

## 5000 – STUDENTS

### PROHIBITION ON SEXUAL HARASSMENT ARR 5145.7

The Sacramento County Office of Education (SCOE) prohibits, sexual harassment of any pupil in any SCOE academic or educational program or activity, as set forth in Board Policy 5145.7.

#### Complaint Process/Grievance Procedure

The Superintendent designates the following individual as the responsible employee to investigate and resolve sexual harassment complaints under Title IX of the Education Amendments of 1972 or SCOE's Uniform Complaint Procedures (UCP):

Title IX Coordinator/Compliance Officer  
10474 Mather Boulevard, Mather CA 95655  
(916) 228-2226  
complianceofficer@scoe.net

SCOE shall notify students, parents/guardians, employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of SCOE's Title IX Coordinator. (34 C.F.R. § 106.8.)

Any pupil who believes that she/he has been subjected to sexual harassment should immediately contact the principal or any other staff member. In addition, any person who observes any such incident should report the incident to the principal. SCOE prohibits any form of retaliation against any pupil who files a complaint or report, testifies, or otherwise participates in the complaint process for a complaint regarding an incident of sexual harassment.

Any school employee who observes an incident or allegation of sexual harassment at any school, or school sponsored or school-related activity, shall intervene as appropriate, then directly and promptly notify the Title IX Coordinator. The principal or Assistant Superintendent will report all complaints of sexual harassment to the Title IX Coordinator.

The Title IX Coordinator will determine whether Title IX or UCP procedures will govern the complaint process:

- A. Title IX Regulations will govern complaints that meet one of the following criteria.
  1. Any SCOE employee conditioning the provision of a SCOE aid, benefit, or service on the student's participation in unwelcome sexual conduct.
  2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive *and* objectively offensive that it effectively denies a student equal access to SCOE educational programs or activities.
  3. Sexual assault, dating violence, or stalking as defined in 20 USC 1092 or 34 USC 12291.

## 5000 – STUDENTS

### PROHIBITION ON SEXUAL HARASSMENT ARR 5145.7

- B. The UCP Procedures will govern all other complaints that do not rise to the level of a Title IX complaint. Administrative Rules and Regulations 1312.3 sets forth the procedures to be taken in addressing such UCP complaints.

#### Title IX Procedures

Upon receiving a report of conduct meeting one of these criteria, the Title IX Coordinator or designee shall conduct an initial meeting with the complainant and inform him or her of the process for filing a complaint. If the complainant chooses not to file a complaint, the Title IX Coordinator shall discuss possible informal resolution and potential supportive measures as set forth below.

If the complainant chooses not to file a complaint but the conduct reported presents a safety threat, the Title IX Coordinator shall file a complaint. The Title IX Coordinator may file a complaint in other situations as permitted under Title IX regulations. In these cases, the alleged victim is not a party to the complaint but will receive notices as required by Title IX regulations.

A complaint may be signed physically or digitally and may be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by SCOE.

The Title IX Coordinator, investigator, decision-maker, or facilitator of an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or on an individual basis. Such persons shall receive training in accordance with 34 Code of Federal Regulations part 106.45.

#### Supportive Measures

Upon receipt of a report of sexual harassment, even if a complaint is not filed, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures which are nondisciplinary, nonpunitive, and do not unreasonably burden the other party. Such measures may include, but are not limited to: counseling, course-related adjustments, modifications of class schedules, mutual restrictions on contact, increased security, and monitoring of certain areas of the campus to the extent feasible. The Title IX Coordinator shall consider the complainant's wishes and other legal requirements with respect to supportive measures.

#### Emergency Removal

On an emergency basis, SCOE may remove a student from an education program or activity, provided SCOE:

- conducts an individualized safety and risk analysis;
- determines that removal is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations;
- and

## 5000 – STUDENTS

### PROHIBITION ON SEXUAL HARASSMENT ARR 5145.7

- provides the student with notice and an opportunity to challenge the decision immediately following the removal.

This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. If a SCOE employee is the respondent, the employee may be placed on administrative leave during the pendency of the complaint process.

#### Dismissal of a Complaint

The Title IX Coordinator *shall* dismiss a formal complaint if:

- the alleged conduct would not constitute sexual harassment as defined in 34 Code of Federal Regulations part 106.30 (see above) even if proved
- the conduct did not occur in a SCOE education program or activity
- the conduct did not occur against a person in the United States.

