

SUMMARY OF INVESTIGATIVE FINDINGS

In January 2020, two Santa Clara Office Of Education (SCCOE) employees¹ and two Santa Clara County Board of Education (SCCBOE) Board Members made verbal complaints of harassment by Board Member Joseph Di Salvo to the Santa Clara County Superintendent of Schools (hereinafter “County Superintendent” or “SCCSS”). Specifically, they alleged that Di Salvo engaged in harassing behavior due to gender (female) and race (African American).

Under federal and state law, the County Superintendent is required to ensure that any claims of harassment are promptly investigated. A similar requirement is imposed by Superintendent Policy 4030. In furtherance of that requirement, an outside investigator, Carrie McFadden of Van Dermyden Maddux Law Corporation, was retained to investigate the claims against Board Member Di Salvo.

This investigation was initiated pursuant to Superintendent Policy 4030, 4144, and 4144.1. Collectively, these policies prohibit discrimination and harassment against SCCOE employees based on any protected characteristic, including gender and race. Ms. McFadden (the “Investigator”) was asked to determine the veracity of the allegations against Board Member Di Salvo, and make factual findings.

During the course of this investigation, witnesses raised allegations against Di Salvo which implicated Board Policy 9005 and 9006. The scope of this investigation was expanded to include those allegations.

I. Scope/Allegations Investigated

Witness A received verbal complaints from two SCCOE employees and two Board Members alleging that Di Salvo engaged in harassing behavior on the basis of gender (female) and race (African American). During the course of this investigation, Witness B raised additional concerns regarding Di Salvo’s conduct towards Witness B due to her gender (female).

The scope² of the investigation was limited to these allegations. The Investigator analyzed whether the evidence established that Di Salvo engaged in the conduct alleged and whether, taken individually or collectively, the conduct demonstrated harassment due to gender or race.

II. Summary of Findings

The Investigator determined that the preponderance of the evidence supports a finding that Di Salvo’s behavior, taken individually or collectively, was motivated in part by gender, but not race. Below is a summary of the Investigator’s findings and conclusions based on a review of the evidence and the information provided by the individuals interviewed:

¹ To ensure confidentiality, employees and Board Members who participated in this investigation are referred to herein by pseudonyms. Where feasible, details which could potentially identify the witness, such as job title, are not included.

² During the course of this investigation, witnesses reported allegations that were deemed outside the scope of this investigation. They included additional allegations from witnesses about Di Salvo’s behavior towards others, and Di Salvo also raised allegations regarding Witness B.

Racial and Gender Harassment Allegations Regarding Witness C

- **Allegation**—Shortly before she retired in summer 2019, Witness C verbally complained to Witness A that Di Salvo engaged in behavior towards her which she felt amounted to racial harassment on account of her race (African-American) and gender harassment on account of her gender (female). The conduct complained of included a disparaging comment about how she presented as an African American leader, intimidation to attend political fundraiser, and harassment claim.
- **Finding**—Despite these specific allegations, Witness C declined to participate in the investigation, and thus the Investigator was unable to get Witness’s C’s perspective and additional information about her allegations. The Investigator found that there was insufficient evidence that Di Salvo made disparaging comments regarding how Witness presented as a female African American leader, as none of the other witnesses interviewed for the investigation corroborated this claim. Further, while the Investigator sustained the claim that Di Salvo invited Witness C to a political fundraiser, she did not sustain the claim that he “intimidated” or “pressured” Witness C to attend that event. Finally, the Investigator noted that none of the witnesses interviewed could cite a particular interaction or communication between Di Salvo and Witness C which they felt was an example of Di Salvo undermining or ignoring Witness C. As such, the Investigator determined that the evidence did not sustain the allegation that Di Salvo harassed Witness C by undermining her work and ignoring her at times.

