
Board of Education

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| Ms. Kathryn Skinner | Mr. Mark Osbourn | Dr. Donna Joy | Mr. Gary Kable | Ms. Laurie Ogden |
| <i>President</i> | <i>Vice President</i> | <i>Member</i> | <i>Member</i> | <i>Member</i> |

Nondiscrimination on the Basis of Sex in Education Programs or Activities

The Jefferson County Board of Education does not discriminate on the basis of sex, including sexual orientation or gender identity) in employment or in any education program or activity that it operates and it is required by Title IX not to discriminate in such a manner. The Board prohibits sexual harassment that occurs within its education programs and activities. When the District has actual knowledge of sexual harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner that is not deliberately indifferent. Pursuant to its Title IX obligations, the Board is committed to eliminating sexual harassment and will take appropriate action when an individual is determined responsible for violating this policy. Members of the school community or third parties who commit Sexual Harassment are subject to the full range of disciplinary sanctions stated herein. The Board will provide persons who have experienced Sexual Harassment ongoing supportive measures as reasonably necessary to restore or preserve access to the District’s education programs and activities.

Coverage

This guidance applies to sexual harassment that occurs within the District’s education programs and activities and that is committed by a Board employee, student, third-party vendor or contractor, guest, or other members of the school community. This guidance does not apply to sexual harassment that occurs off school grounds, in a private setting, and outside the scope of the Board’s education programs and activities; such sexual misconduct/sexual activity may be prohibited by other Board policies or state laws, if committed by a Board employee. This guidance does not apply to sexual harassment that occurs outside the geographic boundaries of the United States, even if the sexual harassment occurs in the District’s education programs or activities. Sexual harassment that occurs outside the geographic boundaries of the United States is governed by the Student Code of Conduct if committed by a student, or by other applicable Board policies or applicable State and/or Federal laws if committed by a Board employee. Complaints alleging sexual harassment and/or discrimination on the basis of sex are also covered by and subject to the investigation procedures in the Board’s policies relating to anti-harassment and bullying.

Definitions: Terms used in this policy shall have those meanings defined herein; terms not defined herein shall be construed according to their plain and ordinary meanings.

Sexual Harassment: is conduct on the basis of sex that satisfies one or more of the following:

- A. A Board employee conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct (often called “*quid pro quo*” harassment); or
- 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 education program or activity; or
- C. Sexual assault, dating violence, domestic violence or stalking.
 - 1. **Sexual assault:** any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent and includes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.
 - a. **Rape** is the carnal knowledge of a person (i.e., penetration, no matter how slight, of the genital or anal opening of a person), without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- b. Sodomy is 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 age or because of temporary or permanent mental or physical incapacity
 - c. Sexual Assault with an Object is using an object or instrument to unlawfully 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 age or because of temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
 - d. Fondling is touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - e. Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by State law.
 - f. Statutory Rape is sexual intercourse with a person who is under the statutory age of consent as defined by WV Code §§ 2-2-10 and 61-8B-2, or whose status as a student prohibits such sexual contact per WV Code § 61-8D-1 *et seq.*
 - g. Consent refers to words or actions that a reasonable person would understand as agreement to engage in the sexual conduct at issue. Pursuant to W.Va. Code § 61-8B-2, lack of consent results from forcible compulsion, incapacity to consent, or if an offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct. A person is deemed incapable of consent when such person is: (1) less than 16 years old; (2) mentally defective; (3) mentally incapacitated; (4) physically helpless; or (5) subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact pursuant to W.Va. Code § 61-8B-10(a)(b).
 - h. Incapacitated refers to the state where a person does not understand and/or appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition, disability, or due to a state of unconsciousness or sleep.
2. **Domestic violence** includes felony or misdemeanor crimes of violence committed by:
 - a. A current or former spouse or intimate partner of the victim;
 - b. A person with whom the victim shares a child in common;
 - c. A person cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
 - d. A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime occurred; or
 - e. 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 in which the crime occurred.
 3. **Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 4. **Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person’s safety or the safety of others; or (2) suffer substantial emotional distress.

Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

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

Formal Complaint: a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the District investigate the allegation(s) of sexual harassment. At the time of filing a formal complaint with the District, a Complainant must be participating in or attempting to participate in the District’s education program or activity. A “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal that the Board provides for this purpose) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or a party to the formal

complaint and must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

Actual Knowledge: is notice of sexual harassment or allegations of sexual harassment to the District's Title IX Coordinator, or any District official who has authority to institute corrective measures on behalf of the Board, or any Board employee. The mere ability or obligation to report Sexual Harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the District. "Notice" includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator. This standard is not met when the only District official with actual knowledge is the Respondent. Imputation of knowledge-based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.

Supportive Measures: 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 the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's 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, school/campus escort services, mutual restrictions of contact between the parties, changes in work locations), leaves of absence, increased security and monitoring of certain areas of the campus (including school buildings and facilities), referral to Employee Assistance Program and other similar measures.

Education Program or Activity: all operations of the District over which the Board exercises substantial control, including in-person and online educational instruction, employment, extra-curricular activities, athletics, performances, and community engagement, and outreach programs. The term applies to all activity that occurs on school grounds or on other property owned or occupied by the Board. It also includes events and circumstances that take place off-school property/grounds if the Board exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.

School District community: refers to students and Board employees, including administrators and professional and service personnel, as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

Third Parties: include, but are not limited to, guests and/or visitors on School District property (visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with the Board, and other individuals who come in contact with members of the School District community at school-related events/activities (whether on or off District property).

Inculpatory Evidence: evidence that tends to establish a Respondent's responsibility for alleged sexual harassment.

Exculpatory Evidence: evidence that tends to clear or excuse a Respondent from allegations of sexual harassment.

Day(s): Unless expressly stated otherwise, "day" or "days" means business day(s) where the Board office is open for normal operating hours.

Eligible Student: A student who is 18 years of age or is attending an institution of postsecondary education.

Title IX Coordinator: The Board designates and authorizes the following individual(s) to oversee and coordinate its efforts to comply with Title IX and its implementing regulations:

Tanya Dallas-Lewis
Department of Cultural Unity & Equity/Staff Development Coordinator
Jefferson County Schools
110 Mordington Ave
Charles Town, WV 25414
E-mail: tddallaslewis@k12.wv.us
Office: 304.728.9202
Fax: 304.724.5311

The Title IX Coordinator shall report directly to the Superintendent except when the Superintendent is a Respondent. In such matters, the Title IX Coordinator shall report directly to the Board President. Questions about this policy should be directed to the Title IX Coordinator.

The Superintendent hereby notifies any and all applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, Board employees, and all unions or professional organizations holding collective bargaining or professional agreements with the Board of the following information:

The Jefferson County Board of Education does not discriminate on the basis of sex, including sexual orientation or gender identity, in its education program or activity and is required by Title IX and its implementing regulations not to discriminate in such a manner. The requirement not to discriminate in its education program or activity extends to admission and employment. The District's Title IX Coordinator(s): Tanya Dallas-Lewis Department of Cultural Unity & Equity/Staff Development Coordinator; Jefferson County Schools, 110 Mordington Ave, Charles Town, WV 25414, who can be reached by phone at (304)728-9202, by fax at (304)724-5311 and email: at: ddallaslewis@k12.wv.us. Any inquiries about the application of Title IX and its implementing regulations to the District may be referred to the Title IX Coordinator(s), the Assistant Secretary for the U.S. Department of Education's Office for Civil Rights, or both.

The District's Title IX grievance process provides for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by Title IX or its implementing regulations. The grievance process specifically addresses how to report or file a complaint of sex discrimination, how to report or file a formal complaint of Sexual Harassment, and how the District will respond.

