Title: **Harassment and Discrimination Investigation Procedures for Staff Members and Applicants for Employment**
Code: AC R 2

Section: Section A: Foundations and Basic Commitments

The District prohibits discrimination against any student, staff member, or applicant for employment.

For the purposes of this regulation, **"Discrimination"** shall be defined in accordance with applicable law, including unlawful different treatment, exclusion, denial of benefits, limitation of opportunities, or other adverse action based on a person's protected class, where prohibited by applicable federal or Colorado law. Discrimination may include denying or limiting a student's, staff member's, applicant's, participation in, or benefits from the District's programs, activities, services, employment, facilities, or opportunities because of a protected status.

In addition to any other legally protected classes, for purposes of this regulation "marital status" shall be considered a protected class, except that marital status may be considered in situations in which one spouse directly or indirectly would exercise supervisory, appointment, or dismissal authority or disciplinary action over the other spouse; one spouse would audit, verify, receive, or be entrusted with moneys received or handled by the other spouse; or one spouse has access to the employer's confidential information, including payroll and personnel records.

For employment, discrimination may include failing or refusing to hire, discharging, disciplining, demoting, denying promotion or advancement, providing unequal compensation or benefits, or otherwise treating an employee or applicant differently with respect to the terms, conditions, privileges, opportunities, or status of employment because of a protected status.

Discrimination also includes other conduct prohibited by applicable nondiscrimination laws, including the failure to provide reasonable accommodations or modifications when required by law. Unlawful harassment based on a protected status is a form of prohibited discrimination. For the purposes of this regulation, **"harassment"** shall be defined in accordance with applicable law, including unwelcome conduct or communication directed at an individual because of their membership in a protected class, or perceived membership in a protected class, as defined in Policy AC. The conduct or communication must be subjectively offensive to the individual alleging harassment and objectively offensive to a reasonable individual who is a member of the same protected class. The conduct or communication constitutes harassment if:

(i) submission to the conduct or communication is explicitly or implicitly made a term or condition of the individual's employment;
(ii) submission to, objection to, or rejection of the conduct or communication is used as a basis for employment decisions affecting the individual; or
(iii) the conduct or communication has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.

Harassment does not include petty slights, minor annoyances, and lack of good manners, unless they meet the definition of harassment when taken individually or in combination and under the totality of the circumstances.
Harassment under Colorado law also includes the knowing or intentional use of a name other than the student's chosen name, or the refusal to use a student's chosen name (see administrative policy ACA).

The grievance procedures outlined below are designed to ensure the fair, impartial, and timely resolution of harassment or discrimination complaints filed by staff members or, applicants for employment.

Allegations of sex-based discrimination or sexual harassment arising under Title IX must follow the procedures specifically outlined in Policy AC R 3.

Definitions

a. **Advisor:** A person selected by a Party, of the Party's own choosing, which may include a parent, legal guardian, or attorney. The District does not provide, nor train advisors. An advisor provides support and advocacy during the grievance process, but may not speak on behalf of a party. If the Party is a student, they may have a guardian present in addition to an advisor.

b. **Compliance Coordinator:** The District staff member who is responsible for coordinating and overseeing the District's discrimination and harassment prevention and response efforts. Among other responsibilities, the compliance coordinator will coordinate and oversee the District's discrimination and harassment investigation, consultation, recordkeeping, monitoring, and training processes. The compliance coordinator may appoint a designee to perform any of their assigned duties, including performing the investigation and issuing the report.

c. **Complainant:** An individual who is alleged in a Formal Complaint to be the victim/impacted party of conduct that could constitute a violation of this policy. Parents and guardians do not become complainants (or respondents), even if they file the Formal Complaint on behalf of their child.

d. **Decision Maker:** An individual(s) responsible for considering the evidence contained in the investigation report, making findings of fact, and analyzing the relevant policy provisions to determine whether the allegations constitute a policy violation. The District's decision maker may be the superintendent, another designated administrator, or a third party. This person must be trained in accordance with this policy. The Decision-maker cannot be the same person(s) as the Title IX Coordinator or the Investigator.

