

<b>POLICY</b>	<b>BOARD OF EDUCATION OF FREDERICK COUNTY, MARYLAND</b>
<b>TITLE IX SEXUAL HARASSMENT</b>	<b>POLICY 116</b>

## I. Policy Statement

- A. The Board of Education of Frederick County (Board) prohibits discrimination on the basis of sex in its educational program, activities, or employment as required by Title IX of the 1972 Education Amendments and recognizes sexual harassment as a form of sexual discrimination.

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 Education Article, *Annotated Code of Maryland*, §6-113.1 and Board Policy 418 *Child Abuse and Neglect* and FCPS Regulation 400-47 *Reporting Abuse and Neglect*.

- B. It is the policy of the Board to maintain a learning and working environment that is free from sexual harassment. The Board believes that sexual harassment is offensive and morally wrong. Therefore, the Board prohibits sexual harassment of, or by, employees, students, volunteers, vendors, or others having business or contacts with the school system. All complaints of sexual harassment will be investigated and appropriate action taken to end the harassment and protect the victim from retaliation.

## II. Definitions

- A. **“Complainant”** is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- B. **“Decision-Maker”**<sup>1</sup> is the official responsible for making a determination regarding responsibility in response to an investigation of sexual harassment triggered by a formal complaint.
- C. **“Education program or activity”** includes 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.
- D. **“Formal complaint”** means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that FCPS investigate the allegation of sexual harassment. Formal complaints may be filed with the Title IX Coordinator by mail or by electronic mail. A “document filed by a Complainant” means a document or electronic submission (such as electronic mail) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint. Although third parties may not file formal complaints, the Title IX Coordinator may sign a formal complaint based upon a third party complaint or based upon an informal complaint by a Complainant. A formal complaint signed by the

<sup>1</sup> Decision-Maker is Chief Legal Counsel or designee

Title IX Coordinator does not make the Title IX Coordinator a party in the grievance process described below. The Title IX Coordinator may sign a formal complaint over a Complainant's objections in order to ensure that FCPS does not respond with deliberate indifference to sex discrimination, including sexual harassment, in its programs and activities.

- E. **“Investigative Report”** means a written account of the findings of the investigation conducted in response to a formal complaint.
- F. **“Investigator”** is the official responsible for investigating and responding to a formal complaint.
- G. **“Member of the FCPS School Community”** means: Board member; FCPS employee; FCPS volunteer; FCPS student; or any other person who participates in activities of FCPS or is present on FCPS grounds or premises and is supervised or sanctioned by FCPS.
- H. **“Preponderance of the evidence”** refers to 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 50.1% likely to have occurred.
- I. **“Remedies”** means 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.

Remedial measures available to a Complainant following a determination of responsibility include counseling, mental health services referral, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual or one-way restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring, and other measures determined to be necessary to restore or preserve the Complainant's equal access to the education program and activities, regardless of whether such measures impose a burden on the respondent or are punitive or disciplinary in nature. Note: Remedies are different than supportive measures.

- J. **“Removal”** means requiring a Respondent to discontinue his or her attendance or participation in an FCPS education program or activity on an emergency basis.
- K. **“Report”** means a communication whether verbal or written, in which any person notifies the Title IX Coordinator of sexual harassment.
- L. **“Respondent”** is the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- M. **“Retaliation”** means:
  - 1. Unfavorable differential treatment of a person because that person has opposed any act or practice which is unlawful under Title IX or has made a charge, testified, assisted or participated in an investigation, proceeding or other matter pursuant to Title IX; or
  - 2. Threatening, coercing, intimidating or interfering with any person because that person has opposed any act or practice which is unlawful under the Title IX or has made a

charge, testified, assisted or participated in an investigation, proceeding or other matter pursuant to the Title IX.

