

**A. Purpose**

1. To provide a safe, welcoming, and inclusive environment that is free from discrimination and harassment based on a person's membership in a protected class.
2. This Regulation guides how notifications and complaints of sexual harassment will be investigated and appropriate action taken to end the harassment and protect the victim from retaliation.

**B. Background**

1. The Board of Education of Frederick County (Board) prohibits discrimination on the basis of sex in its educational program, activities, and employment as required by Title IX of the Education Amendments Act 1972 (Title IX) and further recognizes sexual harassment as a form of sex discrimination.
2. Sexual harassment behavior between an employee and a student may also be deemed a form of child sexual abuse as defined as "an act by an adult involving a minor or a student that constitutes a sexual offense under the laws of the state, or any sexual contact between an adult and a minor" as stipulated in Section 6-113.1 of the Education Article of the Maryland Annotated Code and Board [Policy 418, Child Abuse and Neglect](#), and FCPS [Regulation 400-47, Reporting Abuse and Neglect](#).

**C. Definitions**

1. "Complainant" is defined as an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
2. "Confidential Employee" is defined as:
  - a. An employee of a recipient whose communications are privileged or confidential under Federal or State law, and whose confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
  - b. An employee of a recipient whom the recipient has designated as confidential for the purpose of providing services to persons related to sex discrimination.
3. "Consent" is defined to mean clear, knowing, and voluntary permission by words or actions, which indicate a willingness to participate.
4. "Dating Violence" is defined as violence committed by a person:
  - a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

- b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - i. The length of the relationship;
  - ii. The type of relationship; and
  - iii. The frequency of interaction between the persons involved in the relationship.
- 5. “Decision-Maker” is defined to mean the judge of Title IX cases. They preside over hearings, if applicable, and issue the verdict in the form of written determinations. At the end of the process, they weigh the evidence to determine if it meets the standard of sexual harassment allegations. Decision-Makers produce a written statement to both parties describing their verdict. The Decision-Maker cannot also be the Investigator.
- 6. “Disciplinary Sanctions” is defined as consequences imposed on a Respondent following a determination under Title IX that the Respondent violated the recipient's prohibition on sex discrimination.
- 7. “Document Filed by a Complainant” is defined to mean a document or an electronic submission (*i.e.*, by electronic mail or through a designated online portal) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the Formal Complaint.
- 8. “Domestic Violence” is defined as felony or misdemeanor crimes committed by a person who:
  - a. Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
  - b. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - c. Shares a child in common with the victim; or
  - d. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.
- 9. “Education Program or Activity” is defined to mean locations, events, or circumstances over which Frederick County Public Schools (FCPS) exhibits substantial control over both the Respondent and the context in which the sexual harassment occurred.
- 10. “Formal Complaint” is defined as a written document filed by complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the recipient investigate the allegation of sexual harassment.
- 11. “Hostile Environment Harassment” is defined to mean sexual harassment that is severe, pervasive, and objectively offensive. This includes:
  - a. Severe – Conduct that limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.
  - b. Pervasive – Conduct characterized by its type, frequency, and duration.
  - c. Objectively Offensive – Behavior that would be offensive to a reasonable person under the circumstances.

12. “Investigative Report” is defined to mean a written account of the findings of the investigation conducted in response to a complaint.
13. “Investigator” is defined to mean the official responsible for investigating and responding to a notification or complaint.
14. “Member of the FCPS School Community” is defined to mean a Board member, FCPS employee, FCPS volunteer, FCPS student, or any other person who participates in activities or programs of FCPS or is present on FCPS grounds or premises and is supervised or sanctioned by FCPS.
15. “Peer Retaliation” is defined to mean retaliation by a student against another student.
16. “Preponderance of the Evidence” is defined to mean evidence that is of greater weight or more convincing than the evidence to the contrary, evidence which shows that something is more likely than not to be true or likely to have occurred.
17. “Protected Class” is defined to mean to FCPS applicants, employees, former employees, and students who are protected from being harmed or harassed due to a shared characteristic (e.g., race, color, religion, sex (including pregnancy, sex orientation, or gender identity), national origin, age (40 or older), disability, and genetic information (including family medical history)).
18. “Recipient” is defined as any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.
19. “Remedies” is defined as measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient’s education program or activity limited or denied by sex discrimination. Remedies are provided to restore or preserve a person’s access to the recipient’s education program or activity after a recipient determines that sex discrimination occurred such as individualized measures provided to a Complainant designed to restore or preserve the Complainant’s equal access to the education program and activities of the school system when a Respondent is found responsible for sexual harassment.
20. “Removal” is defined to mean the discontinuation of the Respondent’s attendance or participation in an FCPS education program or activity on an emergency basis.
21. “Report” is defined to mean a communication whether verbal or written, in which any person notifies the Title IX Coordinator of sexual harassment.
22. “Respondent” is defined as an individual who has been reported to be the perpetrator of

conduct that could constitute sexual harassment.

