

RACIAL AND SEXUAL HARASSMENT

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INTRODUCTION

The Board of Education believes that all students and employees are entitled to pursue their education in school-related environments that are free of racial and sexual harassment. It also believes that part of its obligation for educating its students is to transmit the shared values of our society, including the principles of tolerance for others and equality among people of differing genders and races.

With these principles in mind, the Board prohibits employees and students from harassing other persons through conduct or communications which 1) are of a sexual nature or which, while not overtly sexual, would not have occurred except for the student's gender; or 2) are of a racial nature or which, while not overtly racial, would not have occurred except for the student's race, color or national origin. (For the sake of simplicity, the term "race" is used in this policy to refer to race, color or national origin.)

Any employee who is aware of racial or sexual harassment of a person in an educational or school-related setting is required as a condition of employment to report it promptly to an appropriate authority.

It is the policy of the Board to investigate and deal appropriately with offending employees and students when complaints of such offensive behavior are made.

(Note: This policy governs cases where the victim of sexual harassment is a student or where the victim of racial harassment is either a student or employee. Cases of sexual harassment of one employee by another are governed by policy GBAA.)

SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination and as such is strictly prohibited. Generally, conduct must be unwelcome in order to constitute harassing behavior. However, when behavior is engaged in by a non-student and directed toward a student, the behavior is prohibited whether or not it is welcome. Any sexual contact, sexually related communication or other sexual attention, directed by an employee toward a student is strictly prohibited whether or not the student considers the activity to be welcome or consents to such activity.

Unwelcome sexual advances, requests for sexual favors and other verbal, written, graphic or

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physical conduct of a sexual nature constitute sexual harassment when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of a student's academic progress or completion of a school-related activity;
- b. Submission to or rejection of such conduct by a student is used as the basis for educational decisions affecting the student; or
- c. Such conduct has the purpose or effect of unreasonably interfering with a student's educational performance or creating an intimidating, hostile or offensive educational environment.

Examples of sexual harassment include, but are not limited to:

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. Spreading sexual rumors or stories;
7. Pressure to engage in sexual activity;
8. Unwelcome sexual touching, such as offensive brushing against a person, patting or pinching;
9. "Rating" students on the basis of physical characteristics;
10. 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.);
11. An employee engaging in sexual activity with a student, or directing sexually related communications toward a student, whether or not the activity is consensual or welcome; and
12. Verbal abuse of a sexual nature or using sexually degrading words to describe a person.

Sexual harassment does not refer to occasionally inoffensive compliments. It refers to behavior which is not welcome (except, as noted above, where the harassment of a student is engaged in by an adult), which is personally offensive, and which, therefore, interferes with the learning or work of the victims and sometimes their peers.

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RACIAL HARASSMENT

Racial harassment is a form of racial discrimination and as such is strictly prohibited. It shall be defined for purposes of this policy as oral, written, graphic or physical behavior relating to the race or national origin of another, which is intentional and which has the effect of:

1. Creating an intimidating, hostile, or offensive environment for the learning, working or performance of school-sanctioned activities of any person;
2. Unreasonably interfering with or disrupting the educational performance, work performance or participation in any other school-sanctioned activity of any person; or
3. Unreasonably interfering with the receipt by any person of any of the benefits or opportunities available through the School District.

It is important to note that not every act which relates to the race of others and that may be offensive to any individual group will be considered to be a violation of this policy. However, a single incident, if sufficiently severe, may constitute racial harassment. Whether a specific incident constitutes harassment proscribed by this policy will be decided on a case-by-case basis. The circumstances surrounding the behavior, together with this policy's definition of racial harassment, the severity of the conduct (taking into account the victim's age and race), and the pervasiveness and persistency of the conduct should be determined. Determinations of whether racial harassment has occurred should be made from the perspective of a hypothetical, reasonable and similarly situated victim who was subjected to the same conduct.

In making determination under this policy, due consideration will be given to the rights to freedom of expression of public school students and employees under federal and state law.

Examples of acts that may, if they satisfy the definition of racial harassment set forth in this policy, constitute racial harassment include:

- * Racially derogatory written or pictorial communications (e.g. letters, notes, newspaper articles, invitations, posters, photos, cartoons);
- * Racially derogatory verbal comments (epithets, jokes, or slurs);
- * Threats of force or violence against a person's body, possessions or residence; or
- * Physical conduct (provocative gestures, restricting freedom of action or movement, violence,

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defacing or destruction of property).

FURTHER INFORMATION RELATING TO BOTH RACIAL AND SEXUAL HARASSMENT

Sexual harassment can occur between members of the same gender and racial harassment can occur between members of the same race.

Students or staff who sexually or racially harass shall be subject to disciplinary action. Supervisors or managers who fail to take prompt action to investigate and discipline offenders are placing the District at risk and shall also be subject to disciplinary action. Such disciplinary action may, depending upon the circumstances, range from relatively minor discipline up to termination of employment or expulsion from school.

Where sexual or racial harassment is found to have occurred, the victim shall be offered counseling where, in the opinion of the District-level designated coordinator, counseling is necessary to redress the problems caused by the harassment. Where counseling is provided, it shall be paid for by the District. The District-level designated coordinator is expected to determine, (in consultation with mental health care professionals) the nature and duration of the counseling to be provided and the identity of the mental health care provider. In all but the most unusual cases, counseling shall be provided by District employees. Where counseling is provided, this should not be considered an admission of fault or liability by the District, but rather should be viewed as an indication of the District's desire to provide assistance and support to victims of harassment.

