

## **SEXUAL, RACIAL, OR DISABILITY HARASSMENT/DISCRIMINATION TOWARD STUDENTS**

Colorado Springs School District 11 (the District) is subject to the following laws: Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act of 2008, and the Colorado Anti-Discrimination Act. Accordingly, the District is committed to prohibiting discrimination on the basis of disability, need for special education services (whether actual or perceived), race, creed, color, sex, marital status, sexual orientation, transgender status, gender identity, gender expression, national origin, religion, ancestry, age, genetic information, or protected activity, in admissions, access to, treatment, or employment in the educational programs or activities which it operates. Therein, the Colorado Springs School District 11 Board of Education (the Board) has stated that respect for the dignity and worth of each individual shall be a consideration in the establishment of policies by the Board and in the implementation of those policies by the District. This policy addresses sexual and racial harassment of students, which are forms of discrimination. For behavior towards students other than sexual or racial harassment, please refer to other Board policies, such as Policy AC or Policy JICDE.

This policy applies to individuals and activities on 1) all District property, including but not limited to school buses and electronic communication and access resources; 2) any non-District property on which a District- or school-sponsored activity or event occurs; and 3) any other non-District property or location where the behavior engaged in may have a direct impact on school discipline or be detrimental to the welfare or safety of students or staff. Among other things, it is designed to generally advise students, their parents/guardians, and District employees of behavior that may constitute sexual or racial harassment, and to encourage District students to report any such behavior to an appropriate District representative. This policy is also designed to generally alert District employees and students to their responsibilities with respect to the sexual and racial harassment of students, and to consequences that may apply for policy violations.

Importantly, the District expects each of its employees and students to avoid any behavior that constitutes unlawful sexual or racial harassment. The District also expects its employees and students to avoid any behavior that constitutes retaliation against any person for reporting alleged sexual or racial harassment, or for otherwise assisting, participating, or providing testimony relating to alleged sexual or racial harassment. Such behavior is itself a violation of this policy, and may also be a violation of applicable federal and state law.

Whether or not conduct constitutes sexual harassment will be determined on a case by case basis, depending on the totality of the circumstances. Sexual harassment may not only include behavior that is overtly sexual, but also behavior that would not have occurred but for the student's gender, regardless of whether or not it is sexual in nature. Under some circumstances, one incident may be sufficiently severe to constitute sexual harassment. The harasser may be the same gender as the student who has been harassed.

**NOTE:** Sexual relations between a District employee and a District student are strictly prohibited regardless of whether or not the conduct was considered unwelcome by the student or the conduct is found to have constituted sexual harassment.

Sexual harassment is generally defined as involving behavior that falls into at least one of the three following categories:

1. (Quid pro quo sexual harassment) A District employee explicitly or implicitly conditioning a student's participation in an education program or activity on the student's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature;
2. (Quid pro quo sexual harassment) A District employee basing an educational decision on the student's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature; and,
3. (Hostile environment sexual harassment) A District employee, another student, or a third party subjecting a student to sexually harassing conduct (which may, but does not have to, include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature) that is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from an education program or activity, or to create a sexually hostile, abusive, or offensive educational environment.

The following are examples of conduct and communication that, regardless of the manner or means by which they occur, may constitute sexual harassment:

1. Sexually oriented "kidding" or inappropriate references to sexual matters;
2. Continued or repeated offensive sexual flirtations, advances or proposals;
3. Continued or repeated verbal remarks about a person's body;
4. Making sexual or lewd gestures;
5. Displaying sexual material, such as cartoons, photos of nudes or pornography, or placing such material in someone's locker or desk;
6. Pressure to engage in sexual activity;
7. Unwelcome sexual touching, such as offensive brushing against a person, patting or pinching in a sexual manner;
8. "Rating" students on the basis of physical characteristics;
9. Conduct or communications, which, while not overtly sexual, would not have occurred except for the student's gender (e.g., vandalizing the property of a female student);
10. Verbal abuse of a sexual nature or using sexually degrading words to describe a person;
11. Sending sexual material, such as cartoons, photos of nudes or pornography; and,
12. Sexually violent behavior involving a physical act perpetrated against a person's will or where a person is incapable of giving consent.

As with sexual harassment, whether or not conduct constitutes racial harassment will be determined on a case by case basis, depending on the totality of the circumstances. Racial harassment generally includes behavior that would not have occurred but for the student's race. One incident may, under some circumstances, be sufficiently severe to constitute racial harassment. The harasser may be the same race as the student who has been harassed.

Racial harassment is generally defined as verbal, written, graphic or physical conduct relating to the race, color, or national origin of another, that is sufficiently severe, persistent, or pervasive to limit a

student's ability to participate in or benefit from an education program or activity, or to create a racially hostile, abusive, or offensive educational environment.

The following are examples of conduct and communication that, regardless of the manner or means by which they occur, may constitute racial harassment:

1. Displaying racially derogatory written or pictorial or electronic communications (e.g., letters, notes, jokes, posters, photos, cartoons);
2. Distributing racially derogatory written or pictorial or electronic communications (e.g., letters, notes, jokes, posters, photos, cartoons).
3. Racially derogatory verbal comments (epithets, jokes or slurs);
4. Threats of force or violence against a person's body, possessions or residence on account of that person's race, color, or national origin; and,
5. Physical conduct (provocative gestures, restricting freedom of action or movement, violence, defacing or destruction of property) on account of an individual's race, color or national origin.

