

BERKELEY COUNTY BOARD OF EDUCATION
TITLE IX SEXUAL HARASSMENT POLICY

Effective: August 14, 2020

PURPOSE:

Title IX of the Education Amendments of 1972 (“Title IX”) prohibits sex discrimination in educational programs or activities receiving Federal financial assistance. In May of 2020, the United States Department of Education released new Title IX regulations that change the way school districts are required to respond to allegations of sexual harassment. This policy and the administrative procedures that implement it have been revised accordingly so as to comply with the new Title IX regulations which are currently in effect as of August 14, 2020.

The Berkeley County Board of Education (“District”) does not discriminate and does not permit the discrimination on the basis of sex in its educational programs or activities that it operates. The purpose of this policy and the administrative procedures that implement it is to secure prompt and equitable resolutions of complaints based on sex discrimination, including complaints of sexual harassment, in violation of Title IX of the Education Amendments of 1972, and violation of District policies that prohibit this type of discrimination. This policy and administrative procedures only applies to complaints alleging discrimination on the basis of sex as prohibited by Title IX including sexual harassment, quid pro quo, sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).

This policy and the administrative procedures shall be available in every school site administrative office, posted on the District website, and included in student handbooks. Annually, the District will provide to applicants for admission and employment; students; parents or legal guardians of students; employees; and all unions or professional organizations notice of its grievance procedures and grievance process, including how to report or file a complaint of sexual discrimination or sexual harassment, how to report or file a formal complaint of sexual harassment, and how the District will respond.

Sexual Harassment – “Sexual Harassment” is defined by this policy to mean conduct on the basis of sex that satisfies one or more of the following:

- (1) “Quid Pro Quo”- An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct; or
- (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 the District’s educational program(s) or activity(ies); or
- (3) “Sexual assault” as defined in 20 U. S. C. 1092(f)(6)(A)(v), “dating violence”

as defined in 34 U. S. C. 12291 (a)(8), or “stalking” as defined in 34 U. S. C. 12291 (a)(30).

Any District employee with actual knowledge of sex discrimination, including sexual harassment in an education program or activity as defined in the Policy, must report the sex discrimination to the Title IX Coordinator. Failure to report may result in disciplinary action, up to and including termination, being taken against the employee.

Any person may report sex discrimination, including sexual harassment as defined by this Policy, (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), to the Title IX Coordinator in person, by mail, by telephone, by electronic mail, or through the District’s on-line portal. Reports may be made at any time, including during non-business hours.

The District shall not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.

The District’s **TITLE IX COORDINATOR** shall be tasked with coordinating the District’s response to all allegations involving possible sexual harassment. The Title IX Coordinator’s responsibilities are critical to the development, implementation, and monitoring of meaningful efforts to comply with District and Federal Title IX regulations.

The Title IX Coordinator can be reached at:

Elice Gregory
Berkeley County Board of Education
1453 Winchester Avenue
Martinsburg, West Virginia 25405
(304) 267-3500

E-mail address: emgregor@k12.wv.us

<https://www.berkeleycountyschools.org/Page/14417>

A “Complainant” is an individual, either student or employee, who is alleged to be the victim of conduct that could constitute sexual harassment. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party under this Policy, unless the Title IX Coordinator is alleged to be the victim of conduct that could constitute sexual harassment.

The “Respondent” is any individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Upon receipt of a report of alleged sexual harassment, the Title IX Coordinator will promptly contact the Complainant and discuss the following:

- a) The availability of supportive measures that are available to the Complainant to immediately restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party.
- b) The availability of supportive measures with or without the filing of a formal complaint; and
- c) The process for filing the formal complaint.

“Supportive Measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant and/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, campus escort services, mutual restrictions on contact between the parties, changes in work or class locations, leaves of absence, increased security and monitoring of certain areas of the District's facilities, and other similar measures. The District shall maintain as confidential any supportive measures provided to the Complainant and/or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide supportive measures. The Title IX Coordinator will coordinate the effective implementation of supportive measures.

A “Formal Complaint” is a document filed by a Complainant or 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, a Complainant must be participating in or attempting to participate in the education program or activity of the District with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, or through the District's on-line portal on its webpage.

The “Grievance Process” shall be those provisions, rules, or practices included within this Policy and the administrative procedures for processing formal complaints of sexual harassment. The Grievance Process shall be applied equally to both the Complainant and the Respondent.

The “Preponderance of the Evidence Standard” is the evidentiary standard to be used during the investigation and final determination of a formal complaint. Preponderance of the Evidence means that the evidence shows that the action alleged is more likely to have occurred than not to have occurred.

The filing of a formal complaint does not preclude the District from responding to the complaint by also applying other District policy violations, such as Code of Conduct

violations, violations of the Berkeley County Student or Employee Handbook, Safe Schools Act, to allegations that are not related to sexual harassment to allegations that are not related to sexual harassment. Non-sexual harassment allegations and/or findings shall be promptly reported to the principal of the student and/or the supervisor of the Respondent to process pursuant to the District's applicable policies, including its disciplinary policies.

If the Complainant refuses to initiate a formal complaint, the Title IX Coordinator may submit a signed, written formal complaint to initiate a formal investigation and complaint process, regardless of the Complainant/Complainant's parent's or guardian's consent, if based upon the allegations and information received there is the possible likelihood of sexual harassment.

The Title IX Coordinator shall submit a signed, written formal complaint to initiate a formal investigation and complaint process, regardless of the Complainant/Complainant's parent's or guardian's consent, if the allegations and information received involve sexual harassment of a student by an employee.

Throughout the course of the investigation of the formal complaint and throughout the grievance process (collectively, "Formal Complaint Process"), the burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on the parties.