N. **“Sexual harassment”** means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of FCPS conditioning the provision of an aid, benefit, or service of FCPS on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an FCPS education program or activity; or
3. “Sexual assault” as defined in 20 U.S.C. § 1092(f)(6)(A)(v), <sup>2</sup> “dating violence” as defined in 34 U.S.C. § 12291(a)(10), <sup>3</sup> “domestic violence” as defined in 34 U.S.C. § 12291(a)(8), <sup>4</sup> or “stalking” as defined in 34 U.S.C. § 12291(a)(30) <sup>5</sup>.

<sup>2</sup> “Sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation and includes the following:

- Sex Offenses, Forcible – Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
  - Forcible Rape – Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - Forcible Sodomy – Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - Sexual Assault with an Object – To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - Forcible Fondling – The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- Sex Offenses, Nonforcible – Nonforcible sexual intercourse.
  - Incest – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Maryland law.
  - Statutory Rape – Nonforcible sexual intercourse with a person who is under the statutory age of consent in Maryland.

<sup>3</sup> “Dating Violence” means 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; (iii) The frequency of interaction between the persons involved in the relationship.

<sup>4</sup> “Domestic Violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

<sup>5</sup> “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

**“Sexual harassment”** may include, but not be limited to, the following examples:

1. Verbal harassment, such as derogatory comments, jokes, name calling, or slurs;
2. Pressure for sexual activity;
3. Unnecessary or offensive touching, inappropriate patting or pinching, or impeding or blocking a person's physical movement;
4. Intentional brushing against a person's body;
5. Visual harassment, such as derogatory or offensive posters, cards, emails, pictures, calendars, cartoons, graffiti, or drawings;
6. Demanding sexual favors accompanied by implied or overt threats of preferential treatment with regard to an individual's employment or educational status; or
7. Demanding sexual favors accompanied by implied or overt threats concerning an individual's employment or education.

- O. **“Student Code of Conduct”** as referenced in FCPS Regulation [400-08](#) *Student Discipline*.
- P. **“Supportive measures”** means 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. Such measures are designed to restore or preserve equal access to an FCPS education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the FCPS educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of schools or other buildings operated by FCPS, and other similar measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
- Q. **“Title IX”** means Title IX of the Education Amendments of 1972, codified at 20 U.S. Code Section 1681, *et seq.* and its implementing regulations codified at 34 Code of Federal Regulations (CFR) Part 106.1, *et seq.* which, in pertinent part, prohibit discrimination on the basis of sex in employment with respect to access to facilities, programs or activities and prohibit sexual harassment.
- R. **“Title IX Coordinator”**<sup>6</sup> refers to the individual designated by FCPS to: 1) oversee the FCPS response to sexual harassment reports and complaints, and identify and address any patterns or systemic problems revealed by such reports and complaints; 2) coordinate, conduct, and/or delegate sexual harassment investigations; 3) 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; 4) ensure that appropriate policies are in place for responding to complaints of sexual harassment against faculty, staff, and students; 5) work with local law enforcement to ensure coordinated

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<sup>6</sup> To ensure compliance with the mandates of this policy, Title IX Coordinator (i.e. Director of Human Resources) can also include a designee, which could be another FCPS employee or outside consultant specifically trained in Title IX sexual harassment investigations. Student-to-student complaints are investigated at the school level in accordance with FCPS Regulation [400-48](#) *Bullying – Harassment – Intimidation Complaint Process for Students*.

responses to sexual harassment cases; and 6) maintain accurate documentation and logs related to the Maryland State Department of Education (MSDE) reports.

The Title IX Coordinator is responsible for receiving all reports of sexual harassment and maintaining all records related to Title IX sexual misconduct.

### III. Dating or Sexual Relations Between Staff and Students

The relationship between students and staff is to be of a professional nature. Because school personnel have the responsibility for the supervision of children, interactions with students should remain clearly within the appropriate confines of a professional staff/student relationship. Therefore, asking for a date, dating or exploiting the student relationship by soliciting or actually engaging in sexual relations is not to occur between FCPS employees and students. Such action may be grounds for discipline up to and including termination, suspension or revocation of a professional certificate in accordance with Maryland law, and criminal sanctions.