How and to whom a student should report sexual or racial harassment: Students and staff may file a report or a formal complaint of sexual or racial harassment through the use of procedures outlined in the supporting District regulation JBB-R. Filing of a complaint or otherwise reporting sexual or racial harassment shall not negatively reflect upon a student's class standing, grades, etc. The Administration is directed to develop a regulation (File: JBB-R) that includes procedures for reporting and investigating suspected sexual and/or racial harassment. The regulation shall designate school contact points and shall include the name, business address, and business phone number of the District's Equal Opportunity Office. The procedures shall specify that all matters, including the identity of the parties, shall remain confidential to the extent the District may maintain such confidentiality and also fulfill its obligations to investigate alleged harassment under applicable statutes.

Students' responsibilities with respect to this policy: First and foremost, students are expected to avoid engaging in sexually or racially harassing behavior directed to other students, staff, or visitors to the District, and to avoid engaging in behavior that constitutes retaliation for having reported, assisted, participated, testified, or otherwise provided information about possible sexual or racial harassment. Further, any student who believes she or he has been harassed as defined in this policy is expected to report such information promptly in a truthful manner in accordance with the procedure of JBB-R. All students are required to cooperate fully and truthfully in any District investigation of sexual or racial harassment.

Employees' responsibilities are with respect to this policy: First and foremost, employees are expected to avoid engaging in sexually or racially harassing behavior directed toward any student and to avoid engaging in behavior that constitutes retaliation for having reported, assisted, participated, testified, or otherwise provided information about possible sexual or racial harassment. Any employee who observes or receives a report of possible sexual or racial harassment shall refer it immediately to the school representative designated under regulation JBB-R to address and/or investigate, as circumstances warrant. Employee responsibilities towards other staff and visitors are covered in a separate policy, GBAA.

What may happen if sexual or racial harassment is found to have occurred: In the event it is determined that a student has been sexually or racially harassed, the District will address the situation as it deems appropriate in the circumstances. This may include corrective measures, including but not limited to disciplinary action or other consequences.

Consequences for students, employees, and others who violate this policy: Any student who violates any provision contained in this policy may be disciplined, according to the Student Conduct, Discipline and Attendance Code. Such discipline may involve expulsion from school for up to one calendar year. In addition, any student who is found, during the course of an investigation pursuant to this policy, to have violated another Board policy or any provision of the Student Conduct, Discipline and Attendance Code, may be disciplined for such violation, regardless of whether or not the student is found to have violated this policy.

Any employee who violates any provision contained in this policy may be disciplined, including immediate referral for termination from employment. In addition, any employee who is found, during the course of an investigation pursuant to this policy, to have violated another Board policy, or District procedure, practice, rule or expectation, may be disciplined for such violation, including immediate referral for termination of employment, regardless of whether or not the employee is found to have violated any provision of this policy.

Any third party, including but not limited to, a volunteer, a solicitor, an independent contractor, a parent/guardian, or other visitor, who violates this policy may be dealt with as the District deems appropriate. Consequences to a volunteer, solicitor, independent contractor, parent/guardian, or other visitor for any such violation may include, but are not limited to, cancellation of a contract, ejection from District property, and other appropriate measures.

Notice of this policy and its accompanying complaint and reporting procedure shall be provided to all District students and employees, and shall be circulated to all District schools and departments, and incorporated in student handbooks.

Adopted June 1988

Revised June 1999

Revised January 2008

Revised June 13, 2012

Reviewed November 11, 2015

Reviewed April 12, 2017

LEGAL REFS: Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681  
34 C.F.R. Part 104  
34 C.F.R. Part 106  
Fair Labor Standards Act, 29 U.S.C. §201  
Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621  
Individuals with Disabilities Education Act, 20 U.S.C. §1400, et seq.  
Exceptional Children's Education Act, C.R.S. § 22-2-101, et seq.  
Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701  
Americans with Disabilities Act of 1990, 42 U.S.C. § 12101  
Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d  
Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e  
42 U.S.C. §2000ff et seq. (Genetic Information Nondiscrimination Act of 2008)

C.R.S. § 2-4-401  
C.R.S. § 18-9-121  
C.R.S. § 22-32-109(1)(II)  
C.R.S. § 22-32-109.1(2)(a)(X)(B)  
C.R.S. § 22-32-110(1)(k)  
C.R.S. § 22-33-105(2)(c)  
C.R.S. § 22-61-101  
C.R.S. § 22-93-101, et seq.  
C.R.S. §§ 24-34-301 through 24-34-308  
C.R.S. §§ 24-34-401 through 24-34-406  
3 CCR 708-1

CROSS REFS: AC, Nondiscrimination/Equal Opportunity  
AC-R, Employee Discrimination/Harassment Reporting and Investigation  
Procedures  
EHC, Educational Technology Resources Policy  
GBA, Open Hiring/Equal Employment Opportunity and Affirmative Action  
GBAA, Employee Sexual and Racial Harassment/Discrimination  
GBEA, Staff Ethics/Conflict of Interest/Employment of Relatives  
JB, Equal Educational Opportunities  
JBB-R, Regulation to Policy JBB, Sexual, Racial, or Disability Harassment/  
Discrimination Toward Students  
JIC, Student Conduct, Discipline and Attendance Code  
JICDE, Bullying Prevention and Education  
JK, Student Discipline  
JK-R, Regulation to Policy JK, Student Discipline  
KF, Community Use of School Facilities  
KFA, Public Conduct on School Property  
KI, Visitors to Schools