to:

1. Unwelcome leering, sexual flirtations, or propositions
2. Unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments, or sexually degrading descriptions
3. Graphic verbal comments about an individual's body, or overly personal conversation
4. Sexual jokes, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures, or computer-generated images of a sexual nature
5. Spreading sexual rumors
6. Teasing or sexual remarks about students enrolled in a predominantly single-sex class
7. Massaging, grabbing, fondling, stroking, or brushing the body
8. Touching an individual's body or clothes in a sexual way
9. Impeding or blocking movements or any physical interference with school activities when directed at an individual on the basis of sex
10. Displaying sexually suggestive objects
11. Sexual assault, sexual battery, or sexual coercion
12. Electronic communications containing comments, words, or images described above

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sexual harassment in violation of SCOE policy if it has a continuing effect on or creates a hostile school environment for the complainant or victim of the conduct.

Complaint Process

Sexual harassment complaints by and against students shall be investigated and resolved in accordance with the law and SCOE's procedures specified in Policy 1312.3 - Uniform Complaint Procedures. Principals are responsible for notifying students and parents/guardians that complaints of sexual harassment can be filed under Policy 1312.3 and where to obtain a free copy of the procedures.

Compliance Officer

The County Superintendent designates the individual identified below as responsible for coordinating SCOE's response to complaints and ensuring compliance with state and federal civil rights laws. This individual also serves as the Compliance Officer specified in SCOE Policy 5145.3 — Nondiscrimination/Harassment as the responsible employee to handle complaints regarding discrimination and sexual harassment. This individual shall receive and coordinate the investigation of complaints and shall ensure SCOE's compliance with law.

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Name: Manolo Garcia
Title or Position: Associate Superintendent – Human Resources and
Educator Effectiveness
Work Address: 5100 Business Center Drive, Fairfield, CA 94534-1658
Telephone Number: (707) 399-4400
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The Compliance Officer who receives a complaint may assign another Compliance Officer to investigate and resolve the complaint. The Compliance Officer shall promptly notify the complainant and respondent, if applicable, if another Compliance Officer is assigned to the complaint.

In no instance shall the Compliance Officer be assigned to a complaint in which s/he has a bias or conflict of interest that would prohibit him/her from fairly investigating or resolving the complaint. Any complaint against a Compliance Officer, or that raises a concern about the Compliance Officer's ability to investigate the complaint fairly and without bias, may be filed with the County Superintendent or designee who shall determine how the complaint will be investigated.

The County Superintendent or designee shall ensure that employees designated to investigate and resolve complaints receive training and are knowledgeable about the laws and programs at issue in the complaints to which they are assigned. Training provided to such employees shall include current state and federal laws and regulations governing the program, applicable processes for investigating and resolving complaints, including those alleging unlawful discrimination (such as harassment, intimidation, or bullying), applicable standards for reaching decisions on complaints, and appropriate corrective measures. Designated employees may have access to legal counsel as determined by the County Superintendent or designee.

The Compliance Officer or, if necessary, any appropriate administrator shall determine whether interim measures are necessary during and pending the result of an investigation. If interim measures are determined to be necessary, the Compliance Officer or the administrator shall consult with the County Superintendent, the County Superintendent's designee, or, if appropriate, the site principal to implement, if possible, one or more interim measures. The interim measures may remain in place until the Compliance Officer determines that they are no longer necessary or until SCOE issues its final written decision, whichever occurs first.

SCOE strongly encourages any student who feels that they are being or have been sexually harassed by a SCOE employee, another student, or a non-employee (e.g., a visiting athlete or coach, etc.) on school grounds or at a school-sponsored or school-related activity to immediately contact his/her teacher, the principal, or any other available SCOE employee. An employee who receives such a report or observes an incident of sexual harassment shall notify the principal or SCOE's Compliance Officer. Once notified, the principal or Compliance Officer shall immediately take the steps to investigate and address the allegation in accordance with administrative regulation.

When the principal or Compliance Officer determines that sexual harassment has occurred, they shall take prompt, appropriate action to end the sexual harassment and address its effects on the victim. The principal or Compliance Officer shall file a report with the County Superintendent or designee and refer the matter to law enforcement authorities, where required.