Title IX Grievance Process

The Board is committed to promptly and equitably resolving complaints alleging Sexual Harassment. The District's response to such allegations will treat Complainants and Respondents equitably, including providing supportive measures to the Complainant and Respondent, as appropriate, and before the imposition of any disciplinary sanctions or other actions, other than supportive measures, against the Respondent. The Process relates exclusively to complaints brought under this Policy. The District will also investigate complaints subject to the District's other nondiscrimination and anti-harassment policies. The Title IX Coordinator, along with any investigator(s), decision-maker(s), or any person(s) designated to facilitate an informal resolution process, shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

If a determination of responsibility for sexual harassment is made against the Respondent, the Board will provide remedies to the Complainant. The remedies will be designed to restore or preserve equal access to the District's education program or activity. Potential remedies include, but are not limited to, individualized services that constitute supportive measures. Remedies may also be disciplinary or punitive in nature and may burden the Respondent.

Report of Sexual Discrimination / Harassment

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the Title IX Coordinator's contact information listed above, or by any other means that results in the Title IX Coordinator receiving the person's oral or written report. Reports may be made at any time (including during non-business hours), by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

All Board employees and students are mandatory reporters pursuant to the Title IX regulations. Members of the School District community and Third Parties should report allegations of sex discrimination or sexual harassment promptly to the Title IX Coordinator or to any Board employee, who will, in turn, notify the Title IX Coordinator. Reports can be made orally or in writing and should be as specific as possible. The person

making the report should, to the extent known, identify the alleged victim(s), perpetrator(s), and witness(es), and describe in detail what occurred, including date(s), time(s), and location(s).

If a report involves allegations of sexual harassment by or involving the Title IX Coordinator, the person making the report should submit it to the Superintendent or another Board employee who, in turn, will notify the Superintendent of the report. The Superintendent will then serve in place of the Title IX Coordinator for purposes of addressing that report of sexual harassment.

Notwithstanding any rights that a given Third-Party Respondent may have under this policy, the Board retains the right to limit any Third-Party's access to school grounds for any reason. The Board may terminate its relationship with any Third-Party, irrespective of any process or outcome under this policy.

A person may file criminal charges simultaneously with filing a formal complaint. A person does not need to wait until the Title IX investigation is completed before filing a criminal complaint. Questions or complaints relating to Title IX may be filed with the U.S. Department of Education's Office for Civil Rights at any time.

Any allegations of sexual misconduct/sexual activity not involving sexual harassment will be addressed through the procedures outlined in the Expected Behavior in Safe and Supportive Schools Policy, other applicable state or local board policies or state laws.

Because the Board is considered to have actual knowledge of sexual harassment or allegations of sexual harassment if any Board employee has such knowledge, and because the Board must take specific actions when it has notice of sexual harassment or allegations of sexual harassment, a Board employee who has independent knowledge of or receives a report involving allegations of sex discrimination and/or sexual harassment must notify the/a Title IX Coordinator promptly of learning the information or receiving the report. The Board employee must also comply with mandatory reporting responsibilities regarding suspected abuse or neglect of a child pursuant to W.Va. Code § 49-2-803. If the Board employee's knowledge is based on another individual bringing the information to the Board employee's attention and the reporting individual submitted a written complaint to the Board employee, the Board employee must provide the written complaint to the Title IX Coordinator.

If a Board employee fails to report an incident of sexual harassment of which the Board employee is aware, the Board employee may be subject to disciplinary action, up to and including termination.

When a report of sexual harassment is made, the Title IX Coordinator shall promptly contact the Complainant, including the parent/guardian if the Complainant is under 18 years old or under guardianship, to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Any supportive measures provided to the Complainant or Respondent shall be maintained as confidential, to the extent that maintaining such confidentiality will not impair the ability of the District to provide the supportive measures.

Emergency Removal: Subject to limitations and/or procedures imposed by State and/or Federal law, the District may remove a student Respondent from its education program or activity on an emergency basis after conducting an individualized safety and risk analysis. The purposes of the individualized safety and risk analysis is to determine whether the student Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment that justifies removal. If the District determines the student Respondent poses such a threat, it will so notify the student Respondent and the student Respondent will have an opportunity to challenge the decision immediately following the removal. In determining whether to impose emergency removal measures, the Title IX Coordinator shall consult related District policies. Emergency removals must be conducted in compliance with the Individuals with Disabilities Education Act, as amended and/or Section 504.

