

DSST

Discrimination and Harassment

Complaint, Investigation, and Compliance Procedures

DSST Public Schools (the “School”) is committed to providing a working and learning environment free from discrimination and discriminatory harassment on the basis of any legally protected status. This regulation consolidates, into a single set of procedures, the School's obligations under:

- Title IX of the Education Amendments of 1972 (“Title IX”), which prohibits discrimination on the basis of sex or gender in education programs and activities;
- Colorado Revised Statute § 22-1-143, which requires schools to adopt and implement policies protecting students against harassment and discrimination based on any protected status;
- The Colorado Anti-Discrimination Act, C.R.S. § 24-34-301 et seq., and related state civil rights laws prohibiting harassment of employees; and
- Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and other applicable federal and state nondiscrimination laws.

Where Title IX and Colorado law overlap, the School will follow both, resolving any inconsistency by applying whichever rule is more protective against harassment, unless a federal rule preempts an inconsistent state rule, or both apply harmoniously. Behavior that does not rise to the level of discriminatory harassment under this regulation may still be addressed as a violation of DSST’s Code of Conduct or an employment policy.

Basic Prohibition: The School does not discriminate on the basis of a person’s perceived or actual protected status. The School treats harassment, as defined in federal and state law, based on any protected status, as a form of such discrimination, and therefore forbidden. This regulation governs the investigation of all complaints of discriminatory harassment brought by or against any student, employee, volunteer, parent, guardian, applicant, or other person who receives a benefit or privilege from, or is subject to the control of, the School — regardless of whether the alleged harassment is based on sex or another protected status. A single set of procedures apply regardless of the type of protected status involved, except where this regulation expressly distinguishes Title IX sexual harassment procedures from those for other types of discriminatory harassment.

Definitions:

Appeals Panel: means the person or persons designated to hear an appeal under this regulation. No member of the Appeals Panel may be involved in the complaint as a party or witness, or otherwise biased. The Appeals Panel may include a non-voting advisor, which may be DSST’S general counsel, special counsel, or other appropriate person. In no event may a member of the Appeals Panel or its advisor be the Coordinator, investigator, or decision-maker in the same matter.

Complainant: means a person who is alleged to have been subjected to conduct that violates this regulation, and who was participating or attempting to participate in DSST’S education program or activity (including employment) at the time of the alleged conduct. “Complainant” includes a possible complainant, such as an individual identified by a third party as a possible victim of discriminatory harassment.

Confidential Employee: means an employee of DSST whose communications are privileged or confidential under federal or state law. The employee's confidential status applies only with respect to information received while functioning within the scope of the duties to which privilege or confidentiality applies (e.g., a social worker who provides counseling to students and also staffs the front desk is a confidential employee only with respect to their counseling duties).

Conflict of Interest: means a conflict between the private interests and the official or professional responsibilities of a person in a position of trust, or a conflict between competing duties.

Coordinator: means the person designated as the Civil Rights / Title IX Coordinator for the DSST network or for an individual DSST campus. The Coordinator serves in that role on a case-by-case basis and may delegate coordinator, investigator, or decision-maker responsibilities to other trained individuals as appropriate. DSST shall prominently post and make known its Coordinator(s) as they are assigned from time to time.

Dating Violence: means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, considering the length and type of the relationship and the frequency of interaction between the persons involved.

Decision-Maker(s): means the person(s) who receive a recommendation regarding a complaint of discriminatory harassment from the Coordinator or investigator, assess the relevant evidence, and decide whether the burden of proof has been met to determine that a Respondent engaged in discriminatory harassment. A decision-maker may not also be the investigator in the same matter, and, if implicated in the complaint as a Respondent or witness, an independent decision-maker shall be designated by DSST [Title, e.g., DSST's Head of School/Chief Talent Officer].

Domestic Violence: means a felony or misdemeanor crime committed by a person who is a current or former spouse or intimate partner of the victim; shares a child with, is cohabitating with, or has cohabited with, the victim as a spouse or intimate partner; is similarly situated to a spouse of the victim under the domestic or family violence laws of the applicable jurisdiction; or commits acts against an adult or youth victim protected from such acts under the domestic or family violence laws of the applicable jurisdiction.

Hostile Environment: means unwelcome conduct based on a person's protected status, or targeting the person due to that status, that, based on the totality of the circumstances, is subjectively and objectively offensive such that it limits or denies a person's ability to participate in or benefit from employment (in the case of work) or DSST's education program or activity (in the case of education). Under Title IX, the measure of whether a benefit offered by DSST is sufficiently impacted is the "severe or pervasive" test; under Colorado law, this test does not apply.

Investigator: means a person trained to evaluate objectively the credibility of witnesses, synthesize evidence, and take into account the unique circumstances of each situation involved in an alleged act or pattern of discriminatory harassment. The Coordinator may serve as the investigator or may delegate that responsibility to a qualified outside investigator. An investigator may not have a conflict of interest in a matter under investigation.

Parties: means the Complainant(s) and Respondent(s) in an individual matter.

Preponderance of the Evidence: means a burden of proof requiring the party with the burden to convince the fact-finder that there is a greater than fifty percent (50%) chance that the claim is true ("more likely than not").

