



Boulder Valley School District

File: AC-R

Adopted: May 11, 1995

Revised: January 8, 2000; November 29, 2001; June 6, 2007

NONDISCRIMINATION

In affirming that there shall be no discrimination, harassment, or violence against anyone in the school system, the Board of Education intends this regulation to define what constitutes a violation of the Board's nondiscrimination policy and to provide processes to prohibit discrimination, harassment, and violence. This regulation is further intended to delineate procedures to resolve conflicts that arise and to ensure accountability.

Introduction

1. It is recognized that discrimination or harassment complaints may arise from a variety of situations and circumstances. Students and adults are encouraged to report concerns of discrimination, whether actual or perceived, so that they may be investigated and resolved, either through discipline or education.
2. It is the intent of these procedures to assure that discrimination or harassment complaints are resolved in a timely, orderly, and equitable manner that serves to fulfill the intent of the Board policy against discrimination. All administrators are required to make a conscientious effort to fully understand the nature and basis of any discrimination or harassment complaint and resolve it or refer it to the appropriate source for resolution in a timely manner.
3. The filing of a discrimination or harassment complaint will not be used as a basis for actions that adversely affect any party's standing in the school system.
4. The School District will support teachers and administrators in promoting high standards of academic scholarship in a safe, non-threatening environment that respects the potential of each student without regard for individual differences. Students will have an opportunity to participate in discussions advocating nondiscrimination. Staff development aimed at the elimination of harassment and discrimination will be provided to all employees in the School District.
5. Support services, such as school counseling, and the nondiscrimination school liaison are available for students who experience discrimination or harassment.

Definitions

1. **Harassment** Behavior toward students or adults based, in whole or in part, on race, ethnicity, national origin, gender, gender identity/expression, sexual orientation, age, disability, or religion which interferes with a person's school performance or creates an intimidating, hostile, or offensive school environment.

2. **Sexual Harassment of Personnel** Unwelcome sexual advances, requests for sexual favors, or other sex-based verbal or physical conduct where

- a. submission to such conduct is explicitly or implicitly made a term or condition of an individual's employment;
- b. submission to or rejection of such conduct is used as the basis for decisions affecting an individual's employment benefits; or
- c. such conduct has the purpose or effect of unreasonably interfering with an individual's employment by creating an intimidating, hostile, or offensive work environment.

3. **Sexual Harassment of Students** Verbal, visual, or physical sexual or gender-based behavior that occurs when one person has formal or informal power over the other and

- a. such behavior creates an intimidating, hostile, or offensive educational environment; or
- b. such behavior interferes with an individual's educational performance or adversely affects an individual's learning opportunities.

4. **Violation or Suspected Violation of the Nondiscrimination Policy** It is a violation of the nondiscrimination policy if, on District property, in District vehicles, or in connection with any District program, activity, or event, a District employee or student

- a. engages in behavior that has the purpose or effect of creating an intimidating, hostile, or offensive educational environment or that interferes with or intrudes upon an individual's rights or educational performance, opportunities or benefits on the basis of an individual's race, ethnicity, national origin, gender, gender identity/expression, sexual orientation, age, disability or religion;
- b. harasses, intimidates, threatens or harms an individual on the basis of the individual's race, ethnicity, national origin, gender, gender identity/expression, sexual orientation, age, disability, or religion;
- c. harasses or intimidates another individual or individuals by name calling, using derogatory slurs, or wearing or displaying items or images that, depending upon the facts, circumstances, and context, are reasonably likely to or do create ill will or

hatred toward the individual or individuals, on the basis of race, ethnicity, national origin, gender, gender identity/expression, sexual orientation, age, disability or religion;

- d. damages, defaces, or destroys the property of any individual because of that individual's race, ethnicity, national origin, gender, gender identity/expression, sexual orientation, age, disability, or religion; or
- e. excludes any qualified individual from participation in, denies any qualified individual the benefits of, or otherwise discriminates against any qualified individual in connection with any District program, activity, or event on the basis of the individual's race, ethnicity, national origin, gender, gender identity/expression, sexual orientation, age, disability, or religion.

5. Gender Identity/Expression

“Gender identity” refers to one’s understanding, outlook and feelings about whether one is female or male, regardless of one’s biological sex.

“Gender expression” refers to the way a person expresses her or his gender, through gestures, movement, dress and grooming.

A transgender and or gender nonconforming student has the right to dress in accordance with the gender identity and expression that the student consistently asserts at school within the constraints of the school’s dress code (e.g., prohibitions on wearing gang symbols, etc.)

A transgender and or gender nonconforming employee has the right to dress in accordance with the gender identity and expression that the employee consistently asserts at work within the constraints of the Staff Member Dress policy (e.g., does not detract from a positive educational environment).

6. Retaliation

No Boulder Valley School District student or employee shall be subject to adverse action in retaliation for any good faith report of discrimination under Board Policy AC.

Retaliation is considered to be as serious as prohibited discrimination and appropriate disciplinary action shall be instituted. Examples of retaliation may include unjustified negative performance evaluations or other negative decisions, and continuing/escalating harassing behavior after the student or employee makes a report.

