AC-R-3* - Sexual Harassment Investigation Procedures

(Title IX)

The district is committed to maintaining a learning environment that is free from sexual harassment. It is a violation of policy for any staff member to harass a student or for students to harass other students through conduct or communications of a sexual nature, or to retaliate against anyone that reports sexual harassment or participates in a harassment investigation.

DEFINITIONS

For purposes of this regulation, these terms have the following meanings:

Actual Knowledge means when any district employee receives notice of an incident of alleged sexual harassment. When this standard is met, the district has an obligation to respond under Title IX. This standard is not met when the only employee with knowledge of alleged sexual harassment is the respondent.

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Decision Maker means the individual 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 cannot be the same person as the Title IX Coordinator or investigator.

Disciplinary Sanction means 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 prevent the recurrence of discrimination, harassment, and/or retaliation. Disciplinary sanctions may include: no-contact orders, required training, loss of privileges, suspension, or expulsion.

Education Program or Activity means locations, events, or circumstances over which the district exercises substantial control over both the complainant and respondent and the context in which the sexual harassment occurs.

Formal Complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment by a respondent and requesting that the district investigate the allegation. At the time of the filing of a formal complaint, a complainant must be participating in or attempting to participate in the educational programs or activities of the district.

Investigator means the individual charged with conducting interviews, gathering evidence, and producing an investigation report. The investigator may be the same

person as the Title IX Coordinator, but cannot serve as the decision-maker.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Retaliation means 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, [hearing,] or proceeding under this policy.

Sexual Harassment means conduct on the basis of sex that falls into one or more of the following categories:

1. A school district employee conditioning an educational aid, benefit, or services on participation in unwelcome sexual conduct;

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 district's education program or activity; or

3. An offense that falls into the FBI's Uniform Crime Reporting categories of sexual assault, dating violence, domestic violence, or stalking.

Supportive Measures mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to the complainant and/or respondent in order to restore or preserve the party's access to the education program/activity without unreasonably burdening the other party. Supportive measures may be provided after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures may include the following: 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.

Title IX Coordinator means the employee designated by the district to coordinate its efforts to comply with Title IX responsibilities. The Title IX Coordinator is to be informed of all reports or formal complaints of violations of this policy. The Title IX Coordinator may delegate certain responsibilities under this policy to an alternate who has received appropriate training. The Title IX Coordinator cannot serve as the decision-maker, but may serve as the investigator if appropriate.

- The district's Title IX Coordinator is the High School Assistant Principal/Athletic Director or CFO/COO.

Title IX Resolution Process

The Title IX Coordinator is responsible for receiving and acting on reports and formal complaints, filing complaints on behalf of a complainant if necessary, dismissing complaints if necessary, and ensuring all other requirements of Title IX are followed by the district. The Title IX Coordinator must also offer and coordinate supportive measures, as appropriate, for both the complainant and respondent, or for any party who may have been affected by sexual harassment. Additionally, the Title IX Coordinator may assign any or all aspects of the complaint response process 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 "Title IX Coordinator" refers to the Title IX Coordinator or their alternate.

Investigations into complaints alleging violations of Title IX will proceed as described below. The investigation will be adequate, reliable, and impartial. All parties will be treated equitably and will be provided equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible. However, it is the district's responsibility to gather evidence and determine whether this policy was violated, not the responsibility of either party. Throughout the investigation, the district will take reasonable steps to protect the privacy of the parties and witnesses during the investigation, provided this does not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses, consulting with their family members, confidential resources, or advisors, or otherwise preparing for or participating in the grievance procedures.

The district will make a good faith effort to complete the investigation and make any findings within sixty days after the complaint, and the Title IX Coordinator will adhere to all timeframes. Reasonable extensions of timeframes will be granted on a case-by-case basis for good cause with written notice to the parties that includes the reason for the delay.

No person can serve as a Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator if they have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent. An alternate will be designated in the event it is claimed that an employee with responsibilities under this regulation is the one who committed the alleged discrimination.

1. Making a Complaint

   A formal complaint may be filed with the Title IX Coordinator in person, by mail, or through email and can be filed by a complainant or by a parent or guardian who has the legal right to act on behalf of a minor complainant. Individuals requiring other accommodations for purposes of making a complaint due to a disability or other reasons should contact 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, any witnesses, and a signature.

2. Dismissal by Title IX Coordinator

Upon receipt of a formal complaint, the Title IX Coordinator will review it to determine whether it falls under the jurisdiction of this policy. If it does not, the Title IX Coordinator will dismiss the complaint. A formal complaint must be dismissed when the investigation reveals that the complaint does not constitute sexual harassment, the event did not occur in a district program or activity, or the event did not occur against a person in the United States (mandatory dismissal). Further, a complaint may be dismissed at any time upon written request of a complainant or as determined by the Title IX Coordinator in accordance with applicable law, including when a respondent is no longer enrolled with or employed by the district, and when specific circumstances prevent the district from gathering evidence sufficient to reach a determination (discretionary dismissal). Written notice of a dismissal will be promptly submitted simultaneously to the parties.

