

## **Policy JB-R1: Procedures for the Investigation of Student Complaints of Discrimination or Harassment**

Denver Public Schools (“the District”) will provide a learning environment that is free from unlawful discrimination and harassment. The District shall promptly respond to concerns and complaints of unlawful discrimination and/or harassment; take action in response when unlawful discrimination and/or harassment is discovered; impose appropriate sanctions on offenders in a case-by-case manner; and protect the privacy of all involved in unlawful discrimination and/or harassment complaints as required by state and federal law. When appropriate, the complaint shall be referred to law enforcement for investigation.

The District has adopted the following procedures to promptly and fairly address concerns and complaints about unlawful discrimination and/or harassment. Complaints may be submitted orally or in writing.

### **Definitions**

1. “Student Compliance Officer” means the Executive Director of Student Services or his or her designee who is designated to receive complaints of alleged unlawful discrimination and harassment.
2. “Aggrieved Individual” shall mean a student or the parents or guardians of a student under the age of 18 acting on behalf of a student who is directly affected by and/or is witness to an alleged violation of Board policies prohibiting unlawful discrimination or harassment.
3. “Harassment” is any unwelcome, hostile, and offensive verbal, written, or physical conduct based on or directed at a person’s Protected Class status that: (1) results in physical, emotional, or mental harm or damage to property; (2) is sufficiently severe, persistent, or pervasive that it interferes with an individual’s ability to participate in or benefit from an educational program or activity or creates an intimidating, hostile, or threatening environment; or (3) substantially disrupts the orderly operation of the school.
  - a. Harassing conduct may take many forms, including but not limited to:
    - i. Verbal acts and name-calling;
    - ii. Graphic depictions and written statements, which may include use of cell phones or the Internet; and/or
    - iii. Other conduct that may be physically threatening, harmful, or humiliating.

### **Student Compliance Officer’s Duties**

The Student Compliance Officer shall be responsible for conducting an investigation and coordinating all complaint procedures and processes for any alleged violation of

federal or state statute or Board policy prohibiting unlawful discrimination or harassment.

The District's Student Compliance Officer is:

Executive Director  
Student Services  
Denver Public Schools  
1860 Lincoln St.  
Denver, CO 80203  
Telephone: 720-423-3437

### **Sexual Harassment Prohibited**

Unwelcome sexual advances, requests for sexual favors, or other verbal, non-verbal, or physical conduct of a sexual nature may constitute sexual harassment, even if the harasser and the student being harassed are the same sex and whether or not the student resists or submits to the harasser, when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of a student's participation in an education program or activity;
2. Submission to or rejection of such conduct by a student is used as the basis for education decisions affecting the student; or
3. Such conduct is sufficiently severe, persistent, or pervasive such that it limits a student's ability to participate in or benefit from an education program or activity or it creates a hostile or abusive educational environment. For a one-time incident to rise to the level of harassment, it must be severe.

Any conduct of a sexual nature directed by a student toward a staff member or by a staff member to a student is presumed to be unwelcome and shall constitute sexual harassment. Acts of verbal or physical aggression, intimidation, or hostility based on sex, but not involving conduct of a sexual nature may also constitute sexual harassment.

Sexual harassment as defined above may include, but is not limited to:

1. Sex-oriented verbal "kidding," abuse, or harassment;
2. Pressure for sexual activity;
3. Repeated remarks to a person with sexual implications;
4. Unwelcome touching, such as patting, pinching, or constant brushing against the body of another;
5. Suggesting or demanding sexual involvement, accompanied by implied or explicit threats concerning one's grades or similar personal concerns; or
6. Sexual violence.

## **Complaint Procedure**

An Aggrieved Individual is encouraged to promptly report the incident to an administrator, counselor, teacher, or the District's Student Compliance Officer using form AC-E2: "Discrimination/Harassment Complaint Form." All reports received by teachers, counselors, principals, or other District employees shall be promptly forwarded to the Student Compliance Officer. If the Student Compliance Officer is the individual alleged to have engaged in the prohibited conduct, the complaint shall be forwarded to the Superintendent, and the Superintendent shall designate an alternate Student Compliance Officer to investigate the matter.

Any Aggrieved Individual may file with the Student Compliance Officer a complaint charging the District, another student or any school employee with unlawful discrimination or harassment. Complaints may be made orally or in writing. Persons who wish to file a written complaint shall be encouraged to use the form in AC-E2: "Discrimination/Harassment Complaint Form."

All complaints shall include a detailed description of the alleged events, the dates the alleged events occurred, and names of the parties involved, including any witnesses. The complaint shall be made as soon as possible after the incident.

The Student Compliance Officer shall confer with the Aggrieved Individual and/or the alleged victim of the unlawful discrimination or harassment as soon as is reasonably possible, but no later than 15 school days following the District's receipt of the complaint in order to obtain a clear understanding of the basis of the complaint.

Within 5 school days following the initial meeting with the Aggrieved Individual and/or alleged victim, the Student Compliance Officer shall attempt to meet with the individual alleged to have engaged in the prohibited conduct and, if a student, his or her parents/guardians in order to obtain a response to the complaint. Such person(s) shall be informed of all allegations that, in the Student Compliance Officer's judgment, are necessary to achieve a full and accurate disclosure of material information or to otherwise resolve the complaint.