The Title IX Coordinator *may* dismiss a complaint if:

- the complainant notifies SCOE in writing that the complainant would like to withdraw the complaint or any allegations in the complaint
- the respondent is no longer enrolled or employed by SCOE
- sufficient circumstances prevent SCOE from gathering evidence sufficient to reach a determination with regard to the complaint.

Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and the reasons for the dismissal to both parties simultaneously.

If a complaint is dismissed on the grounds that the alleged conduct does not constitute sexual harassment under Title IX, the conduct shall be addressed pursuant to UCP procedures set forth in BP 1312.3 and ARR 1312.3.

Either party has a right to appeal a dismissal under appeal procedures discussed below.

#### Informal Resolution Process

When a complaint of sexual harassment is filed, SCOE may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. SCOE may facilitate informal resolution by:

1. Obtaining the parties' voluntary, written consent to the informal resolution process and
2. Providing the parties with written notice disclosing the allegations, the requirements of the informal resolution process, the right to withdraw from the

## 5000 – STUDENTS

### PROHIBITION ON SEXUAL HARASSMENT

#### ARR 5145.7

informal process and resume the complaint process, and any consequences resulting from participating in the informal resolution process, including that records will be maintained or could be shared.

SCOE shall *not* offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

SCOE shall *not* require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a complaint.

#### Investigation Process

If a complaint is filed, the Title IX Coordinator shall provide the known parties with written notice of the following:

1. SCOE's Complaint Process, including informal resolution (set forth in this ARR 5145.7).
2. The allegations potentially constituting sexual harassment with sufficient details known at the time, including the identity of parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.

If, during the course of the investigation, SCOE investigates allegations about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.

3. A statement that the respondent is not presumed responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process.
4. The opportunity for the parties to have an advisor of their choice who may be, but is not required to be, an attorney, and the ability to inspect and review evidence.
5. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process.
6. The Title IX Coordinator will provide the parties with the name of the investigator, facilitator of an informal resolution process (if there is one), and decision-maker. The Title IX Coordinator shall provide either party with no less than three calendar days to raise concerns of conflict of interest or bias regarding any of these persons.

SCOE shall:

1. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

## 5000 – STUDENTS

### PROHIBITION ON SEXUAL HARASSMENT ARR 5145.7

2. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.
4. Not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding. SCOE may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to all parties.
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate.
6. Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence that is directly related to the allegations raised in the complaint, and provide the parties at least 10 days to submit a written response for the investigator to consider prior to the completion of the investigative report.
7. Objectively evaluate all relevant evidence, including both inculpatory and exculpatory, and determine credibility in a manner that is not based in a person's status as a complainant, respondent, or witness.
8. Create a report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the report in an electronic format or a hard copy, for their review.
9. After sending the report to the parties and before reaching a determination regarding responsibility, afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow up questions from each party.

#### Prohibited Evidence

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered:

- a) to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- b) if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

## 5000 – STUDENTS

### PROHIBITION ON SEXUAL HARASSMENT ARR 5145.7

#### Privacy Rights

The privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

#### Written Decision

A SCOE employee shall be designated as the decision-maker to determine responsibility for the alleged conduct. This employee shall not also serve as the Title IX Coordinator or a person involved in the investigation of the matter.

Within 60 calendar days of receipt of complaint, the decision-maker shall issue and simultaneously provide to both parties a written decision as to whether the respondent is responsible for the alleged conduct. The 60-day timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 C.F.R. § 106.45.) If the parties agree to participate in the informal resolution process, the timeline may be extended by mutual agreement of the parties.

In making this determination, SCOE shall use the “preponderance of the evidence” standard for all complaints of sexual harassment. The same standard of evidence shall be used for complaints against students as for complaints against employees.

The written decision shall include the following:

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 Code of Federal Regulations part 106.30.
2. A description of the procedural steps taken from receipt of the complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather evidence.
3. Findings of fact supporting the determination.
4. Any conclusions regarding the application of SCOE’s policies.
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, whether corrective measures have been taken, and whether SCOE will provide remedies designed to restore or preserve equal access to SCOE educational programs and activities to the complainant.
6. Appeal procedures and permissible bases for either party to appeal.

#### Appeals

Either party may appeal the written decision or dismissal of a complaint or any allegation in the complaint, if the party believes that a procedural irregularity, new evidence, or a conflict of interest or bias on the part of any Title IX personnel involved in

## 5000 – STUDENTS

### PROHIBITION ON SEXUAL HARASSMENT ARR 5145.7

the complaint process affected or could have affected the outcome of the complaint process.