23. “Retaliation” is defined to mean intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its corresponding federal regulations, or because the person has reported possible sexual discrimination, made a sexual discrimination complaint, or participated or refused to participate in any way in a recipient’s Title IX process.
24. “Sexual Assault” is defined to include:
  - a. An offense classified as a forcible or nonforcible sexual offense under the uniform crime reporting system of the Federal Bureau of Investigation, including any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent (*e.g.*, rape and fondling) and unlawful sexual intercourse (*e.g.*, incest and statutory rape);
  - b. Dating Violence;
  - c. Domestic Violence; or
  - d. Stalking.
25. “Sexual Discrimination” is defined to mean treating someone (an applicant, employee, or student) unfavorably because of that person's sex, including the person's sex orientation, gender identity, or pregnancy.
26. “Sexual Harassment” is defined to include sexual harassment as defined at [Section 20-601](#) of the State Government Article of the Maryland Annotated Code and encompasses other forms of harassment, including sexual discrimination. This refers to conduct that is so severe, pervasive, and objectively offensive that it denies a person equal access to educational program or services, including conduct on the basis of sex that satisfies one or more of the following:
  - a. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
  - c. “Sexual Assault,” “Dating Violence,” “Domestic Violence” or “Stalking”.
27. “Stalking” is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - a. Fear for their safety or the safety of others; or
  - b. Suffer substantial emotional distress.
28. “Supportive Measures” is defined as non-disciplinary, non-punitive individualized, services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed, and may include, but is not limited to, counseling,

extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

29. "Title IX" is defined to mean Title IX of the Education Amendments of 1972, as amended.
30. "Title IX Coordinator" is defined to mean the individual designated by FCPS to:
  - a. Oversee the FCPS response to sexual harassment notifications and complaints, and identify and address any patterns or systemic problems revealed by such notifications and complaints;
  - b. Coordinate, conduct, and/or delegate sexual harassment investigations;
  - c. Oversee, review content, and, in collaboration with other FCPS offices, develop the training plan, and conduct training for all responsible employees on sexual harassment issues;
  - d. Ensure that appropriate policies are in place for responding to notifications and complaints of sexual harassment against faculty, staff, and students;
  - e. Work with local law enforcement to ensure coordinated responses to sexual harassment cases;
  - f. Maintain accurate documentation and logs related to the Maryland State Department of Education (MSDE) reports; and,
  - g. Receive all notifications and complaints of sexual harassment and maintain all records related to Title IX sexual misconduct.
31. "Violations" is defined to mean Title IX violations, including but not limited to discrimination based on sex or gender, sexual harassment, sexual violence, sexual exploitation, sexual misconduct, dating violence, domestic violence, and stalking.

#### **D. Procedures**

1. **Applicability.** This Regulation is applicable to incidents occurring within an FCPS program or activity where FCPS has authority over the Respondent's actions. This includes the actions of an employee or student.
2. **Confidentiality**
  - a. The school system will respect, to the extent possible, the confidentiality of the Complainant, witnesses, and the Respondent consistent with the school system's legal obligations to investigate notifications and complaints and the due process rights of all parties.
  - b. To ensure integrity of the investigation, the Complainant, the Respondent, and witnesses may be directed to refrain from talking about the notification or the complaint during the investigation, other than as part of the school system's official investigation and disposition and to discuss with their representative.
3. **Assignment of Title IX Coordinators and Decision-Makers**
  - a. **Student Related Complaints.** The Title IX Coordinator for student related complaints

shall be the Director of School Management, Planning, and Logistics. The Title IX Decision-Maker for student related complaints shall be the school principal who may delegate the responsibility to the school assistant principal.

- b. **Applicant, Employee, and Community Member Complaints.** The Title IX Coordinator for applicant, employee, and community member complaints shall be the Senior Manager of Employee & Labor Relations. The Title IX Decision-Maker for applicant, employee, and community member complaints shall be the Director of Human Resources.
- c. The Superintendent will annually designate the Appeal Decision-Maker.

