



Boulder Valley School District

File: AC-R-2

Adopted: August 11, 2020

SEXUAL HARASSMENT INVESTIGATION PROCEDURES AND GRIEVANCE PROCESS (Title IX)

Boulder Valley School District is committed to maintaining educational programs and activities that are free from discrimination and harassment. This Policy regulation prohibits specific forms of behavior pursuant to Title IX. It is a violation of this Policy regulation for any staff member to harass students or for students to harass other students through conduct or communications of a sexual nature, or to retaliate against anyone that reports sex-based or gender-based discrimination or harassment or participates in a discrimination or harassment investigation.

The School District is committed to maintaining an equitable learning and working environment that addresses all student and employee misconduct appropriately, whether under this Policy regulation, other Board policy, employment agreement or applicable law. Other types of sex-based or gender-based discrimination or harassment are addressed in District Policy Regulation AC-R. Nothing in this policy shall be construed to prohibit discipline for conduct which, although it does not rise to the level of sexual harassment as defined by this Policy regulation, otherwise violates other District policies. Likewise, nothing in this policy regulation prohibits the School District from providing safety planning and support for any student or employee.

State and federal criminal laws may also apply to conduct prohibited by this policy and criminal prosecution may take place independently of any investigatory or disciplinary action taken by the School District. In the event of criminal charges, it is possible students will be assigned to an alternative educational setting pursuant to Colorado law and Board Policy JDC.

To the extent this policy regulation conflicts with any other School District policy, this Policy regulation shall govern. Board Policy AC's general protections applicable to discrimination and harassment also specifically apply in matters governed by this Policy regulation. All policies must be interpreted to be consistent with applicable law, including If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this Policy regulation.

Definitions

For purposes of this Policy regulation, these terms are defined as follows:

Actual Knowledge: When any District employee receives a report of an incident of alleged sexual harassment. This standard is not met when the only employee with knowledge of alleged sexual harassment is a Respondent.

Advisor: A person chosen by a party to accompany the party to meetings, interviews, or hearings related to the resolution process and to advise the party on that process. BVSD may work with outside agencies in order to refer students to community resources who can provide trained advisors. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. For employees, this right is in addition to any rights that may apply due to negotiated agreements or employment practices.

Complainant: An individual who is alleged to be the target of conduct that could constitute sex-based or gender-based discrimination or sexual harassment.

Decision-maker: The School District-designated individual(s) charged with 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 decision maker may not be the Title IX Coordinator or the investigator. Any School District employee who will serve as the Superintendent's designee shall receive training in the requirements of the law and the role of the decision-maker.

Education Program or Activity: Locations, events, or circumstances over which the School District exercises substantial control over both the Complainant and Respondent and the context in which the sexual harassment occurs.

Emergency Removal: Following the receipt of a report of sexual harassment against a student, the School District may remove a student respondent partially or entirely from its educational programs or activities on a temporary emergency basis. Before removing a student respondent on a temporary basis, the School District shall:

- Conduct an individualized safety and risk analysis that accounts for the specific allegations of sexual harassment against the student respondent;
- Determine that the student respondent poses an immediate threat to the physical health and safety of any student or individual in the School District's educational programs or activities; and
- Provide the student respondent with written notice and an opportunity to challenge the temporary removal.

Final Determination: A conclusion by the preponderance of the evidence that the alleged conduct did or did not violate policy.

Formal Complaint: A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment by a Respondent and requesting that the School District investigate the allegation.

Grievance Process: The School District's resolution procedure for formal complaints brought under this regulation.

Investigator: The School District-designated individual charged with gathering facts about an

alleged violation of this Policy, conducting interviews, compiling evidence, and producing an investigation report. The investigator may be the Title IX Coordinator, but cannot be the decision-maker.

Parties: The Complainant(s) and Respondent(s), collectively.

Remedies: Applied following a Resolution to the Complainant and/or the community to address safety, prevent recurrence, and restore access to the school's/district's educational program.

Report: Information that places the School District on notice that an incident of sexual harassment may have occurred. Examples of reports include personally witnessing an incident or receiving details of an incident from a Complainant or third party.

Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute sex-based or gender-based discrimination or harassment.

Retaliation: Retaliation includes threats, intimidation, coercion, discrimination, or other adverse action against any person for the purpose of interfering with any right or privilege secured by Title IX or because the person has made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this policy.

Resolution: The result of an informal or Formal Grievance Process.