If the Respondent is a non-student employee, the District may place the Respondent on administrative leave during the pendency of the grievance process. Such leave will typically be paid leave unless circumstances justify unpaid leave in compliance with legal requirements.

For all other Respondents, including members of the School District community and Third Parties, the Board retains broad discretion to prohibit such persons from entering onto its school grounds and other properties at any time and for any reason, whether after receiving a report of sexual harassment or otherwise.

Formal Complaint of Sexual Harassment

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information set forth. If a formal complaint involves allegations of sexual harassment by or involving the Title IX Coordinator, the Complainant should submit the formal complaint to the Superintendent, who will designate another person to serve in place of the Title IX Coordinator for the limited purpose of implementing the grievance process with respect to that formal complaint. The Complainant's wishes with respect to whether a formal complaint is filed will be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

When the Title IX Coordinator receives a formal complaint or signs a formal complaint, the District will follow its grievance process, as set forth herein. Specifically, the District will undertake an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and will not make credibility determinations based solely on a person's status as a Complainant, Respondent, or witness.

It is a violation of this policy for a Complainant(s), Respondent(s), and/or witness(es) to knowingly making false statements or knowingly submitting false information during the grievance process, including intentionally making a false report of sexual harassment or submitting a false formal complaint. Such conduct will not be tolerated and violators will be subject to the penalties included in applicable county and state board policies and laws.

The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Timeline

The District will seek to conclude the grievance process, including resolving any appeals, within 90 days of receipt of the Formal Complaint. If the Title IX Coordinator offers informal resolution processes, the informal resolution processes may not be used by the Complainant or Respondent to unduly delay the investigation and determination of responsibility. The timeline, however, may be subject to a temporary delay of the grievance process or a limited extension for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action, except that any complaint covered by other applicable policies, which must comply with the timelines in that policy; however, an investigation may still proceed as required herein. Good cause may include considerations such as: the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; and the need for language assistance or an accommodation of disabilities. The Title IX Coordinator will provide the parties with reasonable updates on the status of the grievance process.

Upon receipt of a formal complaint, the Title IX Coordinator will provide written notice of the following to the parties who are known:

- A. Notice of the Board's grievance process, including any informal resolution processes;
- B. Notice of the allegations of misconduct that potentially constitute sexual harassment as defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice must:
 1. include 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;

2. inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence; and
3. inform the parties of any provision in stated herein, included in other applicable policies or laws that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.

If, during the course of the investigation, the investigator becomes aware of allegations about the Complainant or Respondent that are not included in the original notice provided to the parties, the investigator will notify the Title IX Coordinator and the Title IX Coordinator will decide whether the investigator should investigate the additional allegations; if the Title IX Coordinator decides to include the new allegations as part of the investigation, the Title IX Coordinator will provide notice of the additional allegations to the parties whose identities are known.

Dismissal of a Formal Complaint

The District shall investigate the allegations in a formal complaint *unless* the conduct alleged in the formal complaint: (1) would not constitute sexual harassment (as defined herein) even if proved; (2) did not occur in the District's education program or activity; or (3) did not occur against a person in the U.S. If any one of the preceding circumstances exist, the Title IX Coordinator *shall* dismiss the formal complaint. If the Title IX Coordinator dismisses the formal complaint due to one of the preceding reasons, the District may still investigate and take action with respect to such alleged misconduct pursuant to another provision of an applicable policy or law.

The Title IX Coordinator *may* dismiss a formal complaint, or any allegations therein, at any time during the investigation, if: (1) a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; (2) the Respondent is no longer enrolled in the District or employed by the Board; or (3) specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. If the Title IX Coordinator dismisses a formal complaint or allegations therein, the Title IX Coordinator must promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

Consolidation of Formal Complaints

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 arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this policy to the singular "party," "Complainant," or "Respondent" include the plural, as applicable.