#### 4. **Reporting Procedures Related to Allegations of Sexual Harassment**

##### a. **Mandatory Reporting by School Employees and Board Members**

- i. Any member of the FCPS school community with knowledge, or who has reason to suspect, an individual is violating this regulation is expected to promptly report it in order to maximize the ability of the Title IX Coordinator to obtain evidence, identify potential witnesses, conduct a thorough, prompt, and impartial investigation, and take prompt corrective action.
- ii. Any member of the FCPS school community must report any of the following immediately:
  - 1. A notification of sexual harassment received from a student, employee, or other person;
  - 2. Conduct witnessed by the employee or Board member that is, or reasonably could, be sexual harassment; or
  - 3. Discovery of evidence of sexual harassment, such as sexualized graffiti on school property, or reliable information or reason to believe that a student, employee, or other individual may have been sexually harassed in violation of this regulation, even if no other person has reported the sexual harassment.
- iii. Any doubt about whether particular conduct is sexual harassment must be resolved in favor of reporting the conduct.
- iv. Employees who observe an incident of sexual harassment are expected to intervene to stop the conduct in situations in which they have supervisory control over the perpetrator, and it is safe to do so.
- v. Any employee who fails to comply with any of the reporting requirements of this regulation, or who knowingly provides false information in a report, may be subject to disciplinary action.

- b. **General Notification.** Any person who believes he/she/they have been a victim of sexual harassment, or any person who has observed or learned about an incident of sexual harassment, should provide notification of the incident immediately. Any FCPS employee who receives a notification of sexual harassment must immediately refer the information to [EEO-TitleIX@fcps.org](mailto:EEO-TitleIX@fcps.org) using the appropriate form to provide written notice.

- i. Notifications can be made by using the contact information for the Title IX team provided on the school system's website: [Notice of Non-Discrimination | FCPS](#).
- ii. A notification should be made as soon as possible after disclosure or discovery of the facts giving rise to the information shared.

- c. **Student Notification.** Any student who believes he/she/they is a victim of sexual harassment occurring in the school system's education programs or activities is encouraged to provide notification on the matter by completing the Title IX form and submitting it to [EEO-TitleIX@fcps.org](mailto:EEO-TitleIX@fcps.org) for review. If the matter is not eligible as sexual harassment under Title IX, it may be redirected to the Bullying, Harassment and Intimidation reporting and investigative process.
- d. **Response to Notifications of Sexual Harassment**
  - i. The Title IX Coordinator shall respond promptly and impartially to notifications and complaints of sexual harassment.
  - ii. A notification alleging conduct that is not sexual harassment as defined in this Regulation and Board [Policy 116, Title IX - Sexual Harassment](#), will be referred to the Director of Human Resources. (See Board [Policy 309, Discrimination and Harassment - Employees/Applicants/Community Members](#).)
  - iii. Human Resources will assign the case to the Title IX Coordinator, who will in turn identify an Investigator. The coordinator may also serve as the Investigator, should it be required. Upon receiving a notification or complaint of alleged sexual harassment the Title IX Coordinator shall promptly contact the Complainant and, if the Complainant is under the age of 18, the Complainant's parent or guardian confidentially within three (3) working days with the name of the assigned Investigator.
- e. **Contacting the Complainant**
  - i. When contacting the Complainant and, if applicable, the Complainant's parent or guardian, the Title IX Coordinator shall:
    - 1. Offer supportive measures;
    - 2. Consider the Complainant's wishes with respect to supportive measures;
    - 3. Explain that supportive measures are available with or without the filing of a complaint
  - ii. The response required of FCPS when a complaint is made includes that a complaint will initiate the Title IX Sexual Harassment Grievance Process. The major steps in the grievance process, include:
    - 1. A notice of the allegations that will be provided to the Respondent that includes identification of the Complainant and the allegations made;
    - 2. An investigation of the allegations of sexual harassment in which both parties will have opportunity to have an advisor, present witnesses, and receive a copy of the written investigative report;
    - 3. An opportunity for both the complainant and Respondent to review the written investigative report and submit questions.
    - 4. A decision on responsibility in which a decision-maker objectively evaluates all relevant evidence and determines whether the Respondent engaged in the alleged sexual harassment in violation of this regulation;
    - 5. The opportunity for either party to appeal the decision;
    - 6. The approximate time frame for concluding the grievance process;
    - 7. That both parties will be treated equitably by:
      - a. Providing remedies to the Complainant if the Respondent is found responsible; and
      - b. By not imposing disciplinary sanctions on the Respondent without first