e. **Determination:** A written finding by the Decision Maker determining, using a preponderance of the evidence standard, that the Respondent was or was not responsible for the alleged conduct and policy violation.

f. **Disciplinary Sanction:** a consequence imposed by the District on a respondent who is found to have violated this policy; however, the grievance process must be completed before any disciplinary sanctions are imposed. Disciplinary sanctions are designed to remedy and/or prevent the recurrence of discrimination, harassment, and/or retaliation. Disciplinary sanctions may include, but are not limited to: required educational activities or training, loss of privileges, suspension, expulsion, or termination as appropriately addressed through District policies and procedures.

g. **Education Program or Activity:** Locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurs.

h. **Grievance Process:** A process of formal resolution pursued in response to a report that alleges discrimination or harassment, which includes without limitation an Investigation and Determination, or an Informal Resolution.

i. **Informal Resolution:** An alternative dispute resolution process facilitated by an Informal Resolution Facilitator, which may include but is not limited to educational resolutions, training, mediation or restorative practices.

j. **Informal Resolution Facilitator:** The person who conducts an Informal Resolution process as outlined in this policy. This person must be trained in the methods of Informal Resolution being used, and also must be trained in accordance with this policy.

k. **Investigator:** The individual responsible for conducting interviews, gathering evidence, and producing an investigation report. The investigator cannot serve as the decision-maker and will not make any recommendations of findings. This person must be trained in accordance with this policy.

l. **Party or Parties:** The Complainant and the Respondent, individually or collectively.

m. **Remedies:** Actions taken after resolution of a Formal Complaint designed to restore or preserve access to the District's education program. Such remedies may include the same individualized services utilized as Supportive Measures. However, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent if a determination finds a Respondent responsible.

n. **Report:** A verbal, electronic, or written communication alleging possible discrimination or harassment. May also be referred to as a "concern."

o. **Reporting Party:** A person who raises a concern or allegation of discrimination or harassment on behalf of a complainant with the compliance coordinator. Any District student, staff member, or community member may be a reporting party.

p. **Respondent:** An individual who has been reported to have engaged in conduct that could constitute harassment under this policy.

q. **Retaliation:** Intimidation, coercion, or discrimination against an individual because the individual made a good-faith report about or participated in good faith in an Investigation of Discrimination or Harassment. The District will investigate and respond to an allegation of Retaliation in the same manner as an allegation of Discrimination or Harassment under this policy.

r. **Staff Member:** Any employee of the District, including teachers, teacher aides, bus drivers, cafeteria workers, custodial staff, athletic staff, administrative and clerical staff, school medical staff and security staff, and contractors, as well as an applicant of the District.

s. **Student:** A student currently attending or seeking enrollment in the District.

Investigation Process

Throughout the investigation, the District will keep information related to the investigation confidential to the extent practicable, except a staff member shall not be prevented from making a mandatory report of suspected abuse or neglect, or reporting suspected criminal conduct to law enforcement.

The investigation will be fair, impartial, and prompt. The compliance coordinator will oversee the investigation process. The compliance coordinator may assign the investigation to a designee. Hereafter "compliance coordinator" means compliance coordinator or designee.

The District will make a good faith effort to complete an investigation within sixty calendar days after the complaint is made. An extension of up to an additional thirty days may be enacted for good cause. The compliance coordinator will attempt to adhere to all timelines. If the compliance coordinator needs more time with regard to any aspect of the investigation, they will notify the parties in writing as to the reason for the extension.

All parties will be treated equitably and will be provided equal opportunity to present evidence. All questions related to the investigation must be directed to the compliance coordinator or individual conducting the investigation, and the investigation must consider any evidence of patterns of misconduct as relevant evidence.

If a student with a documented disability is a party, the compliance coordinator may collaborate with the student's 504 or IEP team to consider appropriate supportive interim measures and uphold approved accommodations that may be necessary throughout the investigation. If a staff member is a party and the staff member has an approved accommodation, the staff member shall inform the compliance coordinator and request an activation of approved accommodations throughout the investigation when necessary. The staff member's approved accommodations may be considered when issuing supportive interim measures.

