

*NOTE: Colorado school districts are required by law to adopt a policy and regulations (or procedures) on this subject and the law contains some specific direction as to the content or language. This sample contains the content/language that CASB believes best meets the intent of the law. However, the district should consult with its own legal counsel to determine appropriate language that meets local circumstances and needs.*

## **Sexual Harassment Investigation Procedures** (Title IX)

The district is committed to maintaining a learning environment that is free from sex-based discrimination, including sexual harassment. It is a violation of policy 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 discrimination or harassment or participates in a harassment investigation.

### **Definitions**

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

- **“Complainant”** means an individual who is alleged to be the target of conduct that could constitute sex-based discrimination or sexual harassment.
- **“Decision Maker”** means an individual(s) who assess the relevant evidence, including party and witness credibility, to decide if the district has met the burden of proof showing the respondent to be responsible for the alleged sexual harassment. The decision maker may not be the Title IX Coordinator or the investigator. The district’s decision maker is the superintendent.
- **“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.
- **“Investigator”** means an individual trained to objectively evaluate the credibility of parties and witnesses, synthesize all available evidence – including both inculpatory and exculpatory evidence – and take into account the unique and complex circumstances of each situation. The investigator may be the Title IX Coordinator, but cannot be the decision maker. The district’s investigator is the secondary principal.

- **“Respondent”** means an individual who has been reported to be the perpetrator of conduct that could constitute sex-based discrimination or sexual harassment.
- **“Sexual Harassment”** means conduct on the basis of sex that satisfies one or more of the following:
  1. A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
  2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
  3. Sexual assault, dating violence, domestic violence, or stalking.
- **“Supportive Measures”** mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge, to the complainant or respondent, before or after the filing of a formal complaint or where no formal complaint has been filed.
- **“Title IX Coordinator”** means the employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities. The district's Title IX Coordinator is the elementary principal.

### **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. Complaints must be filed in writing and signed by the complainant. Forms for this purpose are available at *the district, counseling offices, and administrative offices*. Completed forms must be filed with the Title IX Coordinator. If a complaint form is given to a district employee, the district employee will promptly forward the complaint to the Title IX Coordinator. An alternate will be designated in the event it is claimed that the respondent is the one who committed the alleged discrimination or some other conflict of interest exists. Complaints must be filed within 180 days of the event giving rise to the complaint or from the date the complainant could reasonably become aware of such occurrence. The complainant will receive assistance as needed in filing a complaint.

Retaliation against the complainant, respondent, or any person who filed a complaint or participated in an investigation, is prohibited. Individuals found to have engaged in retaliatory behavior will be subject to disciplinary measures.

## Investigation

Once a complaint is received, the Title IX Coordinator or investigator (“investigator”) will first determine if the alleged conduct occurred in the 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, nor does it prohibit the district from addressing the allegations in any manner the district deems appropriate.

Following this determination, the investigator will begin the investigation in a reasonably prompt manner and adhere to the following:

- The investigator must apply the “presumption of innocence” standard during the course of the investigation.
- The investigator must adhere to all timeframes. If a timeframe cannot be met, the investigator will notify the complainant, respondent, and decision maker.
- The investigator will protect the complainant from inappropriate questions and evidence about the complainant’s prior sexual history.
- The investigator must provide written notice of the allegations to the parties involved.
- The investigation may also include, but is not limited to, the following:
  - Implementation of supportive measures for both the complainant and the respondent;
  - A request for the complainant to provide a written statement regarding the nature of the complaint;
  - A request for respondent to provide a written statement;
  - A request for witnesses identified during the course of the investigation to provide a written statement;
  - Interviews of the complainant, respondent, or witnesses; and
  - Review and collection of documentation or information deemed relevant to the investigation.
- Within a reasonably prompt timeframe, the investigator must issue a report to the decision maker. After finalizing the report, the investigator will provide a copy to the complainant and respondent and will wait ten days prior to providing the report to the decision. The investigator’s report must be advisory and must not bind the decision maker to any particular course of action or remedial measure.

*NOTE 1: The procedures reference “reasonably prompt” time frames when issuing an investigation report. In the 2011 Dear Colleague Letter, the Office for Civil Rights recommended up to a 60 calendar day time frame based on OCR’s experience that “a typical investigation takes approximately 60 calendar days following receipt of the complaint.” This guidance has since been withdrawn, but may still represent a reasonable time frame depending on the circumstances associated with a specific situation.*

*NOTE 2: The amended 2020 Title IX rules add provisions for a “live hearing with cross-examination” requirement for postsecondary institutions. The rules clarify that hearings are optional for K12 school districts. The district should consult with legal counsel to determine if a live hearing is appropriate for the district.*

*NOTE 3: Districts may use either the preponderance of the evidence standard or the clear and convincing evidence standard. The preponderance of the evidence standard may only be used if the district uses that standard for code of conduct violations that do not involve sexual harassment but carry the same maximum sanction.*

## **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. 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 measures taken in response to the conduct. 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.

## **Notice and training**

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

Adopted: August 12, 2020