- following the grievance process;
8. The circumstances under which a complaint might be consolidated with other complaints or dismissed; and
  9. That the Title IX Coordinator may have an obligation to initiate the grievance process in the absence of a Formal Complaint filed by the Complainant and the time frame in which that decision will be made.
- f. **Title IX Coordinator Arranges Implementation of Supportive Measures**
- i. After considering the Complainant's wishes, the Title IX Coordinator shall arrange the effective implementation of appropriate supportive measures unless, in the exercise of their discretion, the Title IX Coordinator determines that supportive measures should not be provided. If supportive measures are not provided to the Complainant, the Title IX Coordinator shall document why supportive measures were not provided.
  - ii. If the Complainant is a student with a disability, the Title IX Coordinator shall consult with appropriate school and central office personnel to consider whether an adjustment to the student's Individual Education Program (IEP) or Section 504 Plan to account for the supportive measures should be proposed to the IEP or Section 504 Plan team.
- g. **Presumption of Non-Responsibility of Respondent and Bar on Disciplinary Sanctions Without Due Process**
- i. The Respondent identified in any notification or complaint alleging sexual harassment under this regulation will be presumed not responsible for the alleged conduct until the Respondent's responsibility is conclusively established through the grievance process.
  - ii. An employee Respondent, however, may be placed on administrative leave during the pendency of the grievance process if consistent with applicable state and federal laws.
  - iii. Notwithstanding the limitation just described, Respondents are subject to emergency removal.
- h. **Emergency Removal of Respondent from School or Employment**
- i. Any Respondent is subject to removal from the school system's education program and activities, or any part of the program or activities, on an emergency basis if the person poses an immediate health or safety threat to any person arising from the allegations of sexual harassment. To evaluate the emergency removal need, allegations against a student will be evaluated by a school-based threat assessment team and allegations against an applicant or employee will be evaluated by the System-wide Joint Investigative Team.
  - ii. Removing a student from an extracurricular activity is also considered a removal under this subsection where such action would not otherwise constitute a supportive measure.
  - iii. The emergency removal may take place regardless of whether a Formal Complaint has been filed.
    1. Any such removal shall not violate the rights of any person under Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act (ADA), or the Individuals with Disabilities Education Act (IDEA).
    2. The Respondent shall receive notice of the removal and an opportunity to



3. challenge the decision in an informal hearing with the Superintendent or designee immediately following the removal.
- i. An employee may be placed on administrative leave with or without pay during the pendency of the grievance process. Any such action may not violate the rights of the person placed on leave under Section 504 or ADA.
- j. The Title IX Coordinator or designee shall document all emergency removal decisions under this section, including the immediate threat to health or safety that justified the removal.
- k. Supportive measures shall be available to both the Complainant and the Respondent before or after the filing of a Formal Complaint. Supportive measures will remain confidential to the extent that maintaining such confidentiality does not impair the ability to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

## 5. **Filing a Formal Complaint**

- a. If the Complainant does not wish to file a Formal Complaint and the matter has not been adequately resolved through the provision of supportive measures, the Title IX Coordinator may initiate the grievance process by signing a Formal Complaint. In accordance with law, only the Complainant and the Title IX Coordinator may initiate the grievance process. (*See* section D(6).)
- b. **Timeliness of Filing.** A Formal Complaint should be filed as soon as possible. In some circumstances it may be necessary for the Title IX Coordinator to sign a Formal Complaint to initiate the grievance process in order to meet the school system's legal obligations when the Title IX Coordinator is aware of alleged sexual harassment and the Complainant has not yet filed a Formal Complaint.
- c. **Contents of the Formal Complaint.** Contents of the complaint shall include:
  - i. The name of the Complainant, and the student's parent or guardian if the Complainant is a minor student;
  - ii. A description of the alleged sexual harassment;
  - iii. A request for an investigation of the matter; and
  - iv. The signature of the Complainant or other indication that the Complainant is the person filing the Formal Complaint.
- d. **Methods of Filing.** The Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by email. Formal Complaint forms may be obtained from the Title IX Coordinator. Additional information is located on the FCPS website: [Notice of Non-Discrimination | FCPS](#).
- e. Upon receipt of a Formal Complaint of sexual harassment, the Title IX Coordinator shall engage in an interactive process with the Complainant, consider the provision of supportive measures in light of the Complainant's wishes, provide supportive measures as appropriate, and otherwise fulfill the requirements of paragraph D(4)(d) unless the Title IX Coordinator has already done so in response to an initial report of the same allegation of sexual harassment.
- f. **Consolidation of Formal Complaints**
  - i. The Title IX Coordinator may consolidate Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual

harassment arise out of the same facts or circumstances.