If you perceive retaliation for making a good faith report of discrimination or for your participation in the investigation, please follow the complaint procedure set forth in this regulation.

Application to Student Speech or Expressive Activity

The application of the nondiscrimination policy and this regulation to student speech or expressive activity shall be guided by District Policy File: JF and JR-R (“Student Rights and Responsibilities”), File: JTC (“Student Conduct”), and other policies and regulations governing student rights, conduct, and discipline as applicable. (See cross references at the end of this regulation.)

The district recognizes that the educational process is enriched by robust discussion, both inside and outside of the classroom and school activities. Therefore, this nondiscrimination regulation and associated policy does not prohibit student speech or expression in classroom or other school-sponsored activities or projects that are consistent with standards of appropriate classroom behavior, discourse, and legitimate educational concerns. Nor do they prohibit robust student speech and expression on school property outside of the classroom or school-sponsored activities within the limits of the law, this policy, and the student conduct code.

Processes to Prohibit Harassment and Discrimination

The administrator/department head of a school/department is responsible for communicating to students, staff, and parents the nondiscrimination policy and the procedures to resolve conflicts and for creating a safe, nondiscriminatory school/work environment. The department supervisor is responsible for the same duties in regard to the employees in his or her department.

At the beginning of each school year, the educational and employment nondiscrimination policy and regulation to resolve conflict (AC-R/AC-E1), shall be disseminated to employees, parents, students and volunteers in the following manner:

1. By inclusion in the staff handbook;
2. By inclusion in the student school handbook;
3. By inclusion in student-parent informational handbook;
4. By inclusion in the BVSD web-site;
5. By posting in school offices, halls, and student gathering areas.

Procedures to Resolve Conflicts

Any adult who witnesses a violation of the nondiscrimination policy is expected to take reasonable action to stop the violation at the time the violation occurs, and to report the incident to the appropriate personnel. Students who witness or know of a violation or suspected violation of the policy are encouraged to promptly report to the school principal or another adult staff member. Confidentiality will be maintained throughout the process, with information made available only to persons having a legitimate educational interest in the records of the proceedings.

Procedure

When a violation or suspected violation of the nondiscrimination policy occurs, the Board policies, AC, ACA, GBCC, and regulations provide the following procedures for dealing with an alleged violation:

Students:

ACB, ACB-R Nondiscrimination on the Basis of Disability Under Section 504 and the Americans with Disabilities Act

JFH, JFH-R Student Complaints and Grievances (regarding violation of Board policies or school rules)

Employees:

GBCC Sexual Harassment of Personnel

GBM, GBM-R Staff Complaints and Grievances (regarding violation of Board policies or regulations)

Public:

KL Public Complaints

KLB, KLB-R Public Complaints About the Curriculum or Instructional Materials or Strategies
Any violation or suspected violation of the nondiscrimination policy, AC, that is not addressed by the procedures specifically provided above, shall be handled by the following complaint procedure.

Any investigation conducted within the district will include:

- Interviews with all affected parties, including witnesses or other persons who may have information to share regarding the matter;

- A review of all relevant documents;
- A consideration of all information and facts involving the complaint;
- A written determination regarding the basis of the complaint

The Office of Institutional Equity & Multicultural Education is a resource for all persons seeking questions about and advocacy for the complaint process itself and may be utilized as a mediator, where appropriate. Requests for mediation can be made through the Office of Legal Counsel.

Every effort shall be made to resolve the complaint at the lowest possible level below:

Level I Informal Complaint to Administrator/Supervisor

Students, employees, or members of the public who have personal knowledge of a violation or suspected violation of the nondiscrimination policy that does not fall under the specific procedures listed above, shall initiate a review by contacting the building principal or supervisor as soon as possible after the alleged violation. Students may also report to a teacher or counselor on the school's staff who will act or arrange for a staff member to act as the Student Grievance Liaison. The principal or supervisor shall investigate any allegation of violation of the nondiscrimination policy, and attempt to resolve the matter informally by facilitating a discussion between those involved. If the alleged violation is based upon the conduct of the principal or supervisor of the complainant, the report should be made to that person's immediate supervisor.

In determining whether there has been a violation of the nondiscrimination policy, the principal or supervisor should consider all the facts, the surrounding circumstances, the nature of the behavior, the relationships between the parties involved, and the context in which the alleged incident occurred.

Level II Formal Written Complaint to Administrator/Supervisor

If the matter has not been informally resolved, the complainant may submit the Report Form for Alleged Discrimination, Harassment, or Violence (Form AC-E1) to the principal or supervisor within twenty school days of the alleged act of discrimination. The form will also advise the complainant about persons who are available to assist the complainant in the process. The principal or supervisor shall make, or shall designate another to make, such additional investigation as necessary to determine the complete facts involved. Any person investigating a complaint at this level is expected to have appropriate training in investigating and resolving complaints of discrimination. He or she shall make a written report within ten school days from the date the written complaint is received. The report shall be made on the Alleged Discrimination, Harassment, Violence Follow-Up Report Form (AC-E2) and shall contain the specific findings and conclusion as to the alleged violation of the nondiscrimination policy. Any report that contains the name of a District student shall

be considered an educational record and shall be kept confidential pursuant to state and federal public records laws.