Harassment Allegations Regarding Witness G

- **Allegation**—Witness G alleged that Di Salvo engaged in “inappropriate” behavior by making negative comments about her and one of her job-related tasks during two SCCBOE Board meetings (September 18, 2019 and November 6, 2019). It was alleged that these negative comments could be interpreted as not supporting Witness G or SCCOE, and thus impacted Witness G’s ability to fulfill one of her job duties. In addition, it was alleged that Di Salvo “abruptly” approached Witness G privately before the start of an October 2019, board meeting to ask her about a pending legal matter, which made Witness G feel unprepared to respond.
- **Finding** —The Investigator determined that credible evidence, including video footage of the two meetings, established that Di Salvo made comments which negatively impacted Witness G’s ability to fulfill her work duties because he questioned her work in a critical manner. Because Di Salvo also made comments in the public meeting despite knowing that the SCCBOE had no role in this work, the Investigator determined that Di Salvo’s comments could be reasonably interpreted as not supporting her or SCCOE. The Investigator also determined that the evidence sustained the claim that Di Salvo “abruptly” approached Witness G before the start of the October 2019 board meeting, and noted that Di Salvo did not deny the interaction.

Racial and Gender Harassment Allegations Regarding Closed Session Meeting

- **Allegation**—Witness B and Witness H reported that during a closed session SCCBOE meeting in November or December 2019, Di Salvo angrily made harassing comments to Counsel Meredith Brown of the Atkinson, Andelson, Loya, Ruud & Romo law firm while she provided a legal opinion to the Board. They alleged that Di Salvo openly disagreed with Brown’s opinion in a heated and derogatory manner by asking her two to three times in various ways, “Who signs your paycheck?” to insinuate Brown’s legal opinion was influenced by Witness A, who signs the paycheck. It was also alleged that Di Salvo told Brown in a “derogatory” manner, “You are just telling her [while pointing to Witness A in a “demeaning” manner] what she wants to hear because she signs your paycheck.” In addition, it was alleged that Di Salvo questioned Brown about whether a male attorney from a different firm would agree with Brown’s legal opinion. Witness B and Witness H attributed Di Salvo’s angry and harassing behavior to bias due to Brown’s gender (female).
- **Findings**—The Investigator determined that the preponderance of the evidence sustained this allegation. Credible evidence, including Di Salvo’s admissions and testimony from witnesses who attended the closed session meeting, corroborated that in addition to publicly disagreeing with Brown’s legal opinion, he angrily told her, “Who signs your paycheck?” and “You are just telling her [while pointing to Witness A] what she wants to hear because she signs your paycheck.” Di Salvo also asked Brown whether a male attorney from the Lozano Smith law firm would agree with her legal opinion. Five witnesses described Di Salvo’s tone of voice in similar terms, such as “aggressive,” “angry,” “argumentative,” “hostile,” “not nice,” and “heated.” The Investigator determined that corroborating evidence supports a finding that two witnesses felt Di Salvo’s behavior towards Witness A during this exchange was demeaning; and created a “tense” and “uncomfortable” situation. Di Salvo admitted he was angry, that he “probably” raised his voice and leaned across the table towards Brown while speaking to her. Di Salvo also acknowledged after the closed session ended and the Board returned to the public session, he said “kind of an apology” to Brown.

Allegations Regarding Witness B

During the course of this investigation, Witness B alleged Di Salvo treated her unprofessionally during public SCCBOE Board meetings since 2015, and attributed Di Salvo’s behavior to her gender (female). Witness B pointed to the following examples:

- **Allegations**—During a public SCCBOE Board meeting on June 17, 2015, Di Salvo “berated” Witness B for stating her opinion about the appropriateness of a letter from the Mayor.
- **Findings**—The Investigator determined that this allegation was partially sustained by the preponderance of the evidence, which included video footage. The evidence confirmed that Di Salvo commented at the board meeting that he wanted to “defend” the Mayor after “one of my colleagues ridiculed him tonight.” However, the Investigator determined that although Di Salvo could have used more professional language in expressing his disagreement with Witness B’s statements, his comment did not rise to the level of “berating” her because he did not raise his voice or use any angry tone.