1. **Making a Complaint**

Any person who witnesses or experiences harassment, discrimination, or retaliation against staff members or applicants for employment is encouraged to report the conduct by notifying their supervisor, or their supervisor's supervisor if their supervisor is the offender, or by making a complaint with the District's compliance coordinator.

Any staff member who receives information about, witnesses, or experiences harassment, discrimination or retaliation must report the incident to their supervisor, or their supervisor's supervisor if their supervisor is the alleged offender, or to the District's compliance coordinator. Supervisors must forward complaints received to the District's compliance coordinator.

Complaints may be made by phone, by email, in person, or through an online form and should include a detailed description of the alleged event(s), the date(s) the alleged events occurred, and name(s) of the parties involved, including any witnesses. The complaint should be made as soon as possible after the incident.

- **Compliance Coordinator:** Jennifer "Jen" Piluso, 719-234-1200; 1110 Chapel Hills Drive, Colorado Springs, CO 80920; titleix@asd20.org
- **Complaint Form Link:** Report of Discrimination or Harassment

No person can serve as the compliance coordinator or as an investigator or decision maker in a matter in which they have a reasonably identified bias or conflict of interest with regard to the parties and/or the underlying conduct. If the compliance coordinator is alleged to have participated in prohibited conduct, complaints may be made or forwarded by supervisors to the following District staff member.

- **Assistant Superintendent for Human Resources,** Cameron Smart, 719-234-1238, 1110 Chapel Hills Drive, Colorado Springs, CO 80920

2. Evaluation by Compliance Coordinator

The compliance coordinator will review the complaint to determine whether the alleged conduct constitutes potential discrimination or harassment. The compliance coordinator may refer the matter back to the building principal or appropriate administrative department to be addressed through another process if the conduct alleged does not implicate a protected class or does not fit the characteristics of harassment or discrimination.

The compliance coordinator will refer any potential criminal charges to law enforcement. Upon the request of law enforcement, the compliance coordinator will delay action on a complaint for a reasonable amount of time to allow law enforcement to investigate the matter and may notify the parties of the delay, when appropriate. The compliance coordinator will not rely solely on a criminal investigation by a law enforcement agency in lieu of responding to a report of harassment or discrimination but may consider any evidence collected by law enforcement in making any determinations.

The compliance coordinator may assign any or all aspects of the investigation to a qualified alternate for any reason, including conflict of interest, bias concerns and/or insufficient capacity due to other matters.

As used in this regulation, the term "compliance coordinator" refers to the compliance coordinator or their designee.

If the compliance coordinator determines that the allegations do not meet the criteria for discrimination or harassment, the compliance coordinator may refer the matter to be addressed through another process, and/or offer supportive interim measures to stop, prevent, and remedy the concern.

If the complainant does not want to proceed with the next steps of the investigation, the compliance coordinator may elect to proceed, on behalf of the District, with the investigation if necessary to stop any harassment or discrimination and otherwise ensure the safety of the school environment.

If the respondent is a staff member and resigns upon notice of allegations or during an investigation, the District may or may not continue the investigation depending on the circumstances. Allegations that are not addressed given a resignation and investigations that result in a finding of a violation of policy may be reported to the Colorado Department of Education.

3. Informal Complaint Resolution

When the compliance coordinator deems it appropriate, an informal resolution process may be instituted. The informal resolution process may only be used if both parties agree. Agreement must be voluntary, non-coerced, and documented in writing. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

An informal resolution may include but is not limited to mediation, restorative practices, training or educational activities. Once the informal resolution has been completed, the District will consider the matter considered closed.

- Unavailability of Informal Resolution. Informal resolution is not available in cases where the allegation involves an act of violence.
- Potential Disciplinary Sanctions. An informal resolution may result in findings and/or disciplinary sanctions appropriate for the misconduct, which must be imposed in accordance with applicable law and District policy, including but not limited to a warning, restorative justice, alternatives to suspension or expulsion, suspension, or expulsion, or employment termination.