- ii. The Title IX Coordinator shall advise the Complainant if the Formal Complaint will be consolidated with others.
- g. **Response to Receipt of a Formal Complaint.** If the Complainant declines to file a Formal Complaint within the designated time period following the interactive process described above, the Title IX Coordinator shall determine on a case-by-case basis whether to sign (*i.e.*, file) a Formal Complaint to initiate the grievance process.
  - i. Notwithstanding the paragraph above, the Title IX Coordinator shall file a Formal Complaint in other cases where, in the Title IX Coordinator's discretion, and in consultation with the Systemwide Joint Investigative Team or legal counsel, a grievance process is necessary to comply with the obligation not to be deliberately indifferent to known allegations of sexual harassment.
  - ii. A decision by the Title IX Coordinator to sign a Formal Complaint is not to be construed as supportive of the Complainant or in opposition to the Respondent, or as an indication of whether the allegations are credible or have merit, or whether there is evidence sufficient to determine responsibility. Signing a Formal Complaint does not make the Title IX Coordinator a Complainant or party to the Formal Complaint nor relieve the Title IX Coordinator from any responsibilities under this regulation.
  - iii. The Title IX Coordinator shall document the decision of whether to sign a Formal Complaint and the reasons for that decision.
- 6. **Requirements of Grievance Process.** To ensure a complete, thorough, and fair grievance process for Formal Complaints of sexual harassment, individuals responsible for the investigation, adjudication, or appeal of a Formal Complaint of sexual harassment shall comply with the following requirements:
  - a. Complainants and Respondents must be treated equitably throughout the grievance process.
  - b. Relevant evidence collected in the investigation of a Formal Complaint must be evaluated objectively.
  - c. No individual designated as a Title IX Coordinator, Investigator, decision-maker, or appeal decision-maker shall have a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent.
  - d. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
  - e. The Complainant and Respondent shall be provided an equal opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be an attorney. If a party elects to be represented by an attorney, the party shall provide notification in advance. Any restrictions on advisor participation in any proceeding must be applied equally to both parties.
  - f. The Complainant and Respondent will both be provided a description of the range of supportive measures available to them.
- 7. **Steps to Investigate Formal Complaints**
  - a. **Step 1 – Notice of Allegations.** Upon the filing of a Formal Complaint, the Title IX Coordinator shall, provide the parties written notice of the allegations that includes:

- i. Notice of the allegations of sexual harassment in sufficient detail to permit the parties to prepare a response before any initial interview, including:
    1. The identities of the parties involved, if known;
    2. The conduct allegedly constituting sexual harassment; and
    3. The date and location of the alleged incident, if known.
  - ii. A copy of this regulation to give notice of the school system's grievance process, including the investigative and adjudication procedures, and any informal resolution process available;
  - iii. Notice that the parties may have an advisor of their choice and that both parties will be provided the opportunity to review the written report and submit questions.
  - iv. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process.
  - v. Notice that knowingly making false statements or providing false information during the grievance process is prohibited.
- b. **Step 2 – Review Grounds for Dismissal of the Formal Complaint.** The Title IX Coordinator shall review the allegations and determine whether the Formal Complaint must be dismissed without further investigation because the conduct alleged in the Formal Complaint, even if assumed true, would not constitute sexual harassment as defined in this regulation, did not occur in the school system's education program or activities, did not occur against a person in the U.S., or the Respondent is no longer enrolled or employed by FCPS.
- i. Such a dismissal does not preclude action under another provision of Board policy, FCPS regulation, or [Student](#) or [Employee Code of Conduct](#). The Formal Complaint will not be dismissed at this stage on the basis that the allegations are frivolous, without merit, or otherwise unfounded.
  - ii. Upon a dismissal, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties. The parties have the right to appeal the decision.
  - iii. The Title IX Coordinator shall refer the matter that was the subject of the dismissed Formal Complaint to appropriate FCPS staff for further investigation as warranted.
- c. **Step 3 – Initiating the Investigation.** If the complaint proceeds, the Title IX Coordinator shall notify the appropriate Investigator, who shall investigate the complaint.
- i. In order to provide a neutral and objective investigation, the Investigator shall not be a party to the complaint under investigation.
  - ii. The Title IX Coordinator will review the notification or Formal Complaint of sexual harassment and assign a Title IX Investigator.
  - iii. If the Respondent is a Title IX Coordinator, another Title IX Coordinator shall review the notification or Formal Complaint and assign a Title IX Investigator.
  - iv. The Title IX Coordinator and the Investigator shall jointly assess the need for supportive measures for either party, including assessing the effectiveness of any supportive measures currently being provided and, as necessary, will implement appropriate measures in a timely manner and monitor the effectiveness of the measures during the pendency of the investigation and prior to a final determination regarding responsibility. Supportive measures provided to the Complainant or the

Respondent will be maintained as confidential to the extent that maintaining such confidentiality does not impair the ability to provide the supportive measures.