- **Allegations**—During a public SCCBOE Board meeting on September 6, 2017, Di Salvo engaged in “demeaning” behavior by interrupting Witness B while she was speaking to ask Witness F if she (Witness F) was going to let Witness B’s comments “go on and on,” and that when Witness E put her arm on Di Salvo’s shoulder, Di Salvo physically reacted by putting his arm up.
- **Findings**— The Investigator determined that the preponderance of the evidence sustained this allegation. Credible evidence corroborated the exchange between Witness B, Witness F, and Di Salvo, and the Investigator determined it was reasonable for Witness B to interpret Di Salvo’s behavior as “demeaning.” The Investigator determined that although Di Salvo may have been frustrated that he would not have sufficient time to ask questions because of the length of Witness B’s questioning, Di Salvo expressed his concern in a way which demeaned his fellow Board Members. Specifically, Di Salvo questioned Witness F’s decisions to call on Witness B to ask questions first and to let Witness B continue with her questions despite the shortage of time. Di Salvo also insinuated Witness F’s decision not to agree with Di Salvo was incorrect because he had served on the Board longer than she had. Additionally, Di Salvo insinuated Witness B would not be respectful of the other trustees’ opportunity to ask questions despite Witness F’s request she do so. Lastly, it is undisputed Witness E was attempting to calm Di Salvo when she reached out to touch his arm, yet he suddenly physically and verbally overreacted to her gesture. The Investigator also noted that Di Salvo acknowledged he later wrote an apology letter to the Board for his behavior, which suggested that he recognized his behavior was inappropriate.
- **Allegations**—It was alleged that when Di Salvo arrived at the Board retreat on January 14, 2020 and learned the retreat would be live streamed for public viewing, he became upset, and that he asked, “Whose idea was this? Why are the cameras here?” Witness B responded it was her idea to record the retreat because it was a public meeting and Di Salvo was so upset about it that he left and did not participate in the retreat.
- **Findings**— The Investigator determined that the preponderance of the evidence, including Di Salvo’s admissions, sustained this allegation. Credible evidence established that when Di Salvo arrived at the January 14, 2020, retreat and learned it would be live streamed for public viewing, he became upset. The evidence confirmed that Di Salvo asked, “Whose idea was this? Why are the cameras here?” Di Salvo admitted he was upset to learn the retreat would be live streamed, and did not dispute Witness B told him it was her decision to live stream the Board retreat, as it was a public meeting. Di Salvo also acknowledged to the Investigator that he was “outraged” about it, so he left and did not participate in the retreat.

Allegations Regarding Motive for Di Salvo’s Behavior

The Investigator analyzed whether Di Salvo’s behavior, taken individually or collectively, demonstrated harassment because of gender or race. The Investigator found that Di Salvo’s behavior towards Witness G, Brown, and Witness B was motivated in part by gender but not race.

Gender Bias

The Investigator noted that gender bias can be subtle and often difficult to articulate, and that evidence of overt bias is rare. Yet, when considering Di Salvo's conduct as a whole, and in particular, Di Salvo's treatment toward Brown, Witness B, and Witness F, the Investigator found sufficient evidence demonstrating that Di Salvo's behavior was motivated in part by gender.

Despite Di Salvo's articulated reasons for his behavior (i.e. his passion for his role as trustee and advocating for his constituents, the Investigator determined that the manner in which Di Salvo chose to communicate with his colleagues and SCCOE employees about these issues goes beyond professional discourse, and instead represents a subtle bias against women who disagree with or challenge him. The investigator found that as to Di Salvo's individual behavior towards Witness G, Brown, Witness F, and Witness B, he challenged women whom he perceived were not doing what he wanted. Specifically, he made disagreed with how Witness G performed one of her job duties, so he made negative and critical comments to her. He disagreed with Brown's legal opinion, so he aggressively questioned whether her opinion was bought. Di Salvo also questioned Brown whether a male lawyer would agree with her legal opinion. Di Salvo disagreed with Witness F's decisions to choose Witness B to speak first during a Board meeting and would not cut Witness B's questioning short, so he questioned Witness F's decisions and implied Witness F's decisions were inferior because she disagreed with him. The Investigator found this is stereotypical behavior indicative of gender bias.