Informal Resolution Process

Under no circumstances shall a Complainant be required as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, to waive any right to an investigation and adjudication of a formal complaint of sexual harassment. Similarly, no party shall be required to participate in an informal resolution process.

If a formal complaint is filed, the Title IX Coordinator may offer to the parties an informal resolution process. If the parties mutually agree to participate in the informal resolution process, the Title IX Coordinator shall designate a trained individual to facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. The informal resolution process may be used at any time prior to the decision-maker(s) reaching a determination regarding responsibility.

If the Title IX Coordinator is going to propose an informal resolution process, the Title IX Coordinator shall provide to the parties a written notice disclosing: (1) the allegations; (2) the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; and (3) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. 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. Before commencing the informal

resolution process, the Title IX Coordinator shall obtain from the parties their voluntary, written consent to the informal resolution process. During the pendency of the informal resolution process, the investigation and adjudication processes that otherwise would occur are stayed and all related deadlines are suspended.

The informal resolution process is not available to resolve allegations that a Board employee or another adult member of the School District community or Third Party sexually harassed a student. The informal resolution process is not available to resolve allegations regarding a sexual assault involving a student Complainant and a student Respondent

Investigation of a Formal Complaint of Sexual Harassment

In conducting the investigation of a formal complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is on the District, not the parties. In making the determination of responsibility, the decision-maker(s) is (are) directed to use the preponderance of the evidence standard. The decision-maker(s) is charged with considering the totality of all available evidence, from all relevant sources. The District is not permitted to access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the party provides the District with voluntary, written consent to do so; if a student party is not an eligible student, the District must obtain the voluntary, written consent of a parent. Similarly, the investigator(s) and decision-maker(s) may not require, allow, rely upon or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege in writing.

As part of the investigation, the parties have the right to: (1) present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; and (2) 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, but is not required to be, an attorney. The District may not limit the choice or presence of an advisor for either the Complainant or Respondent in any meeting or grievance proceeding. Neither party shall be restricted in their ability to discuss the allegations under investigation or to gather and present relevant evidence.

The District will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. The investigator(s) and decision-maker(s) must provide one day notice with respect to investigative interviews and other.

Both parties shall have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

Prior to completion of the investigative report, the Title IX Coordinator will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. At the conclusion of the investigation, the investigator shall create an investigative report that fairly summarizes relevant evidence and send the report to each party and the party's advisor, if any, for their review and written response. The investigator will send the investigative report in an electronic format or a hard copy, at least 10 calendar days prior to the decision-maker(s) determination of responsibility.

Determination of Responsibility

The Title IX Coordinator shall appoint a decision-maker(s) to issue a determination of responsibility. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator(s) or the investigator(s).

After the investigator sends the investigative report to the parties and the decision-maker(s), and before the decision-maker(s) reaches a determination regarding responsibility, the decision-maker(s) will afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. The decision-maker(s) must explain to the party proposing the question of any decision to exclude a question as not relevant. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are 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 prior sexual behavior with respect to the Respondent and are offered to prove consent.

Determination regarding responsibility: The decision-maker(s) will issue a written determination regarding responsibility. To reach this determination, the decision-maker(s) must apply the preponderance of the evidence standard. The written determination will include the following content:

- A. Identification of the allegations potentially constituting sexual harassment pursuant to this policy;
- B. A 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, and methods used to gather other evidence.
- C. Findings of fact supporting the determination;
- D. Conclusions regarding the application of the applicable code of conduct to the facts;
- E. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the decision-maker(s) is recommending that the District impose on the Respondent(s) and whether remedies designed to restore or preserve equal access to the District's education program or activity should be provided by the District to the Complainant(s); and
- F. The procedures and permissible bases for the Complainant(s) and Respondent(s) to appeal.