### IV. 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 complaints and the due process rights of the accused.
- B. To ensure integrity of the investigation, the Complainant, the Respondent, and witnesses may be directed to refrain from talking about the complaint during the investigation, other than as part of the school system's official investigation and disposition and to discuss with their representative.

### V. Prohibition of Sexual Harassment

- A. Sexual harassment is prohibited in FCPS, its properties, activities, programs and in employment whether occurring on FCPS premises, FCPS's controlled properties, or at activities or functions supervised and sanctioned by FCPS.
- B. Conduct is not deemed sexual harassment for purposes of this policy, if the conduct occurred (1) outside the United States, or (2) under circumstances in which the school system did not have substantial control over both the harasser and the context in which the harassment occurred.
- C. Conduct that is determined not to meet the definition of "**sexual harassment**" set forth in this policy, may violate other Board policies, FCPS regulations or established standards of conduct and will be treated accordingly. For example, conduct that does not meet the definition of Title IX sexual harassment above may nevertheless violate other Board policies. Nothing in this policy is intended to limit discipline for violation of other Board policies or FCPS regulations when appropriate and consistent with law. (Refer to [Board Policy 309](#) *Discrimination and Harassment – Employees / Applicants / Community Members*)

## **VI. Reporting Procedures Related to Sexual Harassment or Allegations of Sexual Harassment**

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

1. Any member of the FCPS school community with knowledge, or who has reason to suspect, an individual is violating this policy 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.
2. Any member of the FCPS school community must report any of the following immediately:
  - a report of sexual harassment received from a student or other person;
  - conduct witnessed by the employee or Board member that is, or reasonably could, be sexual harassment; or
  - 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 policy, even if no other person has reported the sexual harassment.
3. Any doubt about whether particular conduct is sexual harassment must be resolved in favor of reporting the conduct.
4. 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.
5. Any employee who fails to comply with any of the reporting requirements of this policy, or who knowingly provides false information in a report, may be subject to disciplinary action.

### **B. General Reporting**

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 report the incident immediately to the applicable Title IX Coordinator. Any FCPS employee who receives a report of sexual harassment must immediately refer the report to the Title IX Coordinator by providing a written notice which includes as much detail about the alleged incident as possible.

### **C. Student Reporting**

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 report the matter to the Title IX Coordinator and may use the link provided in Section D.1 below or use the complaint form with FCPS Regulation [400-48](#), or may send email to the principal.

#### D. Time Period for Making a Report

1. Reports can be made by using the contact information for the Title IX Coordinator provided on the school system's website: <https://www.fcps.org/non-discrimination>
2. A report should be made as soon as possible after disclosure or discovery of the facts giving rise to the report.
3. School employees and Board members shall report information regarding sexual harassment or allegations of sexual harassment immediately.

#### E. Response to Reports of Sexual Harassment

1. The Title IX Coordinator shall respond promptly and impartially to reports of sexual harassment or alleged sexual harassment.
2. A report alleging conduct that is not sexual harassment as defined in this policy will be referred to the Director of Human Resources as outlined under Section V C.
3. Title IX Coordinator Initiates Interactive Process with Complainant - Upon receiving a report of alleged sexual harassment, the Title IX Coordinator shall promptly contact the Complainant and, if the Complainant is under age 18, the Complainant's parent or guardian confidentially. This contact will occur within three (3) working days. The Title IX Coordinator shall also notify the principal of any school involved in the report and, if an employee is the Complainant or Respondent, the Director of Human Resources or designee.
4. When contacting the Complainant and, if applicable, the Complainant's parent or guardian, the Title IX Coordinator shall:
  - offer supportive measures;
  - consider the Complainant's wishes with respect to supportive measures;
  - explain that supportive measures are available with or without the filing of a formal complaint; and
  - explain the process for filing a formal complaint with the Title IX Coordinator and the response required of FCPS when a complaint is filed, including:
    - a. that a formal complaint will initiate the Title IX Sexual Harassment Grievance Process;
    - b. that a formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail;
    - c. the major steps in the grievance process, including:
      - i. a notice of the allegations that will be provided to the Respondent that includes identification of the Complainant and the allegations made;
      - ii. an investigation of the allegations of sexual harassment in which both parties will have opportunity to have an advisor, present witnesses, review evidence, pose written questions of the other party, and receive a copy of the investigative report;