The Investigator reviewed Di Salvo's conduct as a whole. Most witnesses corroborated Di Salvo's communication style was more elevated or aggressive when he disagreed with someone, felt he was losing power or control, or when he was not getting his way. Four witnesses felt Di Salvo was "dismissive" and "disrespectful" towards women who disagreed with him but did not engage in similar behavior towards men. In other words, Di Salvo's communication style became more "heated" and "unprofessional" when the person who disagreed with him was a woman. Such behavior goes above and beyond what is necessary to communicate one's point of view, and thus cannot reasonably be related to Di Salvo's role as a trustee. Rather, such conduct appears to be engaged in for other reasons, including to undermine or to intimidate a woman into changing her opinion.³

The Investigator also considered that two witnesses pointed to Di Salvo's "heated" interactions with a male deputy superintendent from a local school district during public Board meetings. Video footage of Di Salvo's interactions with that male deputy superintendent on July 19, 2017, August 2, 2017, August 1, 2018, May 2, 2018, and November 20, 2019 indicate Di Salvo had disagreements with him, but he did not raise his voice, interrupt him to insert Di Salvo's disagreement with his perspective, or use provocative words during those disagreements as he did with Brown, Witness F, and Witness B. Indeed, during the November 20, 2019 Board meeting, when a female superintendent from another local school district made critical comments about Di Salvo, Di Salvo interrupted her before Witness F asked him to let the female

³ See e.g., The Yale Law Journal, Volume 128, "Sexual Harassment Law After #Me Too: Looking to California as a Model," Ramit Mizrahi, (2018) (men use harassment to undermine women's competence and to drive them out of their jobs; such harassment is often motivated by bias and hostility); *Reno v. Baird* (1998) 18 Cal.4th 640, 645-646 ("Harassment consists of conduct outside the scope of necessary job performance, conduct presumably engaged in for personal gratification, because of meanness or bigotry, or for other personal motives. Harassment is not conduct of a type necessary for management of the employer's business or performance of the supervisory employee's job."); *Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 130 ("[A]busive conduct that is not facially sex specific can be grounds for a hostile environment sexual harassment claim if it is inflicted because of gender, i.e., if men and women are treated differently and the conduct is motivated by gender bias.")

superintendent finish. Di Salvo, however, proceeded to interrupt that female superintendent two more times. This evidence suggests that although Di Salvo disagreed with both a male and a female speaker, he engaged in dismissive behavior only towards the female speaker.

In reaching her findings, the Investigator also considered evidence indicating Di Salvo's behavior was unrelated to gender. First, one female Board Member said she did not believe Di Salvo's communication style was related to gender. However, the evidence suggests this Board Member frequently agreed with Di Salvo's views, and thus did not challenge him. Second, two female Board Members (Witness D and Witness E) felt Di Salvo's communication style towards Witness B was attributable in part to Board politics and Witness B's use of provocative language during Board meetings. Although Di Salvo's disagreements with Witness B may be motivated by their different views on particular subjects or Witness B's word choice in expressing her views, the Investigator found his choice of expressing his disagreements with her in a demeaning manner is reflective of a gender bias.

Racial Bias

The Investigator considered whether Di Salvo's conduct may have been partly motivated by racial bias against African Americans. The Investigator considered evidence that Di Salvo engaged in similarly demeaning behavior towards Witness B (Latina) and that witnesses also described Di Salvo engaging in similarly dismissive behavior towards two White women (Witness A and Catherine Groves, Senior Counsel at Hanson Bridgett LLP). Thus, the Investigator did not find race to be a motivating factor in Di Salvo's conduct.