Informal or formal disciplinary consequences may be imposed on a student Respondent who is determined responsible for engaging in sexual harassment. Disciplinary sanctions/consequences may be imposed on a student Respondent who is determined responsible for violating this policy (i.e., engaging in sexual harassment) including but not limited to: **Informal Discipline:** (1) writing assignments; (2) changing of seating or location; (3) before-school, in-school, lunchtime or after-school detention or Saturday school. **Formal Discipline:** (1) suspension or exclusion from bus riding/transportation privileges; (2) removal from co-curricular and/or extra-curricular activities including athletics; (3) emergency removal; (3) suspension pursuant to State Board Policy 4373 (4) exclusion by a teacher or bus operator; (5) disciplinary removal or out-of-school suspension for each incident if the student is eligible for special education services under West Virginia State Board policy 2419; (6) expulsion pursuant to State Board Policy 4373; (6) exclusion from co-curricular and/or extra-curricular activity(ies), including athletics or current class enrollment; and (7) any other sanction authorized by the Student Code of Conduct.

If the decision-maker(s) determines the student Respondent is responsible for violating this policy (i.e., engaging in Sexual Harassment), the decision-maker(s) will recommend appropriate remedies, including disciplinary sanctions/consequences. The Title IX Coordinator will notify the Superintendent of the recommended remedies, so an authorized administrator can consider the recommendation(s) and implement an appropriate remedy(ies).

Disciplinary sanctions/consequences may be imposed on an employee Respondent who is determined responsible for violating this policy, as provided in W.Va. Code § 18A-2-8 and may include disciplinary action up to and including termination from employment. The discipline of an employee will be implemented in accordance with Federal and State law, and Board policy. If the Superintendent is the Respondent, the Title IX Coordinator will notify the Board President of the recommended remedies for consideration and, if necessary and appropriate, implementation in compliance with applicable due process procedures, whether statutory or contractual

If a non-student/non-employee, member of the School District community or Third Party engaged in sexual harassment, the District may: issue verbal or written warning; suspend or terminate the Board's contract

with the third-party vendor or contractor; require mandatory monitoring of the third-party while on school property; restrict or prohibit the third-party from school property; and any combination of the same.

If the decision-maker(s) determines the third-party Respondent is responsible for violating the provisions stated herein, the decision-maker(s) will recommend appropriate remedies, including the imposition of sanctions. The Title IX Coordinator will notify the Superintendent of the recommended remedies, so appropriate action can be taken. The decision-maker(s) will provide the written determination to the Title IX Coordinator who will provide the written determination to the parties simultaneously.

In imposing a disciplinary consequence, the Superintendent will consider the severity of the incident, previous disciplinary violations (if any), and any mitigating circumstances. If the Respondent is a member of the Board, s/he shall be excluded from any determination regarding the imposition of a disciplinary sanction/consequence by the remaining Board members.

The District's resolution of a formal complaint ordinarily will not be impacted by the fact that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

At any point in the grievance process, the Superintendent, or the Title IX Coordinator if the Superintendent is the Respondent, may involve local law enforcement and/or file criminal charges related to allegations of sexual harassment that involve a sexual assault. The Title IX Coordinator is responsible for the effective implementation of any remedies.

Appeal

Both parties have the right to file an appeal from a determination regarding responsibility or from the Title IX Coordinator's dismissal of a formal complaint or any allegations therein, on the following bases: (1) Procedural irregularity that affected the outcome of the matter (e.g., material deviation from established procedures); (2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and (3) the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant(s) or Respondent(s) that affected the outcome of the matter.

If formal discipline has been imposed upon any employee or student as a result of an investigation pursuant to this policy, the employee/student may pursue any available legal remedies to challenge the disciplinary decision, including any applicable board of education hearing or proceeding, grievance, citizen's appeal, or another available legal remedy.

Any party wishing to appeal the decision-maker(s)'s determination of responsibility, or the Title IX Coordinator's dismissal of a formal complaint or any allegations therein, must submit a written appeal to the Title IX Coordinator within five days after receipt of the decision-maker(s)'s determination of responsibility or the Title IX Coordinator's dismissal of a formal complaint or any allegations therein.

Nothing herein shall prevent the Superintendent from imposing any remedy, including disciplinary sanction, while the appeal is pending.

As to all appeals, the Title IX Coordinator will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.

