

Sex-based Harassment Investigation Procedures (Title IX)

The Board is committed to maintaining a learning environment that is free from sex-based discrimination, including sex-based 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 have been subjected to conduct that could constitute sex-based discrimination or sex-based harassment under Title IX.
- **“Decision Maker”** means an individual(s) who assesses the relevant evidence, including party and witness credibility, to decide if the EC BOCES has met the burden of proof showing the respondent to be responsible for the alleged sex-based harassment. The EC BOCES’s decision maker may be the superintendent, another designated administrator, or a third party.
- **“Disciplinary Sanction”** means a consequence imposed by the EC BOCES on a respondent who is found to have violated this policy. 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 EC BOCES exercises substantial control, including disciplinary authority, over both the complainant and respondent and the context in which the sex-based harassment occurs.
- **“Respondent”** means an individual who has been reported to have violated the EC BOCES’s prohibition on sex discrimination.
- **“Sex Discrimination”** is discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

- **“Sex-based Harassment”** is a form of sex discrimination and includes sexual harassment and other harassment on the basis of sex that satisfies one or more of the following:
 1. Quid pro quo harassment. A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
 2. Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the education program or activity; or
 3. Specific offenses. 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 to restore or preserve the party’s access to the education program/activity, including safety measures, or provide support during the grievance procedures, before or after the filing of a formal complaint or where no formal complaint has been filed. Such as 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.
- **“Remedies”** means measures provided, as appropriate, to a complainant or any other person the EC BOCES identifies as having had their equal access to the education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person’s access to the education program or activity after the EC BOCES determines that sex discrimination occurred. Remedies may include: counseling, updating policies, staff or student training, accommodations.
- **“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, proceeding, or hearing under this policy.
- **“Title IX Coordinator”** means the employee designated by the EC BOCES to coordinate its efforts to comply with Title IX responsibilities. The Title IX Coordinator will also 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.

- The EC BOCES's Title IX Coordinator is Moira Hawks, Assistant Special Education Director, 820 2nd Street, Limon, CO 80828 – 719-775-2342 moirah@ecboces.org.

Complaint Resolution Process

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. Throughout the investigation, the EC BOCES 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; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures.

The EC BOCES 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 or Decision Maker 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. 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 compliance officer or their alternate.**

The Title IX Coordinator must offer and coordinate supportive measures, as appropriate, for both the complainant and the respondent. A complainant may request modification of supportive measures if circumstances have changed materially, or they disagree with the EC BOCES's decision to provide, deny, modify, or terminate supportive measures. Challenges of a EC BOCES's decision must be submitted to the Title IX Coordinator within ten (10) days of the decision, and an impartial employee other than the Title IX Coordinator will review the challenge.

1. Making a complaint

A complainant, may file a complaint with the Title IX Coordinator. Complaints are an oral or written request that objectively can be understood as a request for the school to investigate and make a determination about alleged discrimination. If a complaint is given to a EC BOCES employee, the EC BOCES employee will promptly forward all information regarding the complaint to the Title IX Coordinator. 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 sanctions.

2. Evaluation and Dismissal by Title IX Coordinator

Within (*three-five*) school days after a complaint is received, the Title IX Coordinator will determine if the alleged conduct occurred in the EC BOCES 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.

At any point throughout the investigation, the Title IX Coordinator may dismiss the complaint if the respondent cannot be identified or is not participating/employed in EC BOCES programs or activities or the complainant voluntarily withdraws the complaint and the Title IX Coordinator declines to initiate a complaint.

Upon dismissal, the Title IX Coordinator will promptly notify the complainant as to the basis of the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, the respondent will also be notified. Additionally, the EC BOCES will provide both parties with an opportunity to appeal the dismissal. Dismissals may be appealed on one of the following bases, if it would change the outcome: new evidence, procedural irregularities, or a conflict of interest.

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 EC BOCES from addressing the allegations in any manner the EC BOCES deems appropriate.

If the dismissal is appealed, the EC BOCES will: notify the parties of any appeal, including notice of the allegations if not already provided; implement appeal procedures equally for the parties; ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint; ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;

provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, the EC BOCES will offer supportive measures to the complainant and respondent, and take other prompt and effective steps to ensure that prohibited sex discrimination does not occur, including directing the parties to AC-R-1.

3. Initial Meetings with the Parties

Following this determination, the Title IX Coordinator will begin the investigation in a reasonably prompt manner and take the following steps:

- a. *Initial meeting with Reporting Party, if any, and Complainant:* The Title IX Coordinator will meet with the complainant to provide the information detailed in paragraph (c) below. If the complainant does not want to proceed with their complaint, the compliance officer may elect to proceed with the investigation if necessary to stop any harassment or discrimination and otherwise ensure the safety of the school environment.
- b. *Initial Meeting with Respondent:* As soon as possible after meeting with the complainant and any reporting party, the compliance officer will meet with the respondent and, if this individual is a student, their parents/guardians in order to obtain a response to the complaint. At the initial meeting, the compliance officer will provide the respondent written notice as to the allegations against them and give the respondent a chance to respond to those allegations.

The compliance officer may meet with the respondent to advise them of the allegations even if the compliance officer determines, after meeting with the Complainant and any reporting party, that there is no merit to the allegations.

