

VENTURA COUNTY BOARD OF EDUCATION

ADMINISTRATIVE REGULATION NO. 5145.3

ADOPTED: 08/26/02

CLASSIFICATION: Students

**REPLACED
& REVISED: 12/14/15
REVISED: 06/25/18**

SUBJECT: Non-Discrimination, Harassment, Intimidation or Bullying of Students

The Ventura County Office of Education (VCOE) designates the individual(s) identified below as the employee(s) responsible for coordinating the VCOE's efforts to comply with state and federal civil rights laws, including Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Age Discrimination Act of 1975, and to answer inquiries regarding the VCOE's nondiscrimination policies. The individual(s) shall also serve as the compliance officer(s) specified in AR 1312.3 - Uniform Complaint Procedures as the responsible employee to handle complaints alleging unlawful discrimination targeting a student, including discriminatory harassment, intimidation, or bullying, based on the student's actual or perceived race, color, ancestry, national origin, nationality, immigration status, ethnicity, ethnic group identification, age, religion, marital status, pregnancy, parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, genetic information, or any other legally protected status or association with a person or group with one or more of these actual or perceived characteristics. The coordinator/compliance officer(s) may be contacted at:

Teri Gern (or designee)
Chief Human Resources Officer
5189 Verdugo Way
Camarillo, California 93012
805-383-1910

Regina Reed (or designee)
Executive Director of Special Education
5189 Verdugo Way
Camarillo, California 93012
805-383-1924

MEASURES TO PREVENT DISCRIMINATION

To prevent unlawful discrimination, including discriminatory harassment, intimidation, retaliation, and bullying, of students at county schools or in school activities and to ensure equal access of all students to the educational program, the County Superintendent or designee shall implement the following measures:

1. Publicize the VCOE's nondiscrimination policy and related complaint procedures, including the coordinator/compliance officer's contact information, to students, parents/guardians, employees, volunteers, and the general public and post them on VCOE's web site and other prominent locations that are easily accessible to students.

2. Provide to students and/or parents/guardians a handbook and/or policies that contains age-appropriate information that clearly describes VCOE's nondiscrimination policy, procedures for filing a complaint, and resources available to students who feel that they have been the victim of any such behavior.
3. Annually notify all students and parents/guardians of VCOE's nondiscrimination policy, including its responsibility to provide a safe, nondiscriminatory school environment for all students, including transgender and gender-nonconforming students. The notice shall inform students and parents/guardians that they may request to meet with the compliance officer to determine how best to accommodate or resolve concerns that may arise from VCOE's implementation of its nondiscrimination policies. The notice shall also inform all student and parents/guardians that, to the extent possible, VCOE will address any individual student's interests and concerns in private.
4. The Superintendent or designee shall ensure that all students and parents/guardians, including students and parents/guardians with limited English proficiency, are notified of how to access the relevant information provided in VCOE's nondiscrimination policy and related complaint procedures, notices, and forms in a language they can understand.

If 15 percent or more of students enrolled in a particular VCOE school speak a single primary language other than English, VCOE's policy, regulation, forms, and notices concerning nondiscrimination shall be translated into that language in accordance with Education Code 234.1 and 48985. In all other instances, VCOE shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

5. Provide to students, employees, volunteers, and parents/guardians age-appropriate training and information regarding VCOE's nondiscrimination policy; what constitutes prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include details of guidelines VCOE may use to provide a discrimination-free environment for all VCOE students, including transgender and gender-nonconforming students.
6. At the beginning of each school year, inform school employees that any employee who witnesses any act of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, against a student is required to intervene if it is safe to do so.
7. At the beginning of each school year, inform each principal or designee of VCOE's responsibility to provide appropriate assistance or resources to protect students from threatened or potentially discriminatory behavior and ensure their privacy rights.