Site-Level Complaint Process (Grievance Procedure) and Investigation

Complaints of sexual harassment, or any behavior prohibited by SCOE's Policy 5145.3

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Nondiscrimination/Harassment, shall be handled in accordance with the following procedure:

1. Notice and Receipt of Complaint: Any student who believes they have been subjected to sexual harassment by another student, an employee, or a third party or who has witnessed sexual harassment is strongly encouraged to report the incident to their teacher, the principal, or any other available SCOE employee. Within one school day of receiving such a report, the SCOE employee shall forward the report to the principal or SCOE’s Compliance Officer for Nondiscrimination identified below and in SCOE Policy 1312.3. In addition, any SCOE employee who observes any incident of sexual harassment involving a student shall, within one school day, report this observation to the principal or the Compliance Officer, whether or not the alleged victim files a complaint.

When a report or complaint of sexual harassment involves off-campus conduct, the principal shall assess whether the conduct may create or contribute to the creation of a hostile school environment. If they determine that a hostile environment may be created, the complaint shall be investigated and resolved in the same manner as if the prohibited conduct occurred at school.

When a verbal or informal report of sexual harassment is submitted, the principal or Compliance Officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with SCOE’s uniform complaint procedures. Regardless of whether a formal complaint is filed, the principal or Compliance Officer shall take steps to investigate the allegations and, if sexual harassment is found, shall take prompt action to stop it, prevent recurrence, and address any continuing effects.

If a complaint of sexual harassment is initially submitted to the principal, they shall, within two school days, forward the report to the Compliance Officer to initiate investigation of the complaint. The Compliance Officer shall contact the complainant and investigate and resolve the complaint in accordance with law and SCOE’s procedures specified in Policy 1312.3.

In any case of sexual harassment involving the Compliance Officer, principal, or any other SCOE employee to whom the complaint would ordinarily be reported or filed, the report may instead be submitted to the County Superintendent or designee who shall determine who will investigate the complaint.

SCOE designates the following position as Compliance Officer for Nondiscrimination to which complaints of sexual harassment should be referred and who will be responsible for coordinating efforts to comply with Title IX of the Education Amendments of 1972 and California Education Code section 234.1 as well as to investigate and resolve sexual harassment complaints under SCOE Policy 1312.3 – Uniform Complaint Procedures:

Name: Manolo Garcia

Title or Position: Associate Superintendent – Human Resources and Educator Effectiveness

Work Address: 5100 Business Center Drive, Fairfield, CA 94534-1658

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2. Initiation of Investigation: The Compliance Officer or designee shall initiate an impartial investigation of an allegation of sexual harassment within five school days of receiving notice of the harassing behavior, regardless of whether a formal complaint has been filed. SCOE shall be considered to

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have “notice” of the need for an investigation upon receipt of information from a student who believes they have been subjected to sexual harassment, the student’s parent/guardian, an employee who received a complaint from a student, or any employee or student who witnessed the behavior.

If the Compliance Officer or designee receives an anonymous complaint or media report about alleged sexual harassment, they shall determine whether it is reasonable to pursue an investigation considering the specificity and reliability of the information, the seriousness of the alleged incident, and whether any individuals can be identified who were subjected to the alleged sexual harassment.

3. Initial Interview with Student: When a student or parent/guardian has complained or provided information about sexual harassment, the Compliance Officer or designee shall describe SCOE’s grievance procedure and discuss what actions are being sought by the student in response to the complaint. The student who is complaining shall have an opportunity to describe the incident, identify witnesses who may have relevant information, provide other evidence of the harassment, and put his/her complaint in writing. If the student requests confidentiality, s/he shall be informed that such a request may limit SCOE’s ability to investigate the harassment or take other necessary action. When honoring a request for confidentiality, SCOE will nevertheless take all reasonable steps to investigate and respond to the complaint consistent with the request.

When a complainant or alleged victim of sexual harassment notifies SCOE of the harassment but requests that SCOE not pursue an investigation, SCOE will determine whether it can honor such a request while still providing a safe and nondiscriminatory environment for all students.

4. Investigation Process: The Compliance Officer or designee shall keep the complaint and allegation confidential, except as necessary to carry out the investigation or take other subsequent necessary action.