Protected Status: includes race, color, or ancestry; creed or religion; sex, sexual orientation, gender identity, or gender expression; pregnancy or related conditions; family composition or caregiver status; genetic information; age or disability; national origin; past, present, or future military service; and any other status protected by federal, state, or local law.

Quid Pro Quo: means conduct by an DSST employee, agent, board member, or other person authorized by DSST to provide an aid, benefit, or service under DSST's education program or activity (including employment), that explicitly or implicitly conditions the receipt of such aid, benefit, or service on a person's participation in unwelcome sexual conduct. Quid pro quo conduct is, by definition, "severe and pervasive."

Reasonable Person: refers to a reasonable person under similar circumstances and with similar identities to the person allegedly subjected to the conduct.

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

Sex Offense: means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Sexual Assault: means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

Sexual Harassment: means, for purposes of Title IX: (i) conduct by an DSST employee or board member that conditions an aid, benefit, or service of DSST, including employment, on participation in unwelcome sexual conduct (i.e., quid pro quo harassment); (ii) conduct by an DSST team member that constitutes sexual misconduct involving a student; (iii) conduct by anyone that is unwelcome and that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to employment at DSST or to DSST's education program or activity; or (iv) conduct by anyone that constitutes Sexual Assault, Dating Violence, Domestic Violence, or Stalking. See 20 U.S.C. § 1092(f)(6)(A)(v); 34 U.S.C. § 12291(a)(8), (10) & (30). For purposes of Colorado law, sexual harassment is defined more broadly, consistent with the Hostile Environment and discriminatory harassment standards described in this regulation, and does not require conduct to be severe or pervasive. A person may be sexually harassed by a member of any sex. DSST's prohibition against sexual harassment does not extend to legitimate nonsexual touching or nonsexual conduct (for example, a coach's congratulatory hug or a teacher consoling a young child), although nonsexual conduct may, in some circumstances, take on sexual connotations and rise to the level of sexual harassment.

Stalking: means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or to suffer Substantial Emotional Distress.

Substantial Emotional Distress: means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Supportive Measures: means individualized, non-disciplinary, non-punitive services provided to a Complainant or Respondent, offered without charge, that do not unreasonably burden the other party yet are designed to restore or preserve a person's equal access to education or employment.

Civil Rights / Title IX Coordinator: DSST has appointed a single network-wide coordinator responsible for all internal civil rights and discriminatory harassment complaints, including all Title IX complaints (the “Coordinator”). The Coordinator may act as coordinator, investigator, and decision-maker in a given matter, except as prohibited by Title IX, and may delegate any of those roles to another trained individual, including if the Coordinator has a conflict of interest or if the complexity or nature of a particular case warrants delegation. The Coordinator's contact information is:

Samantha LaPres, Civil Rights / Title IX Coordinator

Director of Mental Health and Culture

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Denver, CO 80206

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Policy and Regulation Notice: DSST cannot respond to discriminatory harassment unless it knows about it. DSST encourages all students, employees, parents/guardians, and community members to report any allegation or information about discriminatory harassment to any DSST employee, including the Coordinator. This regulation, and notice of it, will be provided to students, parents, guardians, employees, applicants for admission and employment, and any unions or professional organizations holding agreements with DSST. The distributed notice, whether physical or electronic:

- must be in English, and upon request in Spanish;
- will be displayed on DSST's website home page and posted in the Student/Family and Employee Handbooks;
- must be annually distributed to all employees;
- must be annually distributed, through electronic means, to parents and legal guardians of enrolled students;
- must be annually distributed separately to students enrolled in grades six (6) through twelve (12); and
- must be distributed, upon request, as a physical copy to each incoming student and the parent or legal guardian of each incoming student.

Electronic copies of this notice must be distributed separately from any other document. DSST will also post notices concerning this regulation in multiple conspicuous, easily accessible, and well-lit places customarily frequented by students and employees. Notices will be:

- posted in multiple conspicuous places in the School that are easily accessible and well-lit;
- posted in places that are customarily frequented by students and employees;
- written in simple and age-appropriate language;
- explain that the student or employee can report the harassment or discrimination in writing, in-person, by phone, e-mail, or via an online form;
- identify a person in the School the student(s) can report the harassment or discrimination to; for reporting purposes, contain the e-mail information, phone number, and office location of the School official who is to take student and employee reports of harassment or discrimination; and

- contain the location of where a written complaint can be securely submitted; and, provide information as to where an online form can be obtained and submitted.

Duty to Report: All DSST employees and authorized volunteers, other than a confidential employee acting in their confidential capacity in relation to a Title IX matter, are obligated to report (i) any allegations of discriminatory harassment, or (ii) any information that causes them reasonably to believe there has been conduct that constitutes discriminatory harassment. This duty to report applies without regard to whether the conduct might implicate Title IX, Colorado law, or both. The report must be made to the Civil Rights / Title IX Coordinator.

Recognizing Discriminatory Harassment: Harassment results from unwelcome physical or verbal conduct or any written, pictorial, or visual communication aimed at a person due to their protected status. Because the law of harassment is most developed in the case of sexual harassment, more detailed definitions and descriptions help capture the idea of sexual harassment. Other forms of discriminatory harassment can be understood by analogy or comparison to sexual harassment.