Sanction: A consequence imposed by the School District on a Respondent who is found to have violated this policy. Sanctions are designed to remedy and prevent the recurrence of sexual harassment and/or retaliation. Examples include, but are not limited to, warning, counseling, substance abuse treatment program, exclusion from education activities or locations, and may include discipline in accordance with BVSD's Code of Conduct. Nothing in this policy regulation shall be interpreted to limit BVSD's right to take action with respect to employees consistent with negotiated agreements, employee policies, and applicable law.

Sexual Harassment: As defined in this policy regulation, conduct on the basis of sex that falls into one or more of the following categories:

1. A School District employee conditioning the provision of an aid, benefit, or service of the School District on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the School District's education programs or activities; or
3. Sexual assault (as defined in the Cleary Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA)

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Supportive Measures: Non-disciplinary, non-punitive individualized services offered as appropriate to preserve or restore access to the School District's educational program or activity, including measures to protect the safety of all parties or the educational environment, and/or to deter sexual harassment and/or retaliation. Examples of supportive measures include, but are not limited to: academic support, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual no-contact directives, leaves of absence, changes in work/school locations, access to identified trusted adults at school, increased monitoring of locations, safety planning and referral to outside agencies and supports. Supportive measures are available without charge to 1) a Complainant regardless of whether a formal complaint of sexual harassment is or will be filed and 2) to both parties following the filing of a formal complaint.

Title IX Coordinator: The employee designated to coordinate, monitor, and document the School District's compliance with Title IX responsibilities. The Title IX Coordinator is to be informed of all reports or formal complaints of violations of this Policy regulation. The Title IX Coordinator may delegate certain responsibilities to designees who have received appropriate training. The District's Title IX Coordinator(s) is identified in Exhibit AC-E-1.

Reporting Expectations

Non-employees. Students, parents or guardians, and other non-employees who witness or hear of suspected sexual harassment are encouraged to report it immediately to a teacher, building administrator, or the Title IX Coordinator to assist in the School District's sexual harassment prevention efforts and to help assure students receive needed supports.

Employees. All District employees shall notify the Title IX Coordinator of any reports of alleged sexual harassment immediately when practical and no later than twenty-four (24) hours following receipt of a report. Reports may be provided to the Title IX Coordinator in person, by mail, via phone, or email, using the Title IX Coordinator's contact information in AC-E-1. Some conduct qualifying as sexual harassment – particularly conduct involving physical or sexual violence – may also qualify as child abuse or neglect, even when another child may be responsible for the abuse. If at any point an employee has reasonable cause to believe child abuse or neglect has occurred or is occurring, the employee shall immediately take the steps necessary to satisfy the employee's mandatory reporting obligations.

Mandatory Reporting. Because all School District employees are required to report actual or suspected sexual harassment or retaliation, any such information a Complainant shares with any School District employee cannot remain confidential from law enforcement and/or child protection agencies. In the school setting, a Complainant can determine whether to proceed with a formal Complaint and can receive supportive measures regardless of their decision to pursue a formal Complaint.

Privacy. The School District is committed to protecting the privacy of all individuals involved in the reporting and resolution processes under this Policy regulation. The School District will make reasonable efforts to protect the privacy of participants in an informal resolution or grievance process, in accordance with applicable law, while balancing the need to gather information and to take steps to eliminate sexual harassment, prevent its recurrence, and remedy its effects.

Amnesty. BVSD encourages the reporting of misconduct and crimes by students, employees and witnesses. Sometimes, Complainants or witnesses are hesitant to report to School District officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. To encourage reporting and participation in the process, the School District maintains a policy of offering parties and witnesses amnesty from minor policy violations related to the incident. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. In determining whether to offer amnesty, the Title IX Coordinator will consider factors such as: the nature and severity of the policy violation; the age of the individual; the impact on the health and safety of the individual and the school community; and the best interests of the school community.

Filing a Complaint

A Complainant, or a parent or guardian with the legal right to act on the Complainant's behalf, may file a complaint in person, by mail, or by electronic mail, by using the contact information in AC-E-1. A report may be made at any time (including during non-school hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.

Complaints must include a detailed description of the alleged sexual harassment, the date(s), the full names of the parties involved, and any witnesses. Complaints must be filed in writing and signed. Forms are available on the School District's website, through administration at every school, and from the Title IX Coordinator(s). Assistance in preparing complaints is available through the Title IX Coordinator or building administration.

Completed forms must be filed with the Title IX Coordinator. An alternate is designated in AC-E-1 in the event it is claimed that the Title IX Coordinator is the one who committed the alleged discrimination or some other conflict of interest exists.