If the alleged violation is based upon the conduct of the principal or supervisor of the complainant, the report should be made in writing to that person's immediate supervisor. Upon completion of Step II of this complaint procedure, alternative dispute resolution (mediation) may be encouraged and/or requested. If the parties enter voluntary mediation, time limits are suspended pending the outcome or discontinuance of mediation.

Mediation is private, confidential, and privileged. It is conducted by a trained, unbiased facilitator who assists the parties in clarifying and understanding their different points of view, generating and evaluating alternatives and reaching a mutually acceptable resolution. The mediator's notes are confidential and will be destroyed after the mediation. The mediator cannot be contacted for information. If an agreement can be reached in mediation, all parties will be asked to review and sign an agreement. If either party fails to comply with the agreement, he/she may be subject to corrective or disciplinary action.

Level III District Level Formal Complaint

If resolution is not achieved, the complainant may file a written appeal within ten days of review of the Level II report at the District level (Assistant Superintendents of Elementary, Secondary Education, the Chief Operations Officer or designee). The written appeal shall state, with specificity, the reasons and facts that support the disagreement with the Level II decision. The appropriate Director at the District level shall have ten days to review the records of the complaint and investigation and to issue a written decision.

An investigator external to the district may be appointed to investigate the complaint at Level III or IV.

Level IV Formal Written Complaint to Superintendent/Designee

If the issue has not been resolved by the Level III decision, a final appeal may be made to the Superintendent of Schools or designee within five days of receipt of the Level III decision. The Superintendent, or designee, based upon an independent investigation, shall issue a written decision as a final resolution of the complaint within ten (10) days of receiving the investigation report. Policy KL (Public Complaints) and its associated regulation (KL-R) provide a procedure for District patrons to pursue complaints concerning the application of this policy.

Nondiscrimination Regulations Flow Chart

Level	Decision-Maker	Respondent Action	District Action
I	School principal or immediate supervisor	Report as soon after event giving rise to claim	Resolve informally utilizing District's disciplinary regulations (inappropriate behavior will constitute disciplinary actions). (See BVSD File: JG for reference.)
II	School principal or immediate supervisor	If not resolved at Level I, file a formal written complaint within twenty school days after event giving rise to claim*	Report findings (ten working days) A. No violation of District Policy; B. No violation of District's Nondiscrimination Policy; however, inappropriate behavior by respondent (disciplinary action may be taken); or Violation of District Nondiscrimination Policy (disciplinary action must be taken).
III	Mediation may be requested at this point	Respondent may request mediation at this point	Request must be approved by Legal Counsel
	An investigator external to the district may be appointed to investigate the complaint at Level II or IV.	Respondent may request investigation at this point	Request must be approved by Legal Counsel
	Assistant Superintendent (elementary, secondary), Chief Operations Officer or designee	File a written appeal within ten days of review of report at Level II *	Written decision sent within ten days of appeal or receipt of external investigation report (if applicable) which may: affirm; reverse; modify; remand

IV	Superintendent or designee	File a written complaint within ten days of appeal of Level III	Written decision within twenty days of appeal or receipt of external investigation report (if applicable) which may affirm; reverse; modify; or remand. The Superintendent's or designee's decision is final.
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* If the alleged violation is based upon the conduct of the principal or supervisor of the complainant, the report should be made in writing to that person's immediate supervisor.

The Nondiscrimination Flow Chart will be placed in the student-parent handbook, teacher handbook, and on posters that will be placed in all District buildings.

An investigator external to the district may be appointed to investigate the complaint at Level III or IV.

Special Provisions

1. Failure on the part of the student/parent/employee to initiate and/or follow up on a complaint in a timely manner may result in the complaint being considered abandoned. A complaint must be filed within twenty school days of the alleged violation of the nondiscrimination policy.
2. In general, students and employees shall continue attendance at school and pursue their studies or employment, as directed, while complaints are pending resolution.
3. Records of an ongoing investigation shall be kept confidential pursuant to state and federal law.

Procedures to Ensure Accountability

As part of the annual goal setting in the area of cultural plurality, the staffs in each school and department are expected to develop measurable goals to promote nondiscrimination. Consistent with the District's performance evaluation instrument for administrators that assess each administrator's efforts and success in implementing the District's policies and goals, the evaluations of principals and heads of departments shall include consideration of the implementation of this policy and regulation and related goals.

CROSS REFS.:

IB, Academic Freedom

IGAC, Teaching About Religion and Religion in the Schools

IGDB, Student Publications

JF, Student Rights and Responsibilities

JFC, Student Conduct

JG, Student Discipline

JGD/JGE, Student Suspension/Expulsion

AC-E1 Complaint Form

End of File: AC-R