- iii. 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 policy;
- iv. the opportunity for either party to appeal the decision;
- v. the approximate time frame for concluding the grievance process;
- vi. that both parties will be treated equitably by (1) providing remedies to the Complainant if the Respondent is found responsible, and (2) by not imposing disciplinary sanctions on the Respondent without first following the grievance process;
- vii. the circumstances under which a formal complaint might be consolidated with other formal complaints or dismissed; and
- viii. 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

1. 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.
2. If the Complainant is a student with a disability, the Title IX Coordinator shall consult with appropriate school personnel to determine whether adjustments to the student's IEP or Section 504 plan are needed to implement any supportive measures to be provided and/or whether the student's IEP or 504 plan requires any adjustment as to proposed supportive measures.

#### G. Title IX Coordinator Determines Whether to Sign a Formal Complaint

1. 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.
2. 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 school attorney as appropriate, the Coordinator determines that a grievance process is necessary to comply with the obligation not to be deliberately indifferent to known allegations of sexual harassment.
3. 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 complaint nor relieve the Title IX Coordinator from any responsibilities under this policy.
4. The Title IX Coordinator shall document the decision of whether to sign a complaint and the reasons for that decision.



#### H. Presumption of Non-Responsibility of Respondent and Bar on Disciplinary Sanctions Without Due Process

1. The Respondent identified in any report alleging sexual harassment under this policy will be presumed not responsible for the alleged conduct until the Respondent's responsibility is conclusively established through the grievance process.
2. 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.
3. Notwithstanding the limitation just described, Respondents are subject to emergency removal.

#### I. Emergency Removal of Respondent from School or Employment

1. 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 a school-based threat assessment team conducts an individualized safety and risk analysis and determines that removal is justified because the person poses an immediate health or safety threat to any person arising from the allegations of sexual harassment.
2. 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.
3. The emergency removal may take place regardless of whether a formal complaint has been filed.
  - a. 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).
  - b. The Respondent shall receive notice of the removal and an opportunity to challenge the decision in an informal hearing with the Superintendent or designee immediately following the removal.
4. 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.
5. The Superintendent or designee shall document all emergency removal decisions under this section, including the immediate threat to health or safety that justified the removal.

#### J. Supportive Measures

Supportive measures shall be available to both the Complainant and the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. 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.

## **VII. Grievance Procedures**

The grievance process for formal complaints of sexual harassment under this policy is set forth below.

### **A. Filing a Formal Complaint to Initiate the Grievance Process**

A formal complaint initiates the grievance process.

#### **1. Individuals Who May File a Formal Complaint**

Any Complainant may file a formal complaint.

#### **2. The Title IX Coordinator**

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.

#### **3. Time Period for Filing a Formal Complaint**

Formal complaints 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 Coordinator is aware of sexual harassment or alleged sexual harassment and the Complainant has not yet filed a formal complaint.

#### **4. Contents of the Formal Complaint**

The complaint shall:

- contain the name of the Complainant and the student's parent or guardian if the Complainant is a minor student;
- describe the alleged sexual harassment;
- request an investigation of the matter; and
- be signed by the Complainant or otherwise indicate that the Complainant is the person filing the complaint.