- v. The Investigator shall explain the process of the investigation to the Complainant and the Respondent.
- d. **Step 4 – Conducting the Investigation.** The Investigator is responsible for gathering evidence sufficient to reach a determination of whether the allegations in the Formal Complaint are true and whether the facts establish that sexual harassment as defined in this regulation occurred. In so doing, the Investigator shall impartially, promptly, and thoroughly investigate the Formal Complaint.
  - i. The Investigator shall interview individuals who may have relevant information, including:
    - 1. The Complainant;
    - 2. The Respondent;
    - 3. Individuals identified as witnesses by the Complainant or Respondent; and
    - 4. Any other individuals who are thought possibly to have relevant information.
  - ii. Prior written notice shall be provided to a party whose participation is invited or expected for any investigative interview or meeting.
  - iii. The Investigator shall provide the Complainant and the Respondent an equal opportunity to present facts, witnesses, and other evidence to prove or disprove the allegations.
  - iv. The Investigator shall ensure that the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on FCPS and not on the Complainant or the Respondent.
  - v. The Investigator shall not restrict the ability of either party to gather and present relevant evidence or to discuss the allegations under investigation.
  - vi. The Formal Complaint and the investigation will be kept confidential to the extent possible. Information may be shared only with individuals who need the information in order to investigate and address the Formal Complaint appropriately and those with a legal right to access the information. Any requests by the Complainant or the Respondent for further confidentiality will be evaluated based on the legal responsibilities of FCPS.
  - vii. The Investigator may, with approval of the Title IX Coordinator, dismiss the Formal Complaint or any allegations therein if at any time during the investigation or decision-making process:
    - 1. The Complainant notifies the Title IX Coordinator in writing that he/she would like to withdraw the Formal Complaint or any allegations therein;
    - 2. The Respondent is no longer enrolled or employed by the school system; or
    - 3. Specific circumstances prevent FCPS officials from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations therein.
  - viii. Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.
  - ix. The Investigator may refer to other FCPS officials the matter that was the subject of the dismissed Formal Complaint for action in accordance with Board policy and/or FCPS regulation if he/she believes that the conduct referenced in the

Formal Complaint may constitute a violation of other standards of student or employee conduct.

- e. **Step 5 – Investigative Report and Opportunity to Review the Written Report.** The Investigator shall prepare an investigative report that fairly summarizes the relevant evidence.

- i. The Investigator shall provide a copy of the report to each party and the party's advisor, if any, for their review and written response.
- ii. The parties shall have ten (10) days to provide a written response to the investigative report, along with the party's set of written questions.
- iii. The Investigator shall provide to the decision-maker a copy of the investigative report, the relevant evidence, and the parties' written responses to the report and sets of written questions.
- iv. The Investigator shall also provide a description of the procedural steps taken, starting with the receipt of the Formal Complaint and continuing through the preparation of the investigative report, and including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence.

- 8. **Grievance Process for Formal Complaints: Determination.** The Title IX Decision-Maker or designee shall serve as the grievance procedure decision-maker. The Title IX Decision-Maker shall decide on responsibility in a manner consistent with state law and as provided below.

- a. **Step 1 – Exchange of Questions and Answers**

- i. After the parties are provided the written investigative report, the Title IX Decision-Maker shall review the relevant questions that the parties submitted, provide each party with the answers, and allow for additional, limited follow up questions from each party in accordance with a reasonably prompt time frame established.
- ii. Questions and evidence about the Complainant's sex predisposition or prior sex behavior will be considered not relevant, unless such questions and evidence about the Complainant's prior sex behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's sex behavior with respect to the Respondent and is offered to prove consent.
- iii. The Title IX Decision-Maker shall explain to the party proposing the questions any decision to exclude questions as not relevant.

- b. **Step 2 – Decision on the Question Regarding Responsibility**

- i. Following the exchange of questions as described above, the Title IX Decision-Maker shall decide the question regarding responsibility, any disciplinary action, and any other measures deemed appropriate. The Title IX Decision-Maker shall consider all the relevant evidence objectively, including evidence in the investigative report, and any additional information provided by the parties through the exchange of questions and responses.
- ii. Based on an objective evaluation of the evidence, the Title IX Decision-Maker shall determine whether the preponderance of the evidence supports a finding that the Respondent is responsible for sexual harassment in violation of Board policy, and if so, what disciplinary sanction will be imposed.

- iii. The Title IX Decision-Maker shall provide remedies to the Complainant if the Respondent is found responsible.
    - c. **Step 3 – Written Determination Regarding Responsibility.** The Title IX Decision-Maker shall issue a written determination regarding responsibility simultaneously to both parties that includes:
      - i. Identification of the allegations potentially constituting sexual harassment under this procedure;
      - ii. Description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
      - iii. Findings of fact supporting the determination;
      - iv. Conclusions regarding the application of Board policy, FCPS regulation, [Employee Code of Conduct](#), and/or the [Student Code of Conduct](#) to the facts including whether, the Respondent engaged in prohibited sexual harassment or other proscribed conduct;
      - v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent (which may be a recommendation to the Board for discipline that is beyond the authority of the Superintendent or the Decision-Maker), and whether remedies designed to restore or preserve equal access to the school system's education program and activities will be provided to the Complainant;
      - vi. The procedures and permissible bases for the Complainant and the Respondent to appeal; and
      - vii. Any other notices that are required to accompany the decision under state law, such as when the Superintendent imposes a long-term suspension or recommends dismissal of an employee.
9. **Grievance Process for Formal Complaints: Appeal.** The parties shall have the right to appeal to the Appeal Decision-Maker the determination regarding responsibility, the outcome of any disciplinary proceeding, and any dismissal of a Formal Complaint or any allegations therein.
10. **Deadline and Grounds for Appeal**
- a. Either party may appeal by submitting a request in writing to the Appeal Decision-Maker within thirty (30) days of receiving the written determination report. The grounds for appeal must include one of the following:
    - i. Procedural irregularity that affected the outcome of the matter;
    - ii. 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;
    - iii. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter;
  - b. **Notice of the Appeal.** In all appeals, the other party will be notified in writing when an appeal is filed and will be provided a copy of the appeal.