Under Title IX sexual harassment may be based on use of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity. Sexual harassment may be quid pro quo harassment or hostile environment harassment or may involve a mixture of the two. In evaluating whether a pattern of unwelcome conduct based on or targeting a person due to sex meets the “hostile environment” test under Title IX, the question is whether the conduct has adversely and sufficiently affected or impaired the complainant’s working conditions (for employees) or ability to access the School’s education program or activity (for students). Factors that make conduct that might be harassment or less significant for Title IX purposes include the type, frequency, and duration of the conduct; the parties’ ages, roles within the School’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct; the location of the conduct and the context in which the conduct occurred; and whether other sex-based harassment has occurred in the School’s education program or activity. For conduct to meet the Title IX standard it must be sufficiently severe or pervasive to change conditions of work for employees or impair access to the educational program for students. Some conduct is sufficiently severe that it can constitute sexual harassment even on one occasion. This includes sexual assault; dating violence; domestic violence; stalking; and quid pro quo harassment.

Under Colorado law the conduct or communication does not need to be severe or pervasive and will constitute harassment or discrimination if: (1) submission to the conduct or communication is explicitly or implicitly made a term or condition of employment or of a student’s access to an educational service, opportunity, or benefit; (2) submission to, objection to, or rejection of the conduct or communication is used or threatened (explicitly or implicitly) to be used as a basis for employment or educational decisions affecting the employee or student; or, (3) the conduct or communication has the purpose or effect of unreasonably interfering with the employee’s job or the student’s access to their educational service, opportunity, or benefit, or creates an intimidating, hostile, or offensive work or educational environment.

In the case of employment, conduct is harassing under Colorado law when the conduct would be subjectively offensive to the individual alleging harassment and, in the case of both employment and education purposes, would be objectively offensive to a reasonable person in the same protected class or who shares the same or similar characteristics as the individual subjected to the conduct. With both

employment and education, petty slights, minor annoyances, and lack of good manners are not in themselves harassment, but when taken individually (for employment purposes) or in combination (for employment and education purposes) and under the totality of the circumstances, may constitute harassment or discrimination. To determine whether conduct constitutes harassment or discrimination under Colorado law, one must look at the totality of the circumstances of the conduct or communication, including:

- The frequency of the conduct or communication, recognizing that a single incident may rise to the level of harassment or discrimination;
- The identity of the person or persons engaged in the conduct;
- The identity of the person subject to the conduct;
- The number of individuals engaged in the conduct or communication;
- The type or nature of the conduct or communication;
- The duration of the conduct or communication;
- The location where the conduct or communication occurred;
- Whether the conduct or communication is threatening;
- Whether any power differential exists between the individual alleged to have engaged in harassment or discrimination and the individual alleging the harassment or discrimination;
- Any use of epithets, slurs, or other conduct or communication that is humiliating or degrading;
- Whether the conduct or communication reflects stereotypes about an individual or group of individuals in a protected class; or
- Whether the conduct includes an act of physical violence.

RESPONDING TO COMPLAINTS OF DISCRIMINATORY HARASSMENT

A. REPORTING, FORMAL COMPLAINT, GENERAL CONSIDERATIONS

1. **Reporting:** Upon receiving a report of possible discriminatory harassment, the Coordinator shall promptly and confidentially contact the Complainant. The Coordinator will (a) discuss the availability of Supportive Measures; (b) consider any request for Supportive Measures; (c) inform the Complainant that Supportive Measures are available regardless of whether a formal complaint is filed; and (d) explain the process for filing a formal complaint. The Coordinator shall document each report using the Report of Discriminatory Harassment form (**Exhibit 1**).

- A. **Supportive Measures:** Supportive Measures are individualized, non-disciplinary, non-punitive services designed to restore or preserve a party's equal access to DSST's education programs and activities (including employment), without unreasonably burdening the other party, and offered without charge. Supportive Measures may include, without limitation, counseling, mentoring, extensions of deadlines or other course adjustments, correction of an impacted grade, excused absences, class or schedule modifications, opportunities for

home instruction, monitoring or supervision, restorative justice activities, safety escorts, and restrictions on contact between the parties, as deemed appropriate by the Coordinator.

The Coordinator must offer Supportive Measures to the Complainant as described above. If a formal complaint is filed, the Coordinator must also offer Supportive Measures to the Respondent as set out below.

If Supportive Measures are not offered in response to a report or formal complaint, the Coordinator must document in detail why such failure was reasonable under the circumstances.

2. **Filing a Complaint:** The Coordinator shall determine if a formal complaint is being filed. A Complainant (or their parent or guardian, if appropriate) or the Coordinator, but not a third-party reporter, may sign and file a formal complaint. At the time of filing, the Complainant must be participating in or attempting to participate in DSST's education program or activity. Complainants may, but are not required to, use the Discriminatory Harassment Complaint Form (**Exhibit 2**).

If the Complainant (or the parent of a student Complainant) does not wish to file a formal complaint, the Coordinator must weigh: the Complainant's request not to proceed; any reasonable safety concern; the risk that not filing will allow additional acts of harassment or discrimination; the severity of the alleged conduct; the ages and relationship of the parties (including whether the Respondent is an employee); whether the alleged conduct is part of a pattern or ongoing, or has affected multiple individuals; the availability of evidence to enable a decision; and whether informal resolution or other steps could end the alleged behavior. If the allegation is that a student was sexually harassed by an employee, the Coordinator must file the complaint even absent the Complainant's request.