#### **5. How to File a Formal Complaint**

The complaint may be filed with the Title IX Coordinator in person, by mail, or by email. Complaint forms may be obtained from the Title IX Coordinator. Additional information is located on the FCPS website: <https://www.fcps.org/non-discrimination>

## 6. FCPS' Response to Receipt of the Formal Complaint

- a. 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 Section VI E. entitled "Response to Report of Sexual Harassment" unless the Title IX Coordinator has already done so in response to an initial report of the same allegation of sexual harassment.
- b. 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. The Title IX Coordinator shall advise the Complainant if the formal complaint will be consolidated with others.
- c. The formal complaint initiates the grievance process as described below.

## B. General Principles of the Grievance Process for Formal Complaints

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.

### 1. Equitable Treatment

- 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.
2. The Complainant and Respondent shall be provided an equal opportunity to have others present during any grievance proceeding, including the 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 so that an attorney for the school system may also be present. Any restrictions on advisor participation in any proceeding must be applied equally to both parties.

3. The Complainant and Respondent will both be provided a description of the range of supportive measures available to them.

C. Grievance Process for Formal Complaints: Investigation

1. Step 1 – Notice of Allegations

Upon the filing of a formal complaint, the Title IX Coordinator shall, within five (5) working days, provide the parties written notice of the allegations that includes:

- a. Notice of the allegations of sexual harassment in sufficient detail to permit the parties to prepare a response before any initial interview, including:
  - the identities of the parties involved, if known;
  - the conduct allegedly constituting sexual harassment; and
  - the date and location of the alleged incident, if known.
- b. A copy of this policy to give notice of the school system's grievance process, including the investigative and adjudication procedures, and any informal resolution process available;
- c. Notice that the parties may have an advisor of their choice and that either party may inspect and review any evidence.
- d. 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.
- e. Notice that knowingly making false statements or providing false information during the grievance process is prohibited.

2. Step 2 – Review Grounds for Dismissal of the Formal Complaint

- a. 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 policy, did not occur in the school system's education program or activities, or did not occur against a person in the United States. Such a dismissal does not preclude action under another provision of Board policy, FCPS regulation, or student or employee code of conduct. The complaint will not be dismissed at this stage on the basis that the allegations are frivolous, without merit, or otherwise unfounded.
- b. Upon a dismissal, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. The parties have the right to appeal the decision.

- c. The Title IX Coordinator shall refer the matter that was the subject of the dismissed complaint to appropriate FCPS staff for further action as warranted.

### 3. Step 3 – Initiating the Investigation

If the complaint proceeds, the Title IX Coordinator <sup>7</sup> shall notify the appropriate investigator, who shall investigate the formal complaint.

- a. In order to provide a neutral and objective investigation, the investigator shall not be a party to the complaint under investigation.
- b. The investigator of a formal complaint is ordinarily determined as described below; however, the Title IX Coordinator, in consultation with the Superintendent, may determine that conflict of interest, bias, or other individual circumstances that warrant the assignment of a different investigator.
- c. If the Respondent is a student, the investigator is the principal or designee of the school with jurisdiction over the incident.
- d. If the Respondent is an employee or an applicant for employment, the investigator is the Director of Human Resources or designee.
- e. If the Respondent is neither a student nor an employee/applicant for employment, the principal of the school/site supervisor at which the Complainant is enrolled or employed shall be the investigator.
- f. Notwithstanding the above designations for the investigator:
  - If the Respondent is the Director of Human Resources, the Superintendent or designee shall investigate the Complaint.
  - If the Respondent is the Superintendent or a member of the Board, the Title IX Coordinator shall immediately notify the Board President who shall direct the Board's attorney to investigate, unless the Board President determines that outside counsel should be engaged to investigate.
- g. The investigator may request assistance from the Title IX Coordinator to conduct the investigation.
- h. 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

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<sup>7</sup> Note: The Title IX Coordinator may serve in the role of investigator in cases where the Title IX Coordinator has not acted in a signatory capacity.

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

- i. The investigator shall explain the process of the investigation to the Complainant and the Respondent.