11. **Appeal Procedures.** The Appeal Decision-Maker will hear the appeal. Appeal procedures shall apply to both parties and will follow the applicable appeal procedures governed by Board Policy to allow equal participation of the parties.

**12. Decision on Appeal**

- a. The Appeal Decision-Maker shall issue a decision regarding the appeal in accordance with applicable law, FCPS regulations, collective bargaining agreements and/or Board policy.
- b. The Appeal Decision-Maker shall ensure that a copy of the final decision is provided to the Title IX Coordinator and shall confer with the Title IX Coordinator regarding any remedies to be provided to the Complainant.
- c. If either party remains dissatisfied with the outcome of the appeal, a further appeal may be filed directly with the U.S. Department of Education's Office for Civil Rights (OCR) in accordance with its procedures and timelines.

**13. Disciplinary Consequences, Remedies and Other Responses for Substantiated Sexual Harassment**

**a. Disciplinary Consequences for Students**

- i. Students found responsible for sexual harassment will be assigned consequences in accordance with the [Student Code of Conduct](#). Based on the nature and severity of the offense and the circumstances surrounding the incident, the student will be subject to appropriate consequences and remedial actions ranging from positive behavioral interventions up to, and including, expulsion. In addition, the conduct also may be reported to law enforcement, as appropriate.
- ii. Any disciplinary sanction imposed pursuant to this procedure upon a student, including any student with a disability, shall be subject to and shall not violate the student's rights under federal law.
- iii. Nothing in this regulation will preclude the school system from taking disciplinary action against a student when the evidence does not establish sexual harassment as defined in this regulation but the conduct violates other Board policy, FCPS regulations, and/or the [Student Code of Conduct](#).

**b. Disciplinary Consequences for Employees**

- i. Employees found responsible for sexual harassment are subject to discipline up to and including dismissal. In addition, the conduct may also be reported to law enforcement, as appropriate.
- ii. Nothing in this regulation will preclude the school system from taking disciplinary action against an employee when the evidence does not establish sexual harassment as defined in this regulation, but the conduct violates other Board policy, FCPS regulations, and/or the [Employee Code of Conduct](#).

**c. Consequences for Other Perpetrators**

- i. Volunteers and visitors who engage in sexual harassment will be directed to leave school property. A third party under the supervision and control of the school system will be subject to termination of contracts/agreements, and restricted from access to school property. Any volunteer, visitor or other third party who engages in sexual harassment will also be subject to other consequences, as authorized by law.

- ii. Nothing in this regulation will be construed to confer on any third party a right to due process or other proceedings to which student and employee Respondents are entitled under this regulation unless such right exists under law.
- d. **Remedies**
  - i. At the conclusion of the grievance process, when the Respondent is found responsible for sexual harassment, the Title IX Coordinator shall consult with the Complainant in determining appropriate remedies.
  - ii. The Title IX Coordinator shall be responsible for the effective implementation of the remedies to be provided to the Complainant.
- e. **Consideration of Need for More Extensive Response.** If the Title IX Coordinator believes that a school-wide or system-wide response is needed in order to respond to the sexual harassment, the Title IX Coordinator shall provide additional staff training, harassment prevention programs, or such other measures as determined appropriate to protect the safety of the educational environment and/or to deter sexual harassment.