ENFORCEMENT OF VCOE POLICY

The County Superintendent or designee shall take appropriate actions to reinforce BP 5145.3, Nondiscrimination/Harassment, Intimidation or Bullying of Students. 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 unlawful discrimination and bullying and how to respond
3. Disseminating and/or summarizing the VCOE's policy and regulation regarding unlawful discrimination
4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating to students, parents/guardians, and the community the school's response to unlawful discrimination or harassment.
5. Taking appropriate disciplinary action against perpetrators and anyone determined to have engaged in wrongdoing, including any student who is found to have made a complaint of discrimination that he/she knew was not true.

PROCESS FOR INITIATING AND RESPONDING TO COMPLAINTS

Any student who feels that he/she has been subjected to unlawful discrimination described above or in VCOE's policy is strongly encouraged to immediately contact the compliance officer, principal, or any other staff member. In addition, any student who observes any such incident is strongly encouraged to report the incident to the compliance officer or principal, whether or not the alleged victim files a complaint.

Any school employee who observes an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, or to whom such an incident is reported shall report the incident to the compliance officer or principal within one (1) business school day, whether or not the alleged victim files a complaint.

Any school employee who witnesses an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall immediately intervene to stop the incident when it is safe to do so.

When a verbal report of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, is made to or received by the principal or compliance officer, he/she shall make a note of the report and encourage the student or parent/guardian to file the complaint in writing pursuant to the provisions in AR 1312.3, Uniform Complaint Procedures.

Even if the student chooses not to file a formal complaint, the principal or compliance officer shall begin the investigation and implement immediate measures necessary to stop the discrimination and to ensure all students have access to the educational program and a safe school environment. Any interim measures adopted to address unlawful discrimination shall, to the extent possible, not disadvantage the complainant or a student who is the victim of the alleged unlawful discrimination.

Any report of unlawful discrimination involving the principal, compliance officer, or any other person to whom the complaint would ordinarily be reported or filed shall instead be submitted to the Superintendent or designee who shall determine how the complaint will be investigated.

TRANSGENDER AND GENDER-NONCONFORMING STUDENTS

Gender identity means a student's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the student's physiology or assigned sex at birth.

Gender expression means a student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth.

Gender transition refers to the process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that corresponds to the student's gender identity.

Gender-nonconforming student means a student whose gender expression differs from stereotypical expectations.

Transgender student means a student whose gender identity or gender expression is different from the gender he/she was assigned at birth.

Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, regardless of whether they are sexual in nature, where the act 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 are prohibited under state and federal law. Examples of types of conduct which are prohibited in the VCOE and which may constitute gender-based harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with his/her gender identity
2. Disciplining or disparaging a student or excluding him/her from participating in activities for behavior or appearance that is consistent with his/her gender identity or that does not conform to stereotypical notions of masculinity or femininity, as applicable.
3. Blocking a student's entry to the restroom that corresponds to his/her gender identity.

4. Taunting a student because he/she participates in an athletic activity more typically favored by a student of the other sex.
5. Revealing a student's transgender status to individuals who do not have a legitimate need for the information, without the student's consent.
6. Use of gender-specific slurs.
7. Physical assault of a student motivated by hostility toward him/her because of his/her gender, gender identity, or gender expression.

VCOE's uniform complaint procedures (AR 1312.3) shall be used to report and resolve complaints alleging discrimination against transgender and gender-nonconforming students. Examples of bases for complaints include, but are not limited to, the above list as well as improper rejection by VCOE of a student's asserted gender identity, denial of access to facilities that correspond with a student's gender identity, improper disclosure of a student's transgender status, discriminatory enforcement of a dress code, and other instances of gender-based harassment.

To ensure that transgender and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Board policy, the VCOE shall address each situation on a case-by-case basis, in accordance with the following guidelines:

1. Right to privacy: A student's transgender or gender-nonconforming status is his/her private information and the VCOE will only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the VCOE has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In any case, VCOE shall only allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by VCOE pursuant to 34 CCR 99.31.