#### 4. 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 as determined by the investigator establish that sexual harassment as defined in this policy occurred. In so doing, the investigator shall impartially, promptly, and thoroughly investigate the complaint.

- a. The investigator shall interview all individuals who may have relevant information, including:
  - the Complainant;
  - the Respondent;
  - individuals identified as witnesses by the Complainant or Respondent; and
  - any other individuals who are thought possibly to have relevant information. Prior written notice shall be provided to a party whose participation is invited or expected for any investigative interview or meeting. The investigator shall provide the Complainant and the Respondent an equal opportunity to present facts and expert witnesses and other evidence tending to prove or disprove the allegations.
- b. 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.
- c. The investigator shall not restrict the ability of either party to gather and present relevant evidence or to discuss the allegations under investigation.
- d. 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 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.
- e. 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:

- the Complainant notifies the Title IX Coordinator in writing that he/she would like to withdraw the formal complaint or any allegations therein;
  - the Respondent is no longer enrolled or employed by the school system; or
  - specific circumstances prevent FCPS officials from gathering evidence sufficient to reach a determination as to the formal complaint or any allegations therein.
- f. Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- g. The parties have the right to appeal the decision.
- h. The investigator may refer to other FCPS officials the matter that was the subject of the dismissed complaint for action in accordance with Board policy/FCPS regulation if he/she believes that the conduct referenced in the complaint may constitute a violation of other standards of student or employee conduct.

5. Step 5 – Investigative Report and Opportunity to Review Evidence

- a. The investigator shall prepare an investigative report that fairly summarizes the relevant evidence.
- b. Before completing the final report, the investigator shall send to each party and the party's advisor, if any, in hard copy or electronically, all the evidence collected which is directly related to the allegations raised in the formal complaint. The parties shall have ten (10) calendar days to submit a written response for the investigator's consideration before the investigator finalizes the investigative report.
- c. Following the parties' opportunity to respond to the written evidence, the investigator shall finalize the written investigative report, including a recommendation on the question of responsibility and any recommended discipline sanction.
- d. 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.
- e. The investigator shall also notify the parties of the opportunity to submit written questions to the other party and witnesses as provided below.
- f. The parties shall have ten (10) calendar days to provide a written response to the investigative report, along with the party's initial set of written questions.
- g. 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 initial sets of written questions.

- h. 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.

D. Grievance Process for Formal Complaints: Adjudication

The Chief Legal Counsel or designee shall serve as the decision-maker. As the decision-maker, the Chief Legal Counsel shall provide for the exchange of questions between the parties and decision on responsibility in a manner consistent with state law and as provided below.

1. Step 1 – Exchange of Questions and Answers

- a. After the parties are sent the investigative report, the Chief Legal Counsel shall provide the parties an opportunity to submit written, relevant questions that the party wants asked of any other party or witness, 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 by the Chief Legal Counsel. The parties shall submit their initial set of written questions at the time they submit their response to the investigative report.
- b. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior will be considered not relevant, unless such questions and evidence about the Complainant's prior sexual 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 sexual behavior with respect to the Respondent and is offered to prove consent.
- c. The Chief Legal Counsel shall explain to the party proposing the questions any decision to exclude questions as not relevant.

2. Step 2 – Decision on the Question Regarding Responsibility

- a. Following the exchange of questions as described above, the Chief Legal Counsel shall decide the question regarding responsibility, any disciplinary action, and any other measures the Chief Legal Counsel deems appropriate. The Chief Legal Counsel 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.
- b. Based on an objective evaluation of the evidence, the Chief Legal Counsel 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.



- c. The Chief Legal Counsel shall provide remedies to the Complainant if the Respondent is found responsible.