The Compliance Officer or designee shall interview individuals who are relevant to the investigation, including, but not limited to, the student who is complaining, the person accused of sexual harassment, anyone who witnessed the reported harassment, and anyone mentioned as having relevant information. The Compliance Officer or designee may take other steps such as reviewing any records, notes, or statements related to the sexual harassment or visiting the location where the harassment is alleged to have taken place.

When necessary to carry out the investigation or to protect student safety, the Compliance Officer or designee also may discuss the complaint with the County Superintendent or designee; the parent/guardian of the student who complained; the parent/guardian of the alleged harasser if the alleged harasser is a student, a teacher, or staff member whose knowledge of the students involved may help in determining who is telling the truth; law enforcement and/or child protective services; and SCOE’s legal counsel and/or SCOE’s risk manager.

5. Interim Measures: When an incident of sexual harassment is reported, the principal or designee, in consultation with the Compliance Officer shall determine whether interim measures are necessary during and pending the results of the investigation, such as placing students in separate classes or transferring a student to a class taught by a different teacher, in accordance with law and SCOE policy. The principal/designee or Compliance Officer shall take immediate measures necessary to stop the sexual harassment and protect students and/or ensure their access to the educational program. To the extent possible, such interim measures shall not disadvantage the complainant or victim of the alleged sexual harassment. The school should notify the individual who was harassed of his/her options to avoid contact with the alleged harasser and allow the complainant to change academic and extracurricular arrangements as appropriate. The school should also ensure that the

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complainant is aware of the resources and assistance, such as counseling, that are available to him/her. As appropriate, such actions shall be considered even when a student chooses to not file a formal complaint or the sexual harassment occurs off school grounds or outside school-sponsored or school-related programs or activities.

6. **Optional Mediation:** In cases of student-to-student sexual harassment, when the student who complained and the alleged harasser so agree, the Compliance Officer or designee may arrange for them to resolve the complaint informally with the help of a counselor, teacher, administrator, or trained mediator. The student who complained shall never be asked to work out the problem directly with the accused person unless such help is provided and both parties agree, and s/he shall be advised of the right to end the informal process at any time.
7. **Factors in Reaching a Determination:** In reaching a decision about the complaint, the Compliance Officer or designee may consider:
 - a. Statements made by the persons identified above
 - b. The details and consistency of each person's account
 - c. Evidence of how the complaining student reacted to the incident
 - d. Evidence of any past instances of sexual harassment by the alleged harasser
 - e. Evidence of any past sexual harassment complaints that were found to be untrue

To judge the severity of the sexual harassment, the Compliance Officer or designee may take into consideration:

- a. How the misconduct affected one or more students' education
 - b. The type, frequency, and duration of the misconduct
 - c. The identity, age, and sex of the harasser as well as the student who complained, and the relationship between them. In investigating a sexual harassment complaint, evidence of past sexual relationships of the alleged victim shall not be considered, except to the extent that such evidence may relate to the alleged victim's prior relationship with the respondent.
 - d. The number of persons engaged in the harassing conduct and at whom the sexual harassment was directed
 - e. The size of the school, location of the incidents, and context in which they occurred
 - f. Other incidents at the school involving different students
8. **Written Report on Findings and Follow-Up:** No more than 30 days after receiving the complaint, the Compliance Officer or designee shall conclude the investigation and prepare a written report of his/her findings. This timeline may be extended for good cause. If an extension is needed, the Compliance Officer or designee shall notify the student who complained and explain the reasons for the extension.

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If it is determined that sexual harassment occurred, the report shall also include any corrective actions that have or will be taken to address the harassment and prevent any retaliation or further harassment. This report shall be presented to the student who complained, the person accused, the parents/guardians of the student who complained, the parents/guardians of the student who was accused, and the County Superintendent or designee.

In addition, the Compliance Officer or designee shall ensure that the harassed student and his/her parent/guardian are informed of the procedures for reporting any subsequent problems.

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The Compliance Officer or designee shall also make follow-up inquiries to see if there have been any new incidents or retaliation and shall keep a record of this information.

Enforcement of SCOE Policy

The County Superintendent or designee shall take appropriate actions to reinforce SCOE's sexual harassment policy. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti
2. Providing training to students, staff, and parents/guardians about how to recognize sexual harassment and how to respond
3. Disseminating and/or summarizing SCOE's policy and regulation regarding sexual harassment
4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating the school's response to parents/guardians, and the community
5. Taking appropriate disciplinary action.