4. Formal Complaint Resolution

If informal resolution is determined inappropriate or unavailable, the compliance coordinator will engage in formal complaint resolution. The compliance coordinator will proceed as follows:

Investigation

In all instances of reported unlawful, employment-based harassment, the ccompliance coordinator, or designee, will take prompt, reasonable action to investigate or address alleged discriminatory or unfair employment practices.

If the Superintendent is the alleged offender then the report may be made to the Board of Education. Prompt and reasonable action will be taken to investigate and remedy, when warranted, in response thereto.

Determination

The determination shall be made based on the preponderance of the evidence standard, which means that it is more likely than not that the conduct occurred. In making this decision, all relevant circumstances must be considered, which may include:

(a) the frequency of the conduct or communication, recognizing that a single incident may rise to the level of harassment;
(b) the number of individuals engaged in the conduct or communication;
(c) the type or nature of the conduct or communication, recognizing that conduct or communication that, at one time, was or is welcome between two or more individuals may become unwelcome to one or more of those individuals;
(d) the duration of the conduct or communication;
(e) the location where the conduct or communication occurred;
(f) whether the conduct or communication is threatening;
(g) whether any power differential exists between the individual alleged to have engaged in harassment and the individual alleging the harassment;
(h) any use of epithets, slurs, or other conduct or communication that is humiliating or degrading; and
(i) whether the conduct or communication reflects stereotypes about an individual or group of individuals in a protected class.

Whether harassment has previously occurred in the District is not relevant as to whether the conduct or communication is discriminatory. Petty slights, minor annoyances, and lack of good manners do not constitute harassment, unless, combined, they impact an individual's access to education or create a hostile environment as described in the definition of harassment.

At the conclusion of an investigation, the District will take prompt, reasonable remedial actions, when warranted, in response to complaints of discriminatory or unfair employment practices.

Nonretaliation

Retaliation against the complainant, respondent, or any person who filed a report or complaint or participated in an investigation is prohibited. Individuals found to have engaged in retaliatory behavior will be subject to disciplinary measures.

Nothing in this section prohibits the District from disciplining a student or staff member who knowingly makes a false report of harassment or discrimination, or disciplining a student or staff member when necessary to ensure the safety of any student or staff member. A finding of no harassment or discrimination does not itself constitute a false report.

Resources

Throughout the investigation, or after the investigation concludes, affected individuals may choose to use the following resources:

National Domestic Violence Hotline: 1−800−799−SAFE (7233)
National Sexual Assault Hotline: 1-800-656-4673
Colorado Department of Human Resources Domestic Violence Program: *https://cdhs.colorado.gov/dvp*
Violence Free Colorado: *https://www.violencefreecolorado.org/*

The Crisis Center 24/7 Hotline: *303-688-8484*
Local resources for use by staff include:
Colorado Springs Police Department – Report a Crime
El Paso County Sheriff's Office

Outside Agencies

In addition to, or as an alternative to, filing a complaint pursuant to this regulation, a person may file a discrimination complaint with the U.S. Department of Education, Office for Civil Rights (OCR); the Federal Office of Equal Employment Opportunity Commission (EEOC); or the Colorado Civil Rights Division (CCRD). The addresses of these agencies are listed below.

Denver Office for Civil Rights (OCR)
U.S. Department of Education
1244 Speer Blvd., Suite 310, Denver, CO 80204-3582
Telephone: 303-844-5695
Fax: 303-844-4303
TTY: 303-844-3417
Email: OCR.Denver@ed.gov

Federal Office of Equal Employment Opportunity Commission (EEOC)
303 E. 17th Avenue, Suite 410, Denver, CO 80203
Telephone: 800-669-4000
Fax: 303-866-1085
TTY: 800-669-6820
ASL Video Phone: 844-234-5122
Website: https://publicportal.eeoc.gov/portal/

Colorado Civil Rights Division (CCRD)
1560 Broadway, Suite 825, Denver, CO 80202
Telephone: 303-894-2997 or 800-886-7675
Fax: 303-894-7830
Email: DORA_CCRD@state.co.us (general inquiries)
DORA_CCRDIntake@state.co.us (intake unit)

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