3. Step 3 – Written Determination Regarding Responsibility

The Chief Legal Counsel shall issue a written determination regarding responsibility simultaneously to both parties that includes:

- a. identification of the allegations potentially constituting sexual harassment under this procedure;
- b. 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;
- c. findings of fact supporting the determination;
- d. conclusions regarding the application of Board policy, FCPS regulation and/or the Student Code of Conduct or required standards of employee conduct to the facts including whether, the respondent engaged in prohibited sexual harassment or other proscribed conduct;
- e. 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 other 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;
- f. the procedures and permissible bases for the Complainant and the Respondent to appeal; and
- g. 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.

E. Grievance Process for Formal Complaints: Appeal

The parties shall have the right to appeal to the Superintendent the determination regarding responsibility, the outcome of any disciplinary proceeding, and any dismissal of a formal complaint or any allegations therein. If a party appeals both the determination regarding responsibility and the outcome of a disciplinary proceeding, both matters will be heard by the Superintendent at the same time. If both parties appeal, the appeals will be heard at the same time.

## 1. Deadline and Grounds for Appeal

Either party may appeal by submitting a request in writing to the Superintendent within thirty (30) days of receiving the determination regarding responsibility. The grounds for appeal may be any of the following:

- procedural irregularity that affected the outcome of the matter;
- new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- 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;
- the disciplinary sanction is inappropriate or unreasonable; or
- any other basis provided by law or Board policy governing appeals.

## 2. 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.

## 3. Appeal Procedures

- a. The Superintendent will hear the appeal.
- b. Appeal procedures shall apply to both parties and will follow the applicable procedures in Board policy modified as necessary to allow equal participation of the parties.
- c. If the appeal includes an appeal of a disciplinary sanction relative to which a law, regulation or a collective bargaining agreement entitle a student or employee to a specific type of hearing and/or proceeding, the appeal shall be conducted in accordance with the provisions of such law, regulation or collective bargaining agreement which authorize such hearing or proceeding.
- d. If no other procedural protections apply as described above, then the hearing shall be governed by Board policy.

## 4. Decision on Appeal

The Superintendent shall issue a decision regarding the appeal in accordance with applicable law, FCPS regulations, collective bargaining agreements and/or Board policy.

5. Copy of Final Decision to Title IX Coordinator

The Chief Legal Counsel 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.

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

1. Disciplinary Consequences for Students

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.

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.

Nothing in this policy will preclude the school system from taking disciplinary action against a student when the evidence does not establish sexual harassment as defined in this policy but the conduct violates other Board policy, FCPS regulation and/or the Student Code of Conduct.

2. Disciplinary Consequences for Employees

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.

Nothing in this policy will preclude the school system from taking disciplinary action against an employee when the evidence does not establish sexual harassment as defined in this policy, but the conduct violates other Board policy, FCPS regulation and/or expected standards of employee behavior.

3. Consequences for Other Perpetrators

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.

Nothing in this policy 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 policy unless such right exists under law.

#### 4. Remedies

At the conclusion of the grievance process, the Superintendent or other decision-maker shall confer with the Title IX Coordinator to determine the remedies to be provided to the Complainant when the Respondent is found responsible for sexual harassment. The Title IX Coordinator shall consult with the Complainant in determining appropriate remedies.

The Title IX Coordinator shall be responsible for the effective implementation of the remedies to be provided to the Complainant.

#### 5. Consideration of Need for More Extensive Response

If the Superintendent determines that a school-wide or system-wide response is needed in order to respond to the sexual harassment, the Superintendent 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.

### G. Informal Resolution

1. FCPS provides informal resolution processes to resolve certain formal complaints of sexual harassment without a full investigation and adjudication.
2. Informal resolution is not available unless a formal complaint is filed and shall not be used to resolve formal complaints alleging that an employee sexually harassed a student.
3. An individual's enrollment, employment, or other rights are not subject to the individual waiving their right to a formal investigation and adjudication of a formal complaint.
4. The Title IX Coordinator may offer the parties an informal process to resolve a formal complaint at any time prior to reaching a final determination regarding responsibility. 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:
  - a. the allegations;
  - b. nature and 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
  - c. any consequences that could result from participating in the informal resolution process, including whether records will be maintained and could be shared; and

- d. obtain the parties' voluntary, written consent to the informal resolution process.
5. 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.
6. Any informal process should be completed within a reasonable period of time, not to exceed sixty (60) days from filing the 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.