- **Formal complaints may be consolidated when allegations of sexual harassment arise out of the same facts or circumstances.**

- **Dismissal of a formal complaint does not prevent the district from taking action to remedy the complained-of behavior consistent with other applicable district policies. Allegations in a dismissed complaint may constitute discrimination or harassment prohibited by Policy AC, in which case the investigation will continue under the associated regulations: AC-R-1 or AC-R-2. A dismissal does not prohibit the complainant from pursuing other remedies under state or federal law or local board policy, nor does it prohibit the district from addressing the allegations in any manner the district deems appropriate.**

3. District Resolution

Following the filing of a complaint, the Title IX Coordinator will provide the parties with written notice of the complaint. The written notice will include all information required by law, including the names of the parties involved, the specific section of this policy allegedly violated, this policy's grievance and informal resolution process, 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 Title IX Coordinator will issue an amended notice including additional allegations and details regarding those allegations. The written notice must also inform the parties of any provision in the district's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Upon receipt of a complaint and notice sent to the parties, there are two available options for resolution: (a) the grievance process, which involves an investigation, report, and potential sanctions, and (b) an informal resolution, which involves a variety of informal options for addressing complaints.

a. **Grievance Process**. If a complaint proceeds to the grievance process, the Title IX Coordinator will designate appropriate trained individuals to serve as the

investigator and the decision-maker. The Title IX Coordinator may serve as the investigator if appropriate. Either party may challenge the appointment of the investigator or decision-maker based on bias or conflict of interest by contacting the Title IX Coordinator. Per the regulation, the Respondent is presumed not responsible for the alleged conduct until there has been a determination regarding responsibility by the Decision-Maker at the end of the grievance process.

- **Credibility.** The investigator will objectively evaluate the credibility of parties and witnesses and synthesize all available evidence – including both inculpatory and exculpatory evidence – and take into account the unique and complex circumstances of each situation. Credibility determinations cannot be made based on a person's status as a complainant, respondent, or witness.

- **Timeframe for Process.** Generally, the timeframe from the commencement of investigation through the release of the written determination will not exceed 60 days, unless good cause is shown. If there is a need for a delay, the investigator or decision-maker will notify both parties in writing of the delay and reason for it.

- **Right to an Adviser**. During the process, each party is entitled to the adviser of their choice who may, but is not required to be, an attorney. During interviews and meetings, the adviser may not speak for the party and must limit their role to consulting with and advising the party. The district retains the right to establish restrictions regarding the extent to which the adviser may participate in the proceedings. Any restrictions on participation of adviser(s) will apply equally to both parties.

- **Interviews and Evidence.** Both parties will have an equal opportunity to be heard, to provide evidence, and to review evidence obtained through the course of the grievance process. The investigator will interview the parties and any witnesses, and will review any available evidence. The investigator will also determine the relevance of evidence and what evidence will be included in the investigation report for consideration by the decision-maker.

- **Written Notice of All Meetings.** Prior to any investigative interviews [, hearings,] or other meetings, a party will receive written notice of the date, time, location, purpose, and participants to ensure the party is adequately prepared to participate.

- **Evidence Review.** Prior to the issuance of the investigation report, the parties will 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, for their review. Evidence may be redacted, if appropriate, in accordance with applicable law and district policy. The

parties will have ten business 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 will consider any written response to the evidence when preparing the investigation report.

- **Investigation Report.** Once the parties have reviewed the evidence, and prior to the issuance of any findings regarding a policy violation, both parties will have ten business 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 will not be considered an appeal.

- **Extension to Review Periods.** If a party requires additional time to review the evidence or investigation report, they must contact the Title IX Coordinator to make a request. The request must include 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.

- **Submission of Investigation Report.** Following the review period, the investigator will submit the investigation report and any documentary evidence to the decision-maker for their review. The parties will also receive copies of the investigation report.

- **Questioning of Parties and Witnesses.** After the investigator submits the finalized investigation report to the decision-maker and parties, the parties will have the opportunity to submit relevant written questions to one another and to the witnesses. Each party will be provided copies of the questions posed and answers to those questions, and will have an additional opportunity for limited follow-up based on the first round of questions. The decision-maker has discretion to determine the relevance of any proposed questions and will provide a written explanation for any decision to exclude a question as not relevant.

    - â€‹â€‹â€‹â€‹â€‹Questions or evidence about a complainant's sexual predisposition or prior behavior are not relevant unless offered to (1) demonstrate that someone other than a respondent committed the alleged sexual harassment, or (2) demonstrate consent based on specific incidents of a complainant's prior sexual behavior with a respondent.