At the initial meetings, the Student Compliance Officer shall explain the avenues for informal and formal action, provide a description of the complaint process, and explain that both the victim and the individual alleged to have engaged in prohibited conduct have the right to exit the informal process and request a formal resolution of the matter at any time. The Student Compliance Officer shall also explain that whether or not the individual files a written complaint or otherwise requests action, the District is required by law to take steps to correct the unlawful discrimination or harassment and to prevent recurring unlawful discrimination, harassment, or retaliation against anyone who makes a report or participates in an investigation. The Student Compliance Officer shall also explain that any request for confidentiality shall be honored so long as doing so does not preclude the District from responding effectively to prohibited conduct and preventing future prohibited conduct.

## **Informal Action**

If the Aggrieved Individual and/or the individual alleged to have engaged in the prohibited conduct requests that the matter be resolved in an informal manner and/or the Student Compliance Officer believes that the matter is suitable to such resolution, the Student Compliance Officer may attempt to resolve the matter informally through mediation, counseling, or other non-disciplinary means. If both parties feel a resolution has been achieved through the informal process, then no further compliance action must be taken. No party shall be compelled to resolve a complaint of unlawful discrimination or harassment informally and either party may request an end to an informal process at any time. Informal resolution shall not be used to process complaints against a school employee and shall not be used between students where the underlying offense involves sexual assault or other act of violence.

### **Formal Action**

If informal resolution is inappropriate, unavailable, or unsuccessful, the Student Compliance Officer shall promptly investigate the allegations to determine whether and/or to what extent, unlawful discrimination or harassment has occurred. The Student Compliance Officer may consider the following types of information in determining whether unlawful discrimination or harassment occurred:

1. Statements by any witness to the alleged incident;
2. Evidence about the relative credibility of the parties involved;
3. Evidence relative to whether the individual alleged to have engaged in prohibited conduct has been found to have engaged in prohibited conduct against others;
4. Evidence of the Aggrieved Individual and/or alleged victim's reaction or change in behavior following the alleged prohibited conduct;
5. Evidence about whether the alleged victim and/or aggrieved individual took action to protest the conduct;
6. Evidence and witness statements or testimony presented by the parties involved;
7. Other contemporaneous evidence, and/or
8. Any other evidence deemed relevant by the Student Compliance Officer.

In deciding whether conduct is a violation of law or policy, all relevant circumstances shall be considered by the Student Compliance Officer, including:

1. The degree to which the conduct affected one or more student's education;
2. The type, frequency, and duration of the conduct;
3. The identity of and relationship between the individual alleged to have engaged in the prohibited conduct and the Aggrieved Individual and/or alleged victim;
4. The number of individuals alleged to have engaged in the prohibited conduct and number of victims of the prohibited conduct;
5. The age of the individual alleged to have engaged in the prohibited conduct and the Aggrieved individual and/or alleged victim;
6. The size of the school, location of the incident, and context in which it occurred; and/or
7. Other incidents at the school.

The Student Compliance Officer shall prepare a written report containing findings and recommendations, including but not limited to proposed disciplinary action for students and/or employees as appropriate and supports for the Aggrieved Individual, and submit the report to the Superintendent or the Superintendent's designee within 15 school days following the Student Compliance Officer's initial meeting with the complainant or 15 school days following the termination of the informal resolution process. Conduct of a sexual nature directed toward students shall, in appropriate circumstances, be reported as child abuse for investigation by appropriate authorities in conformity with applicable law and Board policy. To the extent permitted by federal and state law, the Student Compliance Officer shall notify all parties, including the parents/guardians of all students involved, in writing of the final outcome of the investigation and all steps taken by the District within 5 days following the Student Compliance Officer's determination. The District shall implement the recommendations found in the Student Compliance Officer's report.

Should the Aggrieved Individual and/or alleged victim disagree with the Student Compliance Officer's findings and recommendations, the Aggrieved Individual and/or alleged victim may appeal the Student Compliance Officer's decision by submitting a written appeal to the Superintendent or his or her designee within 10 calendar days of receipt of the notification of the final outcome of the investigation. The written appeal shall include any additional evidence to be considered and shall state with specificity the appellant's disagreements with the Student Compliance Officer's decision. The Superintendent or his or her designee shall review the evidence and submit a final written report affirming or reversing the Student Compliance Officer's determination and proposing additional recommendations as appropriate. The Superintendent or designee's decision shall be final.

### **Outside Agencies**

Complaints regarding violations of Title VI (race, national origin), Title IX (sex/gender), or Section 504/ADA (handicap or disability) may be filed directly with the Office for Civil Rights, U.S. Department of Education, 1244 North Speer Blvd., Suite 310, Denver, CO 80204.

### **Legal Ref.:**

Title IX of the Education Amendments, 20 U.S.C. § 1681  
Title VI of the Civil Rights Act, 42 U.S.C. § 2000d -R1  
Genetic Information Nondiscrimination Act, 42 U.S.C. § 2000ff et seq.  
Equal Educational Opportunities Act, 20 U.S.C. §1701-1758  
C.R.S. § 2-4-401(13.5)  
C.R.S. § 22-32-109(1)(kk)(II)  
C.R.S. § 22-32-110(cc) and (dd)  
C.R.S. § 22-61-101  
C.R.S. § 24-34-301 et seq.  
C.R.S. § 24-34-601 et seq.

### **Cross Refs.:**

JB – Equal Educational Opportunities and Nondiscrimination  
Adopted: October 23, 2014