In certain cases, the Title IX Coordinator may sign a formal complaint on behalf of the School District when a Complainant declines to file a formal complaint and the Title IX Coordinator determines an investigation is necessary. In these circumstances, the Title IX Coordinator does not become a party and a Complainant shall not be compelled to participate in the grievance process.

District Resolution Procedures

Following the filing of a complaint, there are two available options for resolution:

- 1) formal complaint grievance process, which involves an investigation and report; or,
- 2) informal resolution, a voluntary process.

Informal Resolution. When the Title IX Coordinator deems it appropriate, an informal resolution process may be instituted. Informal Resolution can include three different approaches:

- When the Title IX Coordinator or designee can resolve the matter informally by providing supportive measures only and Complainant agrees.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process, and Complainant agrees.
- When the parties agree to resolve the matter through an alternate resolution mechanism (as described below).

When agreement is required, the party's agreement must be voluntary, non-coerced, and documented in writing. Informal resolution is not available in cases where a School District employee is alleged to have sexually harassed a student.

At any time prior to engaging in an informal resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. Generally, the information resolution process should be completed within sixty (60) calendar days from the parties' agreement to the process, unless good cause is shown.

Alternate resolution mechanism. Alternate resolution, one form of informal resolution, references mediation, restorative practices, transformative justice, and similar methods that must only be used when designed and facilitated by well-trained individuals. Due to the specialized training required, BVSD may use community partners as third party facilitators with the consent of all the parties. Alternate resolution is rarely appropriate or advisable in cases involving violent incidents, dangerous patterns, or threats.

Grievance Process (Investigation). When required by Title IX, the School District shall investigate as detailed below:

1. Upon the School District's receipt of actual knowledge of alleged sexual harassment, the Title IX Coordinator or designee shall contact the Complainant(s) and Respondent(s) to offer supportive measures and to discuss with Complainant the process for filing a formal complaint. Appropriate supportive measures are determined on a case-by-case basis, in collaboration between building administrators or supervisors, the Title IX

Coordinator, and/or other appropriate District employees. Supportive measures shall be confidential to the extent possible.

2. Once a complaint is received, the Title IX Coordinator will first determine if the alleged conduct occurred in the School District's education program or activity. If the alleged conduct is not part of the education program or activity, the complaint must be dismissed under these procedures. A dismissal does not prohibit the Complainant from pursuing other remedies under state or federal law or local board policy. A dismissal does not prohibit the School District from addressing the allegations in any manner it deems appropriate, including the continued availability of supportive measures and discipline for detrimental behavior off school property in violation of the School District's code of conduct and state law.
3. If a complaint is within the scope of this grievance process, the Title IX Coordinator shall designate appropriately trained individuals to serve as the investigator and the decision-maker. The investigator and decision-maker must be free of bias and able to act with independence. Either party may raise a concern regarding lack of qualification or bias by contacting the Title IX Coordinator (identified in AC-E-1).
4. The investigator will begin the investigation and adhere to the following:
 - a. Notice. The investigator must provide the parties with written notice of the complaint. The written notice shall include the names of the parties involved, the section of the policy allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident(s). If additional allegations are discovered during the grievance process, the investigator shall issue an amended notice.
 - b. Presumption of Non-Responsibility. The grievance process is a neutral fact-gathering process and a Respondent is presumed not to have violated the policy. This presumption may be overcome only where there is sufficient evidence of a policy violation. The investigator shall not draw any adverse inference from a decision by a Complainant or Respondent not to participate in the formal resolution process. The resolution process, however, may proceed, and a finding of responsibility and imposition of any sanction(s) may occur without a Complainant or Respondent's participation.
 - c. Timeframe for Grievance Process. Generally, the timeframe from the issuance of a notice of investigation through the release of the written determination shall not exceed sixty (60) calendar days, unless good cause is shown. If there is a need for a delay, the investigator or decision-maker shall notify both parties in writing of the delay and the reason for it. The School District's action(s) or processes may be delayed, but are not stopped by civil or criminal charges involving the underlying incident(s).
 - d. Right to an Adviser. Each party is entitled to the adviser of their choice during the process. During interviews and meetings, the adviser may not speak for the party and must limit his/her/their role to consulting with and advising the party.