#### 14. Informal Resolution

- a. FCPS provides informal resolution processes to resolve certain complaints of sexual harassment without a full investigation and determination.
- b. An individual's enrollment, employment, or other rights are not subject to the individual waiving their right to a formal investigation and determination of a Formal Complaint.
- c. The Title IX Coordinator may offer the parties an informal process to resolve a Formal Complaint at any time prior to reaching a resolution. Before using an informal resolution process, both parties shall be provided voluntary, informed, written consent to attempt informal resolution. Accordingly, the Title IX Coordinator, Investigator, or Decision-Maker shall provide the parties (including the parent of a minor) a written notice disclosing:
  - i. The allegations;
  - ii. The requirements of the informal resolution process, including that if the parties agree to a resolution of the matter, the agreement precludes either party from resuming a Formal Complaint process arising from the same allegations; and
  - iii. Prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and initiate or resume a Formal Complaint.
  - iv. Any party may seek additional modifications of supportive measures if the circumstances materially change.
  - v. Any consequences that could result from participating in the informal resolution process, including whether records will be maintained and could be shared; and
  - vi. Obtain the parties' voluntary, written consent to the informal resolution process.
- d. Any agreement reached by the parties through informal resolution may include measures that are designed to restore or preserve the parties' equal access to the education program and activities, including measures that may be punitive or disciplinary in nature.
- e. Any informal process should be completed within a reasonable period of time, not to exceed sixty (60) days from filing the Formal Complaint unless special circumstances necessitate more time. At any time prior to agreeing to a resolution, any party has the



right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint.

#### **15. Retaliation Prohibited**

- a. Any act of retaliation or discrimination against any person for the purpose of interfering with any right or privilege secured by Title IX or because the person has made a notification, filed a Formal Complaint, testified, assisted, participated, or refused to participate in any investigation, proceeding, or hearing sexual harassment is prohibited.
- b. Any person who is found to have engaged in retaliation will be subject to discipline, up to and including dismissal for employees, and up to and including expulsion for students.
- c. Complaints alleging retaliation are to be treated as claims of sex discrimination and may be filed in accordance with this procedure.

#### **16. Records**

- a. The Title IX Coordinator or designee shall maintain for a period of seven (7) years a record of each sexual harassment investigation, including:
  - i. Any determination regarding responsibility;
  - ii. Any audio or audiovisual recording or transcript from any live hearing;
  - iii. Any disciplinary sanctions imposed on the Respondent;
  - iv. Any remedies provided to the Complainant designed to restore or preserve equal access to the school system's education program and activities;
  - v. Any appeal and the result therefrom;
  - vi. Any informal resolution and the result therefrom.
- b. In collaboration with the Title IX Coordinator, all training materials for Title IX Coordinators, Investigators, Decision-Makers, and individuals involved in facilitating informal resolution processes will be kept for seven (7) years. These materials will be accessible to the public on the school system's website.

#### **17. Training, Education and Prevention**

- a. The Title IX Coordinator shall take appropriate steps to annually inform staff and students of the contents of this regulation, what sexual harassment is, and where to go for help.
- b. Administrators shall be in-serviced annually on this regulation. The in-service shall explain what sexual harassment is and inform administrators of their duties, responsibilities, and potential liability as workplace managers.
- c. All persons serving as Title IX Coordinators, Investigators, and Decision-Makers shall receive training on sexual harassment, the scope of the school system's education program and activities, conducting an investigation and grievance process, and serving impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

### **E. Related Information**

#### **1. Board Policy**

- a. [Policy 116, Title IX - Sexual Harassment](#)

- b. [Policy 309, Discrimination and Harassment - Employees/Applicants/Community Members](#)
  - c. [Policy 418, Child Abuse and Neglect](#)
  - d. [Policy 437, Bullying-Harassment-Intimidation](#)
- 2. **Code of Federal Regulations (CFR)**
  - a. 34 CFR § 106
- 3. **External Resources**
  - a. [US Department of Education Office for Civil Rights \(OCR\) Webpage](#)
  - b. [US Department of Education Title IX and Sex Discrimination Webpage\]](#)
- 4. **FCPS Regulations**
  - a. [Regulation 400-47, Reporting Abuse and Neglect](#)
  - b. [Regulation 400-48, Bullying-Harassment-Intimidation Complaint Process for Students](#)
  - c. [Regulation 403-01, Student Discipline](#)
- 5. **FCPS Resources**
  - a. [Bullying, Harassment, or Intimidation Reporting Form \(Students\)](#)
  - b. [Discrimination and Harassment Complaint Form \(Employees, Applicants, and Community Members\)](#)
  - c. [Employee Handbook and Code of Conduct](#)
  - d. [FCPS Notice of Non-Discrimination Website](#)
  - e. [Student Code of Conduct](#)
- 6. **Federal Law**
  - a. Title VII of the Civil Rights Act of 1964
  - b. Title IX of the 1972 Education Amendments
- 7. **Maryland Statutes**
  - a. [Md. Code Ann., Educ. § 6-113.1](#)
  - b. [\[Md. Code Ann., Educ § 7-133](#)
  - c. [Md. Code Ann., State Govt § 20-601](#)
  - d. [Md. Code Ann., State Govt § 20-602](#)

**F. Regulation History** (Maintained by Legal Services)

<i>Responsible Office</i>	Office of Human Resources; Division of Legal Services
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