Any individual designated by the District as a Title IX Coordinator, Investigator, Decision-Maker, or any person designated by a recipient to facilitate an informal resolution process, must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. If a conflict of interest or bias is alleged by any party, the Superintendent shall appoint another person to fulfill the role of the person alleged to have a conflict of interest.

The District will endeavor to complete investigations within sixty (60) days of the date on which the formal complaint was received, however, the District's primary objective is a thorough and equitable investigation and grievance process.

The District shall coordinate its investigation and grievance process with any other ongoing criminal investigation of the incident, if any. The District may determine whether to delay its investigation pending the conclusion of a criminal investigation or for criminal proceedings to begin. If the fact-finding portion of the investigation is suspended due to the existence of a criminal investigation, the District's investigation shall resume promptly once law enforcement officials have completed their evidence gathering state of the criminal investigation.

District employees and students are required to participate fully in an investigation, but in no event will a Complainant be subjected to any disciplinary sanctions or consequences for refusing or failing to participate.

An informal resolution process may be facilitated at any time after the Formal Complaint is filed and prior to the determination regarding responsibility, with the exception that an

informal resolution is not permitted to resolve allegations than an employee of the District sexually harassed a student.

Upon a finding of responsibility, disciplinary sanctions against an employee may include any available sanction available for the discipline of employees, up to and including termination of their employment contract pursuant to W. Va. Code 18A-2-8. Disciplinary sanctions against a student may include any available discipline or sanction, up to and including expulsion, under the policies, rules and procedures that establish the District.

If an employee subject to possible discipline for violations of this Policy retires or resigns prior to the completion of the investigation, or before a final disposition is made, or during the course of a disciplinary hearing, the Superintendent shall report the allegations to the database maintained by the West Virginia State Superintendent of Schools pursuant to the requirements set forth in W. Va. Code 18A-2-8 and any revisions thereto.

No person shall, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, intimidate, threaten, coerce, or discriminate against any individual who is the victim of or who reports alleged sexual harassment or testifies, assists, or participates in an investigation, final determination of any proceeding or hearing related to a sexual harassment complaint. Should retaliation occur, the victim shall promptly report the actions to principal or the Title IX Coordinator. Persons found guilty of retaliation shall be subject to discipline.

BERKELEY COUNTY BOARD OF EDUCATION
TITLE IX SEXUAL HARASSMENT POLICY GUIDELINES AND PROCEDURES

Effective: August 14, 2020

PURPOSE:

Title IX of the Education Amendments of 1972 (“Title IX”) prohibits sex discrimination in educational programs or activities receiving Federal financial assistance. In May of 2020, the United States Department of Education released new Title IX regulations that change the way school districts are required to respond to allegations of sexual harassment. These procedures have been revised accordingly so as to comply with the new Title IX regulations which go into full force and effect on August 14, 2020.

The Berkeley County Board of Education (“District”) does not discriminate and does not permit the discrimination on the basis of sex in its educational programs or activities that it operates. The purpose of these procedures is to secure prompt and equitable resolutions of complaints based on sex discrimination, including complaints of sexual harassment, in violation of Title IX of the Education Amendments of 1972, and violation of District policies that prohibit this type of discrimination. These procedures only apply to complaints alleging discrimination on the basis of sex as prohibited by Title IX including sexual harassment, quid pro quo, sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).

These procedures shall be available in every school site administrative office, posted on the District website, and included in student handbooks. The District will provide to applicants for admission and employment; students; parents or legal guardians of students; employees; and all unions or professional organizations holding collective bargaining or professional agreements with the school district notice of its grievance procedures and grievance process, including how to report or file a complaint of sexual discrimination or sexual harassment, how to report or file a formal complaint of sexual harassment, and how the District will respond.

I. DEFINITIONS

A. Actual Knowledge – “Actual Knowledge” means notice of sexual harassment or allegations of sexual harassment to the Title IX coordinator or any employee of the district. The District is not deemed to have actual knowledge when the only employee who has actual knowledge is the Respondent. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.

B. Advisor – An “Advisor” is a parent, guardian, or any person chosen by the Complainant or the Respondent to represent them and their interests throughout the grievance procedures discussed in this Policy. An advisor does not need to be an attorney.

C. Days – “Days” shall mean “working days” and does not include Saturday, Sunday, official holidays, and any days on which the school district is legally closed. However, remote and/or distance learning days where students are not present at school but are still completing coursework virtually, is considered a “work day” for purposes of this Policy.

D. Complainant – A “Complainant” is an individual, either student or employee, who is alleged to be the victim of conduct that could constitute sexual harassment. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party under this Policy, unless the Title IX Coordinator is alleged to be the victim of conduct that could constitute sexual harassment.

E. Consent – “Consent” is an affirmative verbal statement(s) or non-verbal action(s) which a reasonable person would understand to mean a voluntary agreement to engage in sexual activity. Consent must be ongoing throughout a sexual activity and can be withdrawn at any time. It is the responsibility of person(s) involved in sexual activity to ensure that he/she/they have the affirmative consent of the other(s) to engage in sexual activity.

Someone who is incapacitated cannot consent. A person is deemed incapable of consent when that person is either less than sixteen years old, mentally incapacitated, or physically unable to resist. Incapacitation negates consent when the alleged perpetrator knows, or a reasonable person in his or her position, under the circumstances, should know, that the alleged victim is incapacitated.

Past consent does not imply future consent. Silence or an absence of resistance does not imply consent. Consent to one sexual act does not constitute or imply consent to a different sexual act.

Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

Coercion, force, or threat of either invalidates consent. Whether one has taken advantage of a position of influence over another may be a factor in determining consent.

F. Decision Maker – A “Decision Maker” is an individual trained pursuant to this Policy and Federal Title IX Regulations, who is tasked with issuing a written determination regarding responsibility