3. **Dismissal:** If the facts alleged in a complaint, even if true, would not constitute discriminatory harassment under federal or Colorado law, the Coordinator must dismiss the complaint only after making reasonable efforts to clarify the allegations with the Complainant. The Coordinator may dismiss a Title IX Sexual Harassment complaint but allow the same complaint to proceed under Colorado's broader discriminatory harassment standard, if appropriate. A formal complaint may also be dismissed if, after reasonable effort, the Respondent cannot be identified; the Respondent is no longer employed by or enrolled at DSST; the Complainant voluntarily withdraws any or all allegations such that, after reasonable efforts to clarify the remaining allegations, the alleged conduct would not constitute discriminatory harassment; or a complaint filed by the Coordinator would not have been so filed absent circumstances that no longer exist.

Upon dismissal, notice of the reasons for dismissal shall be given to the Complainant and, if the Respondent has been notified of the complaint, to the Respondent. A dismissal may be appealed. Regardless of dismissal under this regulation, DSST may take whatever separate disciplinary or corrective action is appropriate against a Respondent under its Code of Conduct or employment policies and practices, provided such action follows a process that complies with the due-process protections afforded to a Respondent under this regulation and is not taken in retaliation for a report.

4. **Consolidated Matters:** DSST may consolidate complaints against more than one respondent or by more than one complainant when the allegations arise out of the same facts or circumstances.
5. **Informal Resolution:** If, and only if, (a) a formal complaint has been filed, and (b) the complaint does not concern alleged sexual harassment of a student by an DSST employee, the parties may voluntarily agree in writing to an informal resolution process, such as restorative justice procedures, mediation, or fact-finding. Parties may withdraw from the informal resolution process and resume, if desired, the formal complaint process any time before a final written resolution agreement is signed and may not be pressured to participate or to waive any rights as a condition of participating. Before an informal resolution process begins, the Coordinator must provide the parties with notice of the allegations, the requirements of the anticipated process, the ability to withdraw before resolution, and that the parties' agreement to a resolution will end the complaint and preclude any resumption of the complaint. The Coordinator may disapprove informal resolution, including for complaints of sexual violence or agreements containing onerous terms, and proceed with formal investigation. The person managing an informal resolution process may be the Coordinator but may not later serve as investigator or decision-maker in the same matter if informal resolution is unsuccessful and the matter returns to the formal process.
6. **Notice of Formal Complaint, Supportive Measures, and Interim Protective Measures:** If a formal complaint is filed and not dismissed, the Coordinator shall provide notice to the Complainant and Respondent of (i) the allegations, including sufficient detail to permit the Respondent to prepare a response (the identity of the parties, the conduct alleged, and the dates and locations of alleged incidents, to the extent known), and (ii) the process, including any opportunity for informal resolution. The notice must also include: (i) a statement that the Respondent is presumed not responsible and that responsibility will be determined at the conclusion of the process; (ii) a statement of the parties' right to be advised by an attorney or non-attorney advisor of their choice, at their own expense; (iii) a statement of the parties' right to inspect and review evidence; and (iv) a statement of the prohibition on providing false evidence. A model form of this notice is provided as **Exhibit 3**. If additional allegations arise during the investigation, the investigator will provide corresponding written notice of those additional allegations.

Notice will also include a statement that retaliation is prohibited and a statement the parties will have equal access to relevant and not otherwise impermissible evidence or an accurate description of such evidence, with an opportunity to request access to the underlying evidence. If additional relevant facts become known during the process, the investigator shall update the notice of sufficient information, as appropriate, to both parties. At the time notice is provided, the Coordinator shall offer supportive measures to the respondent.

7. **Emergency Removal:** DSST may place a Respondent who is an employee on administrative leave while allegations are investigated and resolved. DSST may remove a Respondent who is a student, following an individualized safety and risk analysis, if removal is necessary to protect a student or other individual from an immediate threat to physical health or safety arising from the allegations. Respondent must be provided notice and an opportunity to challenge the decision immediately after removal. Removal of a student on an Individualized Education Program (IEP) or Section 504 plan is subject to the requirements of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act, as applicable. If a

Complainant and Respondent remain at DSST pending or following an investigation, the Coordinator shall determine whether a written safety plan is advisable and, if so, initiate the process for creating one. A decision not to create a safety plan should be documented in writing.

8. **Authority Reserved:** Except as stated in this paragraph nothing in this policy prevents the School from suspending a student for cause otherwise provided and permitted by law or placing an employee on paid administrative leave as otherwise provided and permitted by law. Student complainants shall not be investigated or receive a disciplinary response such as suspension for reasonable self-defense, consensual sexual activity, drug use, alcohol use, late arrival, truancy, unauthorized access to facilities, talking publicly about reported harassment or discrimination, or expressing a trauma symptom, except that a student may be disciplined for making a knowingly false report or if necessary to ensure the safety of other persons.