The decision-maker(s) for the appeal shall not be the same person(s) as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator(s). The decision-maker(s) for the appeal shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant(s) or Respondent(s) and shall receive the same training as required of other decision-makers.

Both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. The parties' written statements in support of, or challenging, the determination

of responsibility must be submitted within five days after the Title IX Coordinator provides notice to the non-appealing party of the appeal.

The decision-maker(s) for the appeal shall issue a written decision describing the result of the appeal and the rationale for the result. The original decision-maker's(s') determination of responsibility will stand if the appeal request is not filed in a timely manner or the appealing party fails to show clear error and/or a compelling rationale for overturning or modifying the original determination. The written decision will be provided to the Title IX Coordinator who will provide it simultaneously to both parties. The written decision will be issued within five days of when the parties' written statements were submitted.

The determination of responsibility associated with a formal complaint, including any recommendations for remedies/disciplinary sanctions, becomes final when the time for filing an appeal has passed or, if an appeal is filed, at the point when the decision-maker(s) for the appeal's decision is delivered to the Complainant and the Respondent. No further review beyond the appeal is permitted.

Retaliation

Neither the Board nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, constitute(s) retaliation. Retaliation against a person for making a report of sexual harassment, filing a formal complaint, or participating in an investigation is a serious violation of this policy that can result in the imposition of disciplinary sanctions/consequences and/or other appropriate remedies. Complaints alleging retaliation may be filed according to the grievance process set forth above. The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy shall not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Confidentiality

The District will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, or FERPA's regulations, and West Virginia State Board policy 4350, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the District's obligation to maintain confidentiality shall not impair or otherwise affect the Complainant's and Respondent's receipt of the information to which they are entitled with respect to the investigative record and determination of responsibility).

Application of the First Amendment

The Board will construe and apply this policy consistent with the First Amendment to the U.S. Constitution. In no case will a Respondent be found to have committed Sexual Harassment based on expressive conduct that is protected by the First Amendment.

Training

The District's Title IX Coordinator, along with any investigator(s), decision-maker(s), or person(s) designated to facilitate an informal resolution process, must receive training on: (1) the definition of sexual

harassment (as that term is used in this policy); (2) the scope of the District's education program or activity; (3) how to conduct an investigation and implement the grievance process; (4) appeals and informal resolution processes, as applicable; and (5) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interests, and bias. All Board employees will be trained concerning their legal obligation to report sexual harassment to the Title IX Coordinator. This training will include practical information about how to identify and report sexual harassment.

Recordkeeping

As part of its response to alleged violations of this policy, the District shall create, and maintain for a period of seven calendar years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity. If the District does not provide a Complainant with supportive measures, then the District will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

The District shall maintain for a period of seven years: (1) Each sexual harassment investigation including any determination regarding responsibility; (2) any disciplinary sanctions recommended and/or imposed on the Respondent(s), and (3) any remedies provided to the Complainant(s) designed to restore or preserve equal access to the District's education program or activity;) (4) Any appeal and the result therefrom; (5) Any informal resolution and the result therefrom; and (6) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

The District will make its training materials publicly available on its website. If a person is unable to access the District's website, the Title IX Coordinator will make the training materials available upon request for inspection by members of the public.

Outside Appointments, Dual Appointments, and Delegations

The Board may appoint suitably qualified persons who are not Board employees to fulfill any function of the requirements stated herein, including, but not limited to, Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor. The Board may appoint two or more persons to jointly fulfill the role of Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor. The Superintendent may delegate functions assigned to a specific Board employee under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor, to any suitably qualified individual, and such delegation may be rescinded by the Superintendent at any time.

Discretion in Application

The Board retains the discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the Board's interpretation or application differs from the interpretation of any specific Complainant and/or Respondent. Despite the Board's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the Board retains the discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable. The provisions of this policy are not contractual in nature, whether in their own right or as part of any other express or implied contract. Accordingly, the Board retains the discretion to revise this policy at any time, and for any reason. The Board may apply policy revisions to an active case provided that doing so is not clearly unreasonable.