Upon receiving an appeal, SCOE shall:

1. Notify the other party in writing and implement appeal procedures equally for both parties.
2. Ensure that the person hearing the appeal is trained in accordance with Title IX regulations and is not the same person as the investigator, Title IX Coordinator, or decision-maker in the decision that is being appealed.
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
4. Issue a written decision describing the result of the appeal and the rationale for the result.
5. Provide the written decision simultaneously to both parties.

#### Appeal Timeline

An appeal must be filed in writing within 10 calendar days of receiving the determination, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered. Either party has the right to file a complaint with the U. S. Department of Education’s Office for Civil Rights.

A written appeal decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

#### Remedies

When a determination of responsibility for sexual harassment has been made against the respondent, SCOE shall provide remedies to the complainant. Such remedies may include the same individualized services described and provided as “Supportive Measures.”

Once a determination of responsibility has been made after the completion of the complaint procedure, disciplinary sanctions or other adverse actions against a respondent are permissible as a remedy. For students in grades 4-12, discipline for sexual harassment may include suspension and/or expulsion. (Ed. Code, §§ 48900.2, 48915.)

Other actions that may be taken with a student who is determined to be responsible for sexual harassment include, but are not limited to:

## **5000 – STUDENTS**

### **PROHIBITION ON SEXUAL HARASSMENT ARR 5145.7**

1. Transfer from a class or school as permitted by law
2. Parent/guardian conference
3. Education of the student regarding the impact of the conduct on others
4. Positive behavior support
5. Referral of the student to a student success team
6. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law.

#### Record-Keeping

SCOE shall maintain for a period of seven years a record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, any appeal or informal resolution and the results therefrom, and responses made pursuant to Title IX regulations.

SCOE shall also maintain for a period of seven years all materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process.

#### Education and Training

To the extent possible, SCOE schools shall focus on the prevention of sexual harassment by establishing clear rules for pupil conduct and implementing strategies to promote a positive, collaborative school climate.

The Superintendent or designee shall ensure that all SCOE pupils 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.
2. A clear message that students do not have to endure sexual harassment.
3. Encouragement to report observed instances of sexual harassment, even where the victim of the harassment has not complained.
4. Information about SCOE's procedure for investigating complaints and the person(s) to whom a report of sexual harassment should be made.
5. Providing a copy of Board Policy 5145.7 for new and continuing pupils.

## 5000 – STUDENTS

### PROHIBITION ON SEXUAL HARASSMENT ARR 5145.7

6. Posting information about Board Policy 5145.7 in a prominent location on SCOE premises where notices of SCOE rules, regulations, procedures and standards of conduct are posted.
7. Posting Board Policy 5145.7 on the SCOE website in a prominent location that is easily accessible to students, parents and guardians.

The Superintendent or designee shall ensure that, to extent required by law, SCOE staff receive training and instruction in recognizing incidents of sexual harassment and their obligations under the regulations and state and federal law.

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02/12/21	Distribution

## **PROHIBITION OF SEXUAL HARASSMENT**

### **In Sacramento County Office of Education Academic and Educational Programs**

Every pupil is entitled to a safe school environment free from sexual harassment.

The Sacramento County Office of Education's (SCOE) Board Policies prohibiting sexual harassment in SCOE's academic and educational programs are available by request, in the Annual Notifications: Parents Rights & Responsibilities and Pupil Behavior Standards handbook, and on the SCOE website.

1. SCOE prohibits sexual harassment at any school, or school-sponsored or school-related activity. This prohibition applies to all acts related to school activity or school attendance occurring within a school under SCOE's jurisdiction.
2. School personnel must immediately intervene if they witness an act of sexual harassment provided it is safe to do so or take other appropriate action.
3. Acts of sexual harassment should be brought to the attention of the principal.
4. Pupils who violate SCOE's policies prohibiting sexual harassment will be subject to discipline up to and including suspension or expulsion.
5. A formal complaint of sexual harassment can be made by completing the attached Uniform Complaint Procedures form and returning it to SCOE's Title IX\_Coordinator/Compliance Officer, whose contact information is on the complaint form. The identity of the complainant will be kept confidential as appropriate.
6. If a person wishes to appeal the resolution of a complaint, he or she may file an appeal to the appropriate authority indicated in SCOE's final decision. Appeals of decisions governed by UCP procedures may be filed with the California Department of Education within 30 days of receiving that decision. Appeals of decisions governed by Title IX regulations may be filed with SCOE's Title IX Coordinator within 30 days of receiving that decision.
7. SCOE prohibits retaliation against individuals who make complaints of sexual harassment or who provide information related to such complaints.