B. INVESTIGATION

1. **Investigation – General Principle:** DSST shall investigate each formal complaint that is not resolved informally and not dismissed. The investigation will be prompt, thorough, and impartial. Any person acting as a Coordinator, investigator, or decision-maker must not have a conflict of interest in relation to or bias against the complainant or respondent.
2. **Presumptions:** At the outset of, and throughout, any investigation, the Respondent is presumed not to be responsible for discriminatory harassment; this presumption applies until a final determination is made. The burden of proof to overcome the presumption is a preponderance of the evidence (i.e., that a violation is more likely than not). The Complainant and Respondent will each be treated equitably and with respect throughout the process.
3. **Privacy:** The Coordinator, investigator, decision maker, and any persons hearing an appeal will maintain the privacy of the parties, provided that this does not restrict assuring that each party has the ability to understand the issues and obtain and present evidence, consult with family and advisors, use advocates, speak to witnesses, and others to prepare for and participate in the process.
4. **Investigatory Duty:** It is DSST's responsibility (not the parties') to gather evidence sufficient to reach a determination. The investigation may include, but is not limited to, interviews of the parties and/or witnesses; requests for written statements; and review and collection of relevant documentation or information, consulting with other staff as needed.
5. **Prompt Investigation:** DSST will make a good-faith effort to complete the investigation and reach findings within sixty (60) days from the date the complaint was filed, extendable by an additional thirty (30) days when requested by a law enforcement agency or for other good cause, with prior written notice of the reasons for any extension provided to both parties. At each stage of the investigation, the investigator (or designee) will provide the parties and their parents/guardians, if applicable, a written status update at least every fifteen (15) business days.
6. **Investigatory Steps:** The specific steps of the investigation will vary based on the nature of the allegations and other factors. The investigation may include, but is not limited to, any of the following: interviews of the parties and/or witnesses; requests for written statements from the parties and/or witnesses; and review and collection of relevant documentation or information.

The investigator will contact each party and give them an equal opportunity to present fact witnesses and any other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. The investigator will review the evidence and determine what is relevant (directly related to the allegations) and which evidence is impermissible regardless of relevance (as defined in Title IX regulations). After collecting and identifying relevant evidence, the investigator will create a draft investigative report that fairly summarizes the relevant evidence obtained as part of the investigation.

7. **No Live Hearings:** DSST uses a single-investigator model and does not conduct live hearings under this regulation.
8. **Evidence**
 - a. **Privileged and Irrelevant Evidence:** Evidence that is privileged by law, and evidence of a Complainant's sexual predisposition or prior sexual behavior (unless offered to prove that someone other than the Respondent committed the alleged conduct, or to prove consent), is neither admissible nor relevant to this process.
 - b. **Initial Collection of Evidence:** The Complainant and Respondent will have a reasonable opportunity to present witnesses and other evidence to the investigator. DSST will not restrict either party's ability to gather evidence or discuss the allegations, unless a party's discussions exceed legal bounds (e.g., retaliation or witness tampering). The investigator will meet with each party, giving at least twenty-four (24) hours' advance written notice of the date, time, location, and purpose of each meeting.
 - c. **False Evidence:** Complainants, Respondents, and all witnesses are prohibited from knowingly making false statements or providing other evidence known to be false in any investigation. DSST may take disciplinary action against a person making knowingly false statements or submitting other knowingly false evidence. Inconsistencies between evidence and an investigative report or determination of responsibility do not, by themselves, prove a knowing use of false evidence, and discipline for knowingly providing false evidence is not retaliation.
 - d. **Access to Evidence:** Both parties will have an equal opportunity to inspect any evidence obtained as part of the investigation, and mentioned in the draft investigative report, that is directly related to the allegations in the formal complaint, regardless of whether it supports the allegations. Where possible, evidence will be provided in an electronic format that does not permit downloading or copying. Within ten (10) calendar days of receipt or inspection of the evidence, the parties may submit a written response to the investigator.
9. **Investigative Report – Parties' Responses – Proposed Questions:** After considering any written party responses, the investigator will promptly prepare and issue a written investigative report that fairly summarizes the relevant evidence discovered during the investigation. The report will be provided to the parties and to the decision-maker(s), accompanied by notice that the parties may submit a written response to the report and proposed written, relevant questions the party wants asked of any other party or witness (a model form of such notice is **Exhibit 4**). Any such response or proposed questions must be provided within five (5) calendar days of transmission of the report.

10. **Written Questioning:** The decision-maker(s) must review the investigative report and the parties' responses and proposed questions, if any. The decision-maker(s) shall either exclude a proposed question as irrelevant (with an explanation to the proposing party) or submit the question for answer and provide each party with the answer given. The decision-maker(s) shall allow limited follow-up questions from either party.