Any VCOE employee to whom a student's transgender or gender-nonconforming status is disclosed shall keep the student's information confidential. When a student discloses his/her transgender or gender-nonconforming status to a VCOE employee, the employee shall seek the student's permission to notify the compliance officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless he/she is required to disclose or report the student's information pursuant to this procedure, and shall inform the student that honoring the student's request may limit VCOE's ability to meet the student's needs related to his/her status as a transgender or gender-nonconforming student. If the student permits the employee to notify the compliance officer, the employee shall do so within three school days.

As appropriate given the student's need for support, the compliance officer or designee may discuss with the student any need to disclose the student's transgender or gender-nonconformity status or gender identity or gender expression to his/her parents/guardians and/or others, including other students, teacher(s), or other adults on campus. VCOE shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and desire assistance in doing so.

2. **Determining a Student's Gender Identity:** The compliance officer shall accept the student's assertion of his/her gender identity and treat the student consistent with his/her gender identity unless VCOE personnel present a credible and supportable basis for believing that the student's assertion is for an improper purpose.
3. **Addressing a Student's Transition Needs:** The compliance officer shall arrange a meeting with the student and, if appropriate, his/her parents/guardians to identify and develop strategies for ensuring that the student's access to education programs and activities is maintained. The meeting shall discuss the transgender or gender-nonconforming student's rights and how those rights may affect and be affected by the rights of other students and shall address specific subjects related to the student's access to facilities and to academic or educational support programs, services, or activities, including, but not limited to, sports and other competitive endeavors. In addition, the compliance officer shall identify specific school site employee(s) to whom the student may report any problem related to his/her status as a transgender or gender-nonconforming individual, so that prompt action could be taken to address it. Alternatively, if appropriate and desired by the student, the school may form a support team for the student that will meet periodically to assess whether the student's arrangements are meeting his/her educational needs and providing equal access to programs and activities, educate appropriate staff about the student's transition, and serve as a resource to the student to better protect the student from gender-based discrimination.
4. **Accessibility to Sex-Segregated Facilities, Programs, and Activities:** VCOE may maintain sex-segregated facilities, such as restrooms and locker rooms, and sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs. A student shall be entitled to access facilities and participate in programs and activities consistent with his/her gender identity. If available and requested by any student, regardless of the underlying reason, the VCOE shall offer options to address privacy concerns in sex-segregated facilities, such as a gender-neutral or single-use restroom or changing area, a bathroom stall with a door, an area in the locker room separated by a curtain or screen, access to a staff member's office, or use of the locker room before or after the other students. However, the VCOE shall not require a student to utilize these options because he/she is transgender or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with his/her gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. A student's right to participate in a sex-segregated activity in accordance with his/her gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

5. Student Records: A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed with proper documentation. However, at the written request of a student or, if appropriate, his/her parents/guardians, VCOE shall use the student's preferred name and pronouns consistent with his/her gender identity on all other VCOE-related documents. Such preferred name may be added to the student's record and official documents as permitted by law.
6. Names and Pronouns: If a student so chooses, VCOE personnel shall be required to address the student by a name and the pronouns consistent with his/her gender identity, without the necessity of a court order or a change to his/her official VCOE record. However, inadvertent slips or honest mistakes by VCOE personnel in the use of the student's name and/or consistent pronouns will not constitute a violation of this administrative regulation or the accompanying VCOE policy.
7. Uniforms/Dress Code: A student has the right to dress in a manner consistent with his/her gender identity, subject to any dress code adopted on a school site.

GENERAL INVESTIGATIVE AND APPEAL PROCEDURES

1. Investigation

An adequate investigation of student discrimination/harassment claims involve the same steps as an adequate investigation of any student misbehavior at the Step 1 Level. The Step 2 Level shall be performed in accordance with the Uniform Complaint Procedures (Board Policy and Administrative Regulation 1312.3) and this Administrative Regulation.

