

## **EMPLOYEE SEXUAL AND RACIAL HARASSMENT/DISCRIMINATION**

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 (GBAA) specifically addresses sexual and racial harassment of employees, which are forms of discrimination.

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

Importantly, the District expects each of its employees to avoid any behavior that constitutes unlawful sexual or racial harassment. The District also expects its employees 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 employee'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 employee who has been harassed.

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

1. (Quid pro quo sexual harassment) A District employee's employment, pay, fringe benefits, promotion, transfer, or other employment related provision being

explicitly or implicitly conditioned on the employee's submission to unwelcome sexual advances, requests for sexual favors, or other verbal-nonverbal, or physical conduct of a sexual nature;

2. (Hostile environment sexual harassment) A District employee being subjected 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 unreasonably interfere with an employee's work performance, or to create a sexually hostile, abusive, or offensive working 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 desk or work area;
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" persons on the basis of physical characteristics;
9. Conduct or communications, which, while not overtly sexual, would not have occurred except for the employee's gender (e.g., vandalizing the property of a female employee);
10. Verbal abuse of a sexual nature or using sexually degrading words to describe a person; and,
11. Sending sexual material, such as cartoons, photos of nudes or pornography, using the D-11 Net (See Board Policy EHC).
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 employee's race. One incident may, under some circumstances, be sufficiently severe to constitute racial harassment. The harasser may be the same race as the employee 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 unreasonably interfere with an employee's work performance, or to create a racially hostile, abusive, or offensive working 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 communications (e.g., letters, notes, jokes, posters, photos, cartoons);
2. Racially derogatory verbal comments (epithets, jokes or slurs);
3. Distributing racially derogatory written or pictorial communications or electronic communications (e.g., letters, notes, jokes, posters, photos, cartoons) using educational technology resources (Policy EHC);
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 should an employee report sexual or racial harassment: An employee may file a report or a formal complaint of sexual or racial harassment through the use of procedures outlined in the supporting District regulation [Regulation AC-R].

Employees' responsibilities with respect to this policy: First and foremost, employees are expected to avoid engaging in sexually or racially harassing behavior directed to other person, including, but not limited to, students, other employees, and 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 employee 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 AC-R. All employees are required to cooperate fully and truthfully in any District investigation of sexual or racial harassment.

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

What are the consequences for employees who violate 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 from 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 reporting procedure (Regulation AC-R) shall be provided to all District employees, and shall be circulated to all District schools and other work sites.

Revised June 1999  
Revised January 2008  
Revised September 7, 2012  
Revised November 11, 2015  
Reviewed October 10, 2018

**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 Investigative Procedures  
EHC, Educational Technology Resources Policy  
GBA, Open Hiring/Equal Employment Opportunity and Affirmative Action  
GBEA, Staff Ethics/Conflict of Interest/Employment of Relatives  
JB, Equal Educational Opportunities  
JBB, Sexual and Racial Harassment/Discrimination toward Students  
JBB-R, Sexual and Racial Harassment/Discrimination toward Students (Reporting and Investigation Procedures)  
JK, Student Discipline

JK-R, Student Discipline Regulations  
KF, Community Use of District Property (For Non-District Use)  
KFA, Public Conduct on School Property  
KHA, Public Solicitations in Schools  
KI, Visitors to Schools