In addition, disciplinary measures may be taken against any person who is found to have made a complaint of sexual harassment which s/he knew was not true.

Disciplinary Actions

Upon investigation of a sexual harassment complaint, any persons found to have engaged in sexual harassment or sexual violence at school or at a school-sponsored or school-related activity in violation of this policy shall be subject to disciplinary action. For students in grades 4–12, disciplinary action may include suspension and/or expulsion, provided that, in imposing such discipline, the entire circumstances of the incident(s) shall be taken into account.

Upon investigation of a sexual harassment complaint, any employee found to have engaged in sexual harassment or sexual violence toward any student shall have his/her employment terminated in accordance with law and the applicable collective bargaining agreement.

Confidentiality and Record-Keeping

All complaints and allegations of sexual harassment shall be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR 4964)

The Compliance Officer shall maintain a record of all reported cases of sexual harassment to enable SCOE to monitor, address, and prevent repetitive harassing behavior in its schools.

Notifications

A copy of SCOE's sexual harassment policy and regulation shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code §48980; 5 CCR 4917)
2. Be displayed in a prominent location in the main administrative building or other area where notices of SCOE rules, regulations, procedures, and standards of conduct are posted including SCOE's website and, when available, on SCOE-supported social media (Education Code§231.5)
3. Be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session (Education Code §231.5)

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4. Appear in any school or SCOE publication that sets forth the school's or SCOE's comprehensive rules, regulations, procedures, and standards of conduct (Education Code §231.5)
5. Be included in the student handbook
6. Be provided to employees and employee organizations

Legal Reference:

EDUCATION CODE

- 200-262.4 Prohibition of discrimination on the basis of sex
- 48900 Grounds for suspension or expulsion
- 48900.2 Additional grounds for suspension or expulsion; sexual harassment
- 48904 Liability of parent/guardian for willful student misconduct
- 48980 Notice at beginning of term

CIVIL CODE

- 51.9 Liability for sexual harassment; business, service and professional relationships
- 1714.1 Liability of parents/guardians for willful misconduct of minor

GOVERNMENT CODE

- 12950.1 Sexual harassment training

CODE OF REGULATIONS, TITLE 5

- 4600-4687 Uniform Complaint Procedures
- 4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

- 1221 Application of laws
- 1232g Family Educational Rights and Privacy Act
- 1681-1688 Title IX, Discrimination

UNITED STATES CODE, TITLE 42

- 1983 Civil action for deprivation of rights
- 2000d-2000d-7 Title VI, Civil Rights Act of 1964
- 2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended

CODE OF FEDERAL REGULATIONS, TITLE 34

- 99.1-99.67 Family Educational Rights and Privacy
- 106.1-106.71 Nondiscrimination on the basis of sex in education programs

COURT DECISIONS

- Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567
- Flores v. Morgan Hill Unified School District, (2003, 9th Cir.) 324 F.3d 1130
- Reese v. Jefferson School District, (2001) 208 F.3d 736
- Davis v. Monroe County Board of Education, (1999) 526 U.S. 629
- Gebser v. Lago Vista Independent School District, (1998) 118 S.Ct. 1989
- Oona by Kate S. v. McCaffrey, (1998, 9th Cir.) 143 F.3d 473
- Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447

Policy Cross-Reference:

0410 Nondiscrimination in Programs and Activities
1113 Website
1114 SCOE-Sponsored Social Media
1312.1 Complaints Concerning District Employees
1312.3 Uniform Complaint Procedures
3580 Records
4031 Complaints Concerning Discrimination in Employment
4117.7 Employment Status Report
4118 Dismissal/Suspension/Disciplinary Action
4119.11 Sexual Harassment
4119.23 Unauthorized Release of Confidential/Privileged Information
5125 Student Records
5131 Conduct
5131.2 Bullying
5131.5 Vandalism, Theft, and Graffiti
5137 Positive School Climate
5141.4 Child Abuse Prevention and Reporting
5144 Discipline
5144.1 Suspension and Expulsion/Due Process
5144.2 Suspension and Expulsion/Due Process (Students with Disabilities)
5145.3 Nondiscrimination/Harassment
5145.6 Parental Notifications
5145.71 Title IX Sexual Harassment Compliant Procedures
6142.1 Sexual Health and HIV/AIDS Prevention Instruction