- **Standard of Review.** In determining whether alleged sexual harassment constitutes a policy violation, the decision-maker will use the preponderance of the evidence standard. This means that the decision-maker will determine whether it is more likely than not that a policy violation occurred.

- **How Evidence is Evaluated by the Decision-Maker.** In evaluating the allegations, the decision-maker will consider the totality of the facts, circumstances, and evidence. No single factor will be conclusive in the evaluation of evidence and/or the determination or whether the policy has been violated.

- **Written Determination.** The decision-maker will consider the investigation report and prepare a written determination regarding responsibility with (1) findings of fact, (2) conclusions about whether the alleged conduct occurred, (3) a rationale for the result as to each allegation, (4) any disciplinary sanctions imposed on a respondent, and (5) whether remedies will be provided to the complainant.

    - The written determination must be sent simultaneously to the parties along with information about how to appeal.

- **Potential Disciplinary Sanctions.** If the decision-maker determines that a respondent violated the policy, consequences appropriate for the misconduct will 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, expulsion, or termination. Nothing in this policy will be construed to prohibit discipline for conduct which, although not rising to the level of sexual harassment as defined by this policy, otherwise violates other district policies.

    - **If the decision-maker determines that a respondent is responsible for violations of district policy other than AC-R-3, the decision-maker must discuss this determination with the district's Title IX Coordinator and/or district legal counsel as to next steps.**

- **Release of Written Determination.** Upon completion of the written determination, the decision-maker will provide it to the Title IX Coordinator, who will simultaneously provide it to the parties.

- **Appeals.** If either party is not satisfied with the written determination or the dismissal of a complaint, the party may appeal the decision within ten business days following the release of the written determination. If no appeal is filed, the determination will become final after ten business days. Both parties will receive written notice of any appeal and both will have the opportunity to submit written statements either in support of or challenging

the written determination within ten business days of receiving the appeal notice.

- **Decision-Maker for Appeal.** The decision-maker for the appeal will be determined by the superintendent's office, but the decision-maker for the appeal may not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator. The decision-maker for the appeal will render their final decision within ten business days of the receipt of the appeal.

- **Grounds for Appeal.** There are three grounds for appeal and other asserted grounds will not be considered. A party's appeal must state the grounds for appeal and facts supporting those grounds in order to be considered.

  - (1) Procedural irregularity that affected the outcome of the grievance process;

  - (2) New evidence that was not reasonably available at the time the determination regarding the existence of a policy violation was made that could affect the outcome of the grievance process; and/or

  - (3) The Title IX Coordinator, the investigator, or the decision-maker had a conflict of interest or bias that affected the outcome of the grievance process.

- **Making a False Report.** Any person who knowingly makes a false report of sexual harassment will be subject to disciplinary action in accordance with applicable district policies. Standing alone, the outcome of a grievance process is insufficient evidence of a false report.

b. **Informal Resolution** can be used if both parties agree and the Title IX Coordinator deems it appropriate. An informal resolution process does not involve an investigation, but rather may involve mediation or other restorative justice models. The parties' 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.

- **Unavailability of Informal Resolution**. Informal resolution is not available in cases where a district employee is alleged to have sexually harassed a student.

- **Potential Student Disciplinary Sanctions.** An informal resolution may result in 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.

NOTICE AND TRAINING

To reduce discrimination and harassment and ensure a respectful school environment, the administration is responsible for providing notice of these procedures to all district schools and departments. The policy and complaint procedures must be prominently posted on the district's website, referenced in student and employee handbooks and otherwise be made available to all students, staff, and members of the public through electronic or hard-copy distribution.

All students and district employees will receive periodic training related to recognizing and preventing sexual harassment. District employees must receive additional periodic training related to handling reports of sexual harassment. Title IX Coordinators, decision-makers, informal resolution facilitators, and other persons involved in the grievance procedures or with authority to modify or terminate supportive measures must receive additional periodic training specific to their role relating to handling reports of sexual harassment as required by law, including training on serving impartially without prejudging the circumstances.

Training materials are available to the public on the district's website.

REPORTING TO A FEDERAL OR STATE AGENCY

In addition to, or as an alternative to, filing a formal complaint pursuant to this policy, a person may file a complaint with the U.S. Department of Education, Office for Civil Rights, or with the Colorado Civil Rights Division at the addresses below:

Denver Office for Civil Rights
U.S. Department of Education Federal Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582
Telephone: 303-844-5695
TDD: 800-877-8339
Fax: 303-844-4303
Email: OCR.Denver@ed.gov

Colorado Civil Rights Division
1560 Broadway, Suite 825
Denver, CO 80202
Telephone: 303-894-2997 or 800-262-4845
Fax: 303-894-7830
Email: DORA_CCRDIntake@state.co.us

Questions or concerns about the district's application of Title IX may be addressed to the district's Title IX Coordinator or the United States Department of Education, Office for Civil Rights (OCR.Denver@ed.gov)

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Platte Valley School District, Weld RE-7