- e. Interviews and Evidence. All parties shall have an equal opportunity to be heard, to provide evidence, and to review evidence obtained through the course of the grievance process. The investigator shall interview the parties and any witnesses and shall review any available evidence. The investigator shall also determine the relevance of evidence and what evidence will be included in the investigation report for consideration by the decision-maker.
 - f. Written Notice of All Meetings. Prior to any investigative interviews, hearings, or other meetings, a party shall receive written notice of the date, time, location, purpose, and participants to ensure the party is adequately prepared to participate.
 - g. Evidence Review. Prior to the issuance of the investigation report, the parties shall be provided an electronic or hard copy of all evidence gathered by the investigator that is directly related to the allegations in the formal complaint, including evidence the investigator does not intend to rely upon in the investigation report. Evidence may be redacted, if appropriate, in accordance with applicable law and District policy. The parties shall have ten (10) calendar days to review the evidence and may choose to provide a written response for the investigator to consider prior to the issuance of the investigation report. The response can include corrections, additions, or arguments regarding the relevance of specific evidence. The investigator shall consider any written response to the evidence when preparing the investigation report.
 - h. Investigation Report. Prior to the issuance of any findings, both parties shall have ten calendar (10) days to review the investigation report, which is a summation of the evidence to be submitted to the decision-maker. If either party wishes to correct or add to the evidence, submit arguments regarding relevance of certain evidence, or suggest additional witnesses, they must notify the investigator during the review period. Corrections, arguments regarding relevance, additional evidence, or new witnesses may not be submitted after the review period has ended and shall not be considered in an appeal.
 - i. Extensions to Review Periods. A party who requires additional time to review the evidence or investigation report must request an extension, including stating the reason for the extension and a proposed new deadline. Such extensions are granted at the discretion of the Title IX Coordinator based on a showing of good cause.
 - j. Submission of Investigation Report. Following the review period, the investigator shall submit the investigation report to the decision-maker for their review. The parties shall also receive copies of the investigation report.
5. The decision-maker receives the investigation report and adheres to the following:
- a. Questioning of Parties and Witnesses. After the investigator submits the investigation report to the decision-maker and parties, the decision-maker will facilitate the exchange of written questions between the parties before a final determination is made.
 - i. The decision-maker will invite each party to submit proposed written questions for other parties/witnesses.

- ii. Upon receipt of the proposed questions, the decision-maker will review the proposed questions and determine which questions will be permitted, disallowed, or rephrased. The decision-maker will limit or disallow questions on the basis that they are irrelevant, repetitive (and thus irrelevant), or abusive. The decision-maker will protect the Complainant from inappropriate questions and evidence. The decision-maker has full authority to decide all issues related to questioning and determinations of relevance. The decision-maker may ask a party to explain why a question is or is not relevant from their perspective. The decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.
- iii. The decision-maker, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the parties and witnesses with the relevant written questions to be answered and allow one week for the parties and witnesses to submit written responses to the questions. The parties shall have the opportunity to ask appropriate follow-up questions. The exchange of questions and responses by the parties and witnesses will be concluded within a 10 calendar day period.
- b. Standards for Decision. The decision-maker shall consider the investigation report, but is not bound by the decision. The decision-maker will apply the preponderance of the evidence standard when making a decision and must notify the Complainant and Respondent of the decision.
- c. Report. The decision-maker will prepare findings of fact and an analysis of whether the Respondent violated the policy. The decision must include a written determination regarding responsibility, explain how and why the decision-maker reached the conclusions outlined in the report, and detail any disciplinary, remedial, supportive or other measures taken in response to the conduct.
- d. Upon completion of the written determination, the decision-maker shall provide it to the Title IX Coordinator who shall simultaneously provide it to the parties. The decision of the decision-maker in no way prejudices either the Complainant or the Respondent from seeking redress through state or federal agencies, as provided in law.

Appeal

The investigation is closed after the decision-maker issues a decision, unless either party appeals the decision within 10 days by making a written request to the decision-maker detailing why the decision should be reconsidered. Grounds for appeal shall be limited in accordance with applicable law, to:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or

the specific Complainant or Respondent that affected the outcome of the matter.

Both parties shall receive written notice of any appeal and both shall have the opportunity to submit written statements either in support of or challenging the written determination. The Superintendent or designee shall have up to ten (10) school days to arrange for and hold a meeting with each of the parties if the party so desires. Following the meeting, the Superintendent or designee shall have ten (10) school days to provide a written decision to the parties. Appeal decisions defer to the original decision, making changes to the determination only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. The Superintendent or designee may 1) affirm the written determination; 2) overturn the written determination, or 3) send the report back for additional investigation. The Superintendent or designee's decision to affirm or overturn the report is final.

Notice and training

Consistent with the requirements of Board Policy AC, all students and School District employees will receive periodic training related to recognizing and preventing sexual harassment. Designated district employees must receive additional periodic training related to handling reports of sexual harassment. The School District will make training materials and schedules available to the public.