C. DECISION

1. **Optional Use of Separate Decision-Maker:** The Coordinator may act as sole decision-maker, or may use a separate designated decision-maker. Where a decision-maker is different from the investigator, the investigative report is advisory only and does not bind the decision-maker to any particular decision, course of action, or remedial measure. A decision-maker receiving an advisory report shall review it, along with the parties' responses and any written questioning, and prepare a determination resolving the complaint based on that record.
2. **Decision:** As soon as possible, but, in Title IX matters no sooner than ten (10) days after distribution of the investigative report, the decision-maker(s) shall determine the question of responsibility, based on facts found more likely than not to be true (i.e., by a preponderance of the evidence). In all cases, the decision must be in writing. For Title IX matters, the written decision must include: a statement of the allegations that may constitute discriminatory harassment; a summary of the process followed from receipt of the formal complaint through determination, including notices provided, interviews with parties and witnesses, site visits, and methods used to gather evidence; findings of fact; conclusions regarding application of any Code of Conduct or employment policy to the facts; and a statement of, and rationale for, the conclusions as to each allegation, any disciplinary sanctions on the Respondent, and any remedies designed to restore or preserve the Complainant's equal access to DSST'S programs and activities (including employment, if applicable). The decision will be provided to both parties concurrently, along with notice of the process and grounds for appeal (a model form of such notice is **Exhibit 5**).
3. **Remedies:** Remedies under this regulation must be designed to restore or preserve equal access to DSST education program or activity for students, or to employment for employees. Upon a determination that a Complainant was subjected to discriminatory harassment, DSST may impose one or more of the following or any other appropriate remedy:
 - For students: restorative conversations; safety escorts; no-contact orders; change of classes or placement; revocation of extracurricular privileges (including athletics); mandatory participation in counseling services; and school disciplinary outcomes up to and including expulsion.
 - For employees: restorative conversations; no-contact orders; change of work assignment or reassignment; mandatory participation in counseling services; suspension without pay; and discipline up to and including termination of employment.

Remedies may be kept confidential as deemed necessary by DSST. If the decision-maker lacks the requisite disciplinary authority, disciplinary remedies may be recommended to the appropriate DSST official or supervisor, who may then be the one to impose them. The Coordinator is responsible for the effective implementation of any remedies.

4. **Persons with Disabilities:** If the Complainant or Respondent is a student with a disability, the Coordinator must consult, as appropriate, with one or more members of the student's IEP team

or the team responsible for the student's placement decision, to determine how to comply with the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act in implementing Supportive Measures and any remedy. Nothing in this regulation alters the application of Section 504, the Americans with Disabilities Act, or Colorado civil rights law to any Complainant or Respondent with a disability.

D. APPEAL

1. Any party may appeal a determination of responsibility or a dismissal (including a summary dismissal) within three (3) school days by making a written request to the Coordinator identifying the decision or dismissal appealed from and the ground(s) for the appeal. Parties may use the optional Notice of Appeal form (**Exhibit 6**). Permitted grounds for appeal are limited to:
 - A procedural irregularity that affected the outcome of the matter;
 - New evidence not reasonably available at the time of the determination or dismissal that could affect the outcome of the matter; or
 - The Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against the individual Complainant or Respondent, or against complainants or respondents generally, that affected the outcome of the matter.
2. Upon receipt of a timely appeal, the Coordinator will notify the parties that an appeal has been filed (a model form of such notice is **Exhibit 7**). The Coordinator will arrange an Appeal Panel. The Appeal Panel will notify the parties of the appeal procedures and set a schedule for the parties to submit a written statement in support of, or challenging, the decision-maker's determination. Upon reviewing both parties' statements, the Appeal Panel will issue a reasoned written decision describing the result of the appeal and rationale for the result. The decision of the Appeal Panel will be final and binding on the parties.

GENERAL PROVISIONS

1. **Time Limits:** The investigator, Coordinator, decision-maker(s), or appropriate DSST administrator may extend any time limit in this regulation for good cause shown, with notice of the reason for the extension provided to both parties. DSST will endeavor to reach a determination of responsibility or other resolution within one hundred twenty (120) days of DSST's receiving notice of the allegations. The investigator or decision-maker(s) may consider the advantages of receiving a report of a parallel law-enforcement or other investigation in determining the timeline for investigative activities, but shall not unduly delay the process to assure such receipt.
2. **Inferences:** The investigator and decision-maker(s) are permitted, but not required, to draw adverse factual inferences from the refusal or failure of a Complainant or Respondent to be interviewed or to provide other requested evidence.
3. **Relation to Mandatory Reports and/or Outside Investigations:** Nothing in this regulation alters the obligation of licensed or mandatory-reporting staff to make mandatory reports required by law to appropriate outside authorities (e.g., law enforcement or child protective services). DSST will not unduly delay its own investigation to accommodate an outside investigation, but may initially defer to police or child protective services to avoid interfering with such investigations and to permit trained forensic investigators to interview minors. DSST may admit the results of a

police or child-protective-services investigation into evidence but shall not rely exclusively on such a report.