#### H. Retaliation Prohibited

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 report or filed a formal complaint or testified, assisted, or participated or refused to participate in any investigation, proceeding, or hearing involving sexual harassment is prohibited. 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.

Complaints alleging retaliation are to be treated as claims of sex discrimination and may be filed in accordance with this procedure.

#### I. Records

The Superintendent or designee shall maintain for a period of seven (7) years record of each sexual harassment investigation including:

1. any determination regarding responsibility;
2. any audio or audiovisual recording or transcript from any live hearing;
3. any disciplinary sanctions imposed on the Respondent;
4. any remedies provided to the Complainant designed to restore or preserve equal access to the school system's education program and activities;
5. any appeal and the result therefrom; and
6. any informal resolution and the result therefrom; and
7. in conjunction with the Title IX Coordinator, all materials used to train Title IX Coordinators, investigators, decision-makers and any person who facilitates an informal resolution process. These materials will be made publicly available on the school system's website.

## VIII. Training, Education and Prevention

The Board is committed to educating its employees and students regarding the prevention and elimination of sexual harassment.

- A. The Superintendent shall take appropriate steps to annually inform staff and students of the contents of this policy, what sexual harassment is, and where to go for help.
- B. Administrators shall be in-serviced annually on this policy. The in-service shall explain what sexual harassment is and inform administrators of their duties, responsibilities, and potential liability as workplace managers. Training will include a cross-reference to Board Policy 418 *Child Abuse and Neglect* and FCPS Regulation 400-47 *Reporting Abuse and Neglect* as these behaviors could also be deemed a form of child sexual abuse. Training will also include warning signs to watch regarding inappropriate relationships between staff and students, such as the following:
  - A student spending frequent and unusual non-instructional time with a staff member, particularly when the staff member does not have that student in their class.
  - A staff member frequently/regularly giving one student rides home from school/practice.
  - The classroom door is closed or locked when occupied by the staff member and student(s).
  - The staff member asks personal/inappropriate questions (e.g. sexual activity, personal relationships).
  - The student subject to the conduct/attention often is needy, at-risk, or experiencing difficulty at home and/or school.
- C. This policy shall be explained in the student handbook.

- D. The Title IX Coordinator, and all persons serving as Title IX investigators, decision-maker, or appeal decision-makers, shall receive training on what constitutes sexual harassment, the scope of the school system’s education program and activities, how to conduct an investigation and grievance process, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

<b>Legal Reference</b>	Title IX of the 1972 Education Amendments (20.U.S.C. § 1681) and U.S. Department of Education Regulations Implementing Title IX (34 C.F.R. Part 106)		
	Title VII of the Civil Rights Act of 1964, 1991		
	20 U.S.C. § 1092(f)(6)(A)(v); 34 U.S.C. Å§ 12291(a)(10); 34 U.S.C. § 12291(a)(8 ); and 34 U.S.C. Å§ 12291(a)(30)		
	§20-602, State Government Article, <i>Annotated Code of Maryland</i>		
	§6-113.1 Education Article, <i>Annotated Code of Maryland</i>		
<b>Source Document</b>	Board Policy 437 <i>Bullying – Harassment – Intimidation / Students</i> and FCPS Regulation 400-48 <i>Bullying – Harassment – Intimidation Complaint Process for Students</i>		
	Board Policy 418 <i>Child Abuse and Neglect</i> and FCPS Regulation 400-47 <i>Reporting Abuse and Neglect</i>		
	Board Policy 309 <i>Discrimination and Harassment – Employees / Applicants/ Community Members</i>		
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