- a. The VCOE encourages the reporting party or complainant to use the report form available from the principal or site administrator of each building or available from the Superintendent's office (Exhibit A), but oral reports shall be considered complaints as well. Use of formal reporting forms is not mandated. Nothing in this policy shall prevent any person from reporting harassment directly to a Compliance Officer. The complaint must be forwarded from the person who receives the complaint to the site administrator or principal immediately.
- b. The site level administrator or principal or designee shall promptly investigate and document any accusation of discrimination or harassment (Exhibit A & B). This person shall act in an impartial and neutral manner.
- c. In the course of the investigation, the complainant should be asked if he/she does not want his/her name revealed to the accused. The interviewer should explain to the complainant that refusal to divulge his or her name to the accused may prevent both a full investigation of the alleged and formal disciplinary action (i.e., suspension, expulsion or dismissal) against the accused.

- d. The investigator shall interview the complainant, the accused, and all witnesses to clarify and determine whether the alleged has taken place.
- e. It is acceptable for the respective parties to be accompanied by a support person throughout the process.
- f. In the event that an accused student is enrolled in a special education program, an IEP team will be convened to determine if the behavior is a product of the student's handicapping condition, and if appropriate, what behavioral interventions are needed. The educational environment of the victim should be considered in the development of Individual Behavior Plans.

2. Appropriate Action

The results of the investigation are to be reported to the school administrator or designee who will determine the appropriate consequence for the offense, if it is concluded that discrimination/harassment occurred. Consequences may include, but are not limited to, actions such as counseling, parent conferencing, detention, restorative circle, suspension, expulsion, dismissal from the program, or, in the of case discrimination/harassment by an employee, disciplinary action up to and including dismissal.

Where is has not been possible to determine whether discrimination/harassment has taken place, the complainant and the alleged shall be informed of the conclusion, telling the complainant to report any incidents in the future and indicating to the alleged the serious consequences of such behavior, if it should occur.

3. Complaints to the Office for Civil Rights

Individuals alleging discrimination/harassment may complain directly to the Office for Civil Rights (O.C.R.) or they may file a complaint after filing a separate complaint with VCOE. A complainant is not required by law to use the organization's grievance procedures for filing a complaint with O.C.R. However, filing a complaint with O.C.R. may preclude any further use of the VCOE's grievance procedures. If the complainant uses the VCOE's grievance procedures and files a complaint with O.C.R., the complaint must be filed with O.C.R. within 60 days after the last act of the VCOE's grievance process. To contact the Office for Civil Rights, write or call the following: U.S. Department of Education, 50 United Nations Plaza, #239, San Francisco, CA 94102, (415) 556-7000.

4. Step 2 - Right of Appeal

A student or that student's parents or legal guardians, if not satisfied with the results of the investigation of a discrimination/harassment charge, may file a complaint of discrimination under the Uniform Complaint Procedures contained in Board Policy and Administrative Regulation 1312.3.

5. Appeals to the Office for Civil Rights

An appeal of a VCOE decision regarding a discrimination/harassment complaint may be made with the Office for Civil Rights. To contact the Office for Civil Rights, write or call the following: U.S. Department of Education, 50 United Nations Plaza, #239, San Francisco, CA 94102, (415) 556-7000.

6. Civil Law Remedies

An appeal of a VCOE decision may be made in court through civil law remedies. Complainants should consult an attorney for more information.

7. Retention and Maintenance of Materials

All materials concerning the complaint including the written complaint, written responses, notes, letters, and legal papers, shall be maintained by the Department of Human Resources in a confidential, legal file for a period of five years after the completion of the investigation.

8. Information

Inquiries regarding sexual harassment may be directed to the following:

Title IX Office –VCOE HR Department
5189 Verdugo Way
Camarillo, CA 93012
(805) 383-1910

CDE Office of Gender Equity
721 Capitol Mall
Sacramento, CA 95814
(916) 657-3005

U.S. Department of Education
Office for Civil Rights
50 United Nations Plaza, #239
San Francisco, CA 94102
(415) 556-7000

Legal Reference:

EDUCATION CODE

210.7 Educational Equity; Gender

234.1 Safe Place to Learn

48985 California School Information Services; English Language Learners

TITLE 5

4621 LEA Compliance, District Policies and Procedures