4. **Retaliation:** No retaliation will be taken against any person who makes a report or participates (or refuses to participate) in an investigation into a report of discriminatory harassment, whether brought under this regulation or before an outside agency. Neither DSST nor any person may intimidate, threaten, coerce, or discriminate against an individual because that individual has exercised rights under, participated in, or declined to participate in, any proceeding under this regulation. Charges against a student for Code of Conduct violations related to an incident, brought for the purpose of punishing the student for making a report or otherwise interfering with any right or privilege, constitute retaliation. Discipline for a student or employee, or any other adverse consequence, imposed as a result of knowingly false representations concerning alleged discriminatory harassment is not retaliation.
5. **Record Retention:** DSST must retain, for seven (7) years, all records created of activity under this regulation, including without limitation: training materials; Supportive Measures and accommodations provided in response to a report or formal complaint; documentation of the basis for DSST's action and response; records documenting any informal resolution process or the grievance procedures and any resulting outcome; investigative records; disciplinary records; decisions; remedies; and appeals. Materials used to provide training (which must be made available for inspection by members of the public upon request).
6. **Employee Training:** DSST must provide training to all employees and its governing board regarding harassment and discrimination. Each new employee must complete training upon hiring, and each employee must complete refresher training at least every three years from the last date of training. An employee must complete additional training when transferring between a position working with elementary school-aged students and a position working with secondary school-aged students (in either direction). Training must be provided during an employee's normal working hours and must include, at a minimum, instruction on:
 - recognizing harassment or discrimination, including indicators of grooming and child sexual abuse;
 - the appropriate immediate response when harassment or discrimination is reported to, or witnessed by, an employee;
 - reporting harassment or discrimination to the public school, school district, or authorizer;
 - for employees with direct supervision of students, DSST's procedure for responding to allegations, the differences between this regulation's obligations and those under Title IX, Section 504 of the Rehabilitation Act, Title VI and Title VII of the Civil Rights Act of 1964, and mandatory reporting requirements under state law;
 - best practices to avoid victim-blaming; the effect of trauma on victims of harassment or discrimination; communicating with victims sensitively, compassionately, and in a gender-inclusive and culturally responsive manner; and the impact of harassment or discrimination on students with disabilities; and
 - the types of Supportive Measures available and the provision of effective academic, mental health, and safety accommodations for students who report harassment or discrimination.

7. **Reporting Data:** On or before July 1 of each year, DSST shall provide to DPS, aggregated and without personally identifiable information about the parties, the following information from the past twelve (12) months:
 - the number of formal harassment or discrimination reports received by DSST, and the type of protected-status basis reported when harassment or discrimination was found; and
 - the time taken to complete each investigation and to make findings related to each report.

EXHIBIT 1

Report of Discriminatory Harassment

(to be completed by the Coordinator)

Date:

Name of Reporter:

Name of Complainant:

Name of Respondent:

Basis of Alleged Harassment (protected status, e.g., sex/gender, race, disability, etc.):

Summary of Report:

Attached pages? ☐ No ☐ Yes — Number? _____

Was the report discussed with the Complainant? ☐ Yes ☐ No Date: _____

Was the Complainant informed of available Supportive Measures, with or without a formal complaint?
☐ Yes ☐ No

Was the Complainant given an explanation of the process for filing a formal complaint? ☐ Yes ☐ No

Were Supportive Measures requested? ☐ Yes ☐ No

Will Supportive Measures be provided? ☐ Yes ☐ No. If yes, describe: _____

If any answer above is "No," fully explain why (attach pages if needed): _____

Formal complaint filed by/for Complainant? ☐ Yes ☐ No

Formal complaint filed by Coordinator? ☐ Yes ☐ No

Signature of Coordinator

Date: _____

EXHIBIT 2

Discriminatory Harassment Complaint Form

Instructions: If you believe you have been the victim of discriminatory harassment (based on sex/gender or any other legally protected status), please complete this form and submit it by hand delivery, e-mail, or U.S. mail to DSST's Coordinator. You are not required to use this form and may file a complaint by any other reasonable means, orally or in writing. If the alleged victim is a minor, the form may be completed and signed by a parent or guardian. A person believed to be a victim of discriminatory harassment is the "Complainant."

If you are reporting discriminatory harassment you witnessed or know of against another person, please report this to the Coordinator directly and do not use this form. Please identify for the Coordinator the victim, the alleged perpetrator, the date, time, and place of the conduct, and other factual details. Under federal law, only an alleged victim (for themselves, or through a parent/guardian for a minor) or the Coordinator has the right to file a formal complaint.

Please print or type. If needed, attach additional sheets and indicate the number of additional pages below.

Name of Complainant:

Parent or Guardian (if applicable):

Address:

Telephone Number:

Email Address:

I am an/a: ☐ Employee ☐ Student ☐ Parent/Guardian ☐ Other (_____)

You have the right to be represented by an advisor (who may be an attorney, advocate, or someone else) during the complaint process. If you have an advisor, please provide their contact information (you may provide this information at a later time): Name / Address / Telephone / Email.

A person alleged to have committed discriminatory harassment is called the "Respondent." Please identify the Respondent(s) and their relationship to DSST, the basis of protected status involved, the facts and circumstances giving rise to this complaint, when and where the events occurred, the names of any other possible victims and witnesses, whether you reported this to anyone else and their response, any evidence you believe is relevant, how this conduct has impacted you, and the outcome or remedy you seek.

Signature: _____ Name (printed): _____

Check one: ☐ Complainant ☐ Parent/Guardian ☐ Coordinator Date: _____

Notice to Complainant: This document is a legal record requesting a formal investigation. Please keep a copy of this completed form and any supporting documentation for your records. If your complaint is found not to support a claim of discriminatory harassment, but would be proper under any other DSST policy, DSST will notify you and proceed to consider your complaint under the proper policy.

EXHIBIT 3

Written Notice of Formal Complaint

[To be promptly prepared and provided by the investigator to the Complainant and Respondent after a formal complaint is filed, if the complaint is not summarily dismissed.]

[DSST Letterhead]

[Date]

PLEASE TAKE NOTICE THAT a formal complaint alleging discriminatory harassment has been filed with DSST. I will be the investigator in this process and will submit an investigative report with findings and recommendations.