Where sexual or racial harassment has occurred, steps shall be taken which are reasonably calculated to prevent a recurrence of the harassment. The specific steps to be taken will be determined by the District-level designated coordinator after consultation with the appropriate employee, supervisor or school administrator. Such steps may include, for example, awareness training for the perpetrator and a directive not to engage in such behavior again under penalty of further discipline including termination of employment or expulsion.

Students may file a formal sexual or racial harassment grievance through use of the grievance procedure outlined in regulation ACA-R, a copy of which is also found in the regulation which accompanies this policy. Employees may also use the same grievance procedure when alleging racial harassment. If the alleged harasser is the principal or supervisor with whom the grievance

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would ordinarily be filed, or if the person does not wish for any other reason to file the grievance at the local level, s/he may file the grievance with the Office of Legal Counsel, Aurora Public Schools, 1085 Peoria Street, Aurora, CO 80011 (303-344-8060 ext. 28009).

Each school shall designate a person who shall have primary responsibility for handling complaints of sexual or racial harassment. This person shall be called the "building-level coordinator."

Retaliation against a person filing a grievance or otherwise reporting sexual or racial harassment is prohibited.

All students and employees are required to cooperate fully and be completely truthful during the investigative process, and may be disciplined if they fail to do so. In addition, any person who makes a charge of sexual or racial harassment knowing that such a charge was false, or with reckless disregard for whether or not it was true or without a good faith belief that the charge is true, may be subject to disciplinary action.

Notice of this policy shall be provided to all students and to all staff members.

LEGAL REFS.: Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*
Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*
Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*

CROSS REFS.: AC, Nondiscrimination/Equal Opportunity
ACA, Nondiscrimination on the Basis of Sex
ACBA*, Protection from Intimidation
GBAA, Sexual Discrimination and Harassment
GDQD, Discipline, Suspension and Dismissal of Support Staff
JK.1, Student Discipline
JKD/JKE, Suspension/Expulsion of Students

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Persons who believe that they have been subject to sexual or racial harassment can often have their concerns resolved by working with the building-level coordinator (or designee) and are therefore encouraged, as a first step, to attempt resolution at that level. During discussions at the local level, staff members should ordinarily: 1) discuss what actions the alleged victim (or parent) is seeking; and 2) explain the avenues for formal and informal action, including a description of the formal grievance procedure and an explanation of how it works. (This discussion may include giving the alleged victim (or parent) a copy of the grievance procedure and the identity of the District-level designated coordinator.) Where allegations of harassment are resolved at the building or site level, a report shall be made to the District-level designated coordinator which: 1) identifies the alleged victim and perpetrator; 2) summarizes the allegations; and 3) describes the resolution of the matter.

However, some cases (e.g. where the alleged harasser is the head of school administration or where the complaining party for some other reason does not wish to attempt resolution at the local level) may not be appropriate for resolution at the building level. In such cases a grievance should be brought under this regulation at the outset. Those who wish to file a formal grievance shall utilize the grievance procedure stated in regulation ACA-R. That grievance procedure provides as follows.

Grievance Procedure

Any student or employee shall have ready means of resolving any claim of unlawful discrimination on the basis of sex in the educational programs or activities of the District. To this end the following procedure shall be available. (Note: separate grievance procedures apply to claims of sexual harassment by employees against employees GBAA-R).

In the event a student or employee believes that there has been a violation of policy ACA, policy JBB*, Title VI (which prohibits discrimination on the basis of race, color or national origin) or Title IX (which prohibits discrimination on the basis of sex) s/he shall mail or personally deliver to the District-level designated coordinator for Title VI/Title IX compliance, a written statement setting out the alleged violations in specific terms, describing the incident or activity involved, the individuals involved and the dates, times and locations involved. (Where the student or employee is unable to compose a written statement because of a disability, an alternative means of communicating the information will be arranged. For example, a recorded oral statement may be taken.) The District-level designated coordinator shall provide the individual filing the written statement an opportunity to discuss the matter personally, if requested. (The "District-level designated coordinators" are the director of school services and the chief personnel officer, 1085 Peoria Street, Aurora, CO 80011,

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303-344-8060.)

The District-level designated coordinator shall make such additional investigation as is necessary and shall report his findings and recommendations in writing to the complaining party and the Superintendent/designee. If the complaining party is not satisfied with the decision of the District-level designated coordinator, s/he may appeal this decision, in writing, (or through an alternative means, if necessary because of a disability) to the Superintendent, whose decision shall be final.

The District shall make all reasonable efforts to provide prompt resolution of claims filed under this grievance procedure. Unless, in the opinion of the District-level designated coordinator, good cause exists to deviate from the time line, or the complaining party agrees, the following time line shall be followed.

Decision of District-level designated Coordinator - within 15 business days of receiving the formal (usually written) complaint.

Decision of Superintendent - within five business days of receiving the appeal from the district-level designated coordinator's decision.

If the complaining party alleges that the District-level designated coordinator is directly involved in the discrimination, then the report of alleged discrimination shall be made to the Superintendent who shall designate another District administrator to investigate the matter. The Superintendent shall then hear the appeal.

If the complaining party alleges that the Superintendent is directly involved in the discrimination, then the report of alleged discrimination shall be made to the Board of Education which shall appoint outside legal counsel to investigate the matter and report back to it. The Board of Education shall make a decision and issue findings and recommendations to the complaining party. In such cases there shall be no appeal.