- c. *Notice of Allegations.* At the initial meetings, the Title IX Coordinator will provide to both the complainant and respondent notice of the allegations, which includes the following information:
 - i. *Available supportive measures;*
 - ii. *Copies of Board Policy AC and this implementing regulation;*
 - iii. *Timeline for the investigation process and the EC BOCES's legal obligations;*
 - iv. *Information on the informal resolution process, if offered;*
 - v. *Sufficient information regarding identities to allow parties to respond;*
 - vi. *Retaliation is prohibited;*
 - vii. *Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or a description of the evidence; and*

- viii. Additional notice will be provided if the EC BOCES decides to investigate additional allegations.*

4. Informal Resolution

When the Title IX Coordinator deems it appropriate, an informal resolution process may be instituted with an impartial facilitator who is not the Title IX Coordinator or decision maker. Informal resolution is not appropriate in all circumstances. It may only be used if both parties must agree, with agreement voluntary, non-coerced, and documented in writing. Informal resolution is not available in cases where a EC BOCES employee is alleged to have sexually harassed a student.

Prior to initiating an informal resolution process, both parties must be provided written notice explaining the allegations, the requirements of the informal resolution process, that either party has the right to withdraw from the informal resolution process, that an agreement at the conclusion of the informal resolution process would prevent the parties from initiating grievance procedures arising from the same allegations; the potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and what information the EC BOCES will maintain and whether/how that information could be disclosed for use in the investigation, if informal resolution is not successful and the investigation resumes.

Generally, the informal resolution process should be completed within sixty school days from the parties' agreement to the process, unless good cause is shown.

5. Formal Complaint Grievance Process

If informal resolution is inappropriate, unavailable, or unsuccessful, the Title IX Coordinator or their qualified designee will investigate the complaint and provide a report to the decision-maker, who will determine whether discrimination occurred. Any designee 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).

The burden is on the EC BOCES - not on the parties - to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred. The Title IX Coordinator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

- a. *Collect Evidence:* The Title IX Coordinator will collect evidence, including, but not limited to: statements by any witness to the incident and any available physical or documentary evidence; evidence about the credibility

of the parties involved; evidence about whether the respondent has engaged in other incidents of misconduct; evidence of the complainant and respondent's respective reactions or changes in behavior following the incident; and evidence regarding whether the complainant took action to protest the conduct. Evidence may be collected by interviews with parties and witnesses, reviewing information, requesting written statements, or ways as appropriate.

During the investigation, the Title IX Coordinator will presume that the respondent is not responsible for the alleged sex discrimination until a determination is made (the "presumption of innocence" standard). The Title IX Coordinator may question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. However, the Title IX Coordinator will protect the complainant from inappropriate questions and evidence about the complainant's prior sexual history and will not make credibility determinations based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the EC BOCES to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence protected under legal privilege or provided to a confidential employee, unless waived voluntarily;
 - A party's or witness's records that are made or maintained by a recognized health professional or paraprofessional in connection with the provision or treatment, unless voluntary, written consent for use in the grievance procedures is obtained;
 - Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless offered to prove someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment.
- b. *Report*: Within sixty calendar days of the receipt of the complaint, the Title IX Coordinator must issue a report to the decision maker. The Title IX Coordinator's report must be advisory and must not bind the decision maker to any particular course of action or remedial measure.
- c. *Determination*: The decision maker will determine whether discrimination or harassment occurred, by applying the preponderance of the evidence standard. In making the determination, the decision maker will consider the following:

- i. The degree to which the conduct affected the complainant's ability to access the EC BOCES's education program or activity;
- ii. The type, frequency, and duration of the conduct;
- iii. The parties' ages, roles within the EC BOCES's education program or activity, previous interactions, and other relevant factors;
- iv. Location and context of the conduct;
- v. Other sex-based harassment in the EC BOCES's education program or activity;
- vi. Any other relevant considerations.

The decision maker will notify the parties in writing of the determination that sex discrimination occurred under Title IX including the rationale for such determination and the procedures and permissible bases for the complainant and respondent to appeal.

6. Disciplinary Sanctions and Remedies

If there is a determination that sex discrimination occurred, the Title IX Coordinator will coordinate the provision and implementation of remedies to a complainant and other impacted individuals; coordinate any disciplinary sanctions and notify the complainant; and take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.

Disciplinary sanctions will not be imposed until the grievance procedures are completed, and parties will not be disciplined under Title IX for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

7. 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 will be limited in accordance with applicable law, to either a: procedural irregularity that affected the outcome of the matter; 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/or the Title IX Coordinator or decision maker 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 Executive Director or designee may 1) affirm the written determination; 2) overturn the written determination, or 3) send the report back for additional investigation. The Executive Director or designee's decision to affirm or overturn the report is final.

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 K-12 BOCES. The BOCES should consult with legal counsel to determine if a live hearing is appropriate for the BOCES.

NOTE 3: BOCES 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 BOCES uses that standard for code of conduct violations that do not involve sex-based harassment but carry the same maximum sanction.

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 EC BOCES schools and departments. The policy and complaint procedures must be prominently posted on the EC BOCES's website, referenced in employee handbooks and otherwise be made available to all staff and members of the public through electronic or hard-copy distribution.

All EC BOCES employees will receive periodic training related to recognizing and preventing sex-based harassment. EC BOCES employees must receive additional periodic training related to handling reports of sex-based 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 sex-based harassment as required by law.

The Title IX Coordinator must monitor the EC BOCES for barriers to reporting information that may constitute sex discrimination under Title IX. Additionally, all employees who are not confidential employees must notify the Title IX Coordinator when the employee has information about conduct that may reasonably constitute sex discrimination under Title IX.

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

**EAST CENTRAL BOCES
BOARD REGULATION**

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