In such complaints, the alleged victim is referred to as the Complainant, and the alleged perpetrator is referred to as the Respondent. One purpose of this notice is to assure that both the Complainant and Respondent are aware of certain rights they may exercise in this process. Another purpose is to allow the Respondent to be prepared to appropriately participate in this process. When a party is a minor, the parent or guardian will be given this notice. The terms "Complainant" and "Respondent" may in some cases refer to a representative of a minor.

At the outset of this process, the Respondent is presumed not to be responsible for the conduct alleged. Responsibility will be determined at the conclusion of the process.

Complainant: _____

Respondent: _____

Summary of the Complaint:

Basis of alleged protected status: _____

Date(s) of conduct: _____

Location of conduct: _____

Names of other parties, if any: _____

Description of the conduct alleged (a summary intended to provide sufficient detail to allow the Respondent to prepare a response; additional pages may be attached):

Both the Complainant and the Respondent have a right to be advised by an attorney or non-attorney of their choice, at their own expense. Both have the right to collect and submit evidence in this process; please submit such evidence directly to me within twenty-one (21) days of receipt of this notice. During this process, both the Complainant and Respondent will be given the opportunity to inspect and review all evidence that I have gathered.

Submitting knowingly false statements or evidence is a violation of DSST policy and will result in disciplinary consequences. Such consequences are not "retaliation." Mere disagreement between the parties, or between a party and an DSST official investigating or deciding this matter, does not, by itself, demonstrate a knowing submission of false evidence.

If a party refuses to cooperate, I am empowered to nonetheless finish the investigation and issue a report. I may also decide that a party's refusal to respond to questions or provide evidence means that they have no basis for disputing certain factual issues.

I will be following up as needed during the investigation. Please contact me with any questions or concerns.

/s/ Investigator

EXHIBIT 4

Notice to Parties Concerning Investigative Report

[At the conclusion of the investigation, this notice will accompany the investigative report and be provided by the investigator to the Complainant, the Respondent, and the decision-maker(s).]

[DSST Letterhead] [Date] [Addressee]

Attached to this notice is a copy of the investigative report on an allegation of discriminatory harassment in which you are [the Complainant/the Respondent/the decision-maker(s)].

Further proceedings in this matter will be handled by the [decision-maker(s)/other title], who is:

[Name/Title] [Street Address] [Email] [Phone]

The Complainant and the Respondent each have the right to submit a written response to this report. Each also has the right to submit proposed written, relevant questions for the decision-maker(s) to ask of the other party or a witness. Any written response or proposed questions must be provided within five (5) days of receipt of this report.

I want to thank everyone for their efforts in this investigative process.

/s/ [Investigator]

EXHIBIT 5

Notice to Parties Concerning Determination of Responsibility

[This notice is to accompany the transmission of, or be incorporated into, the determination of responsibility to the Complainant and Respondent. The form given here is a cover letter.]

[DSST Letterhead] [Date] [Addressee]

Please find attached the determination of responsibility in this matter. This determination can be appealed on one or more of the following three grounds:

- You believe a procedural irregularity affected the outcome of the matter;
- You have new evidence not available as of the date of this decision that could have affected the outcome of this matter; or
- You believe either I was biased, or the investigator was biased, against you or biased against all persons in your position (that is, against all complainants or all respondents).

If you wish to appeal, please send me a notice identifying the ground(s) on which you are appealing. An optional form of notice of appeal is provided in Exhibit 6. If an appeal is filed, I will forward your notice of appeal to an Appeals Panel formed under this regulation and provide you with further notice of the details of that process.

/s/ [Decision-Maker(s)]

EXHIBIT 6

Notice of Appeal

[This illustrates one proper form for filing a notice of appeal. This may be used by a Complainant in response to a summary dismissal, or by a Complainant or Respondent in response to a determination of responsibility.]

[Date]

From: [Name and contact information of party filing the appeal]

To: [Name, Title, and contact information of decision-maker(s)]

To Whom It May Concern:

I am appealing the (check one) ☐ Summary Dismissal ☐ Determination of Responsibility in this matter dated [date]. I believe (check appropriate boxes and summarize details, if desired):

☐ A procedural irregularity affected the outcome of the matter. Describe (optional): _____

☐ I have new evidence not available as of the date of this decision that could have affected the outcome of this matter. Describe (optional): _____

☐ The (check as appropriate ☐ Investigator or ☐ Decision-Maker(s)) was biased against me or biased against all persons in my position. Describe (optional): _____

/s/ [Complainant or Respondent]

EXHIBIT 7

Notice to Parties of Appeal

[To be provided by the decision-maker(s) to the Complainant in the event of appeal of a summary dismissal, or to the Complainant and Respondent in the event of appeal of a determination of responsibility.]

[DSST Letterhead] [Date] [Addressed to Complainant in cases of appeal of summary dismissal, or to the Complainant and Respondent in cases of appeal of determination of responsibility.]

This will confirm that I have received a notice of appeal in this matter. If you did not file the notice of appeal, it is attached. You may file a brief written statement challenging or supporting the outcome in this matter within five (5) days of receipt of this notice. The notice of appeal and such written statements will be provided to the Appeals Panel, together with the formal complaint and, as appropriate, either the summary dismissal or the investigative report and determination of responsibility.

You may attach other documents from this proceeding to your written statement.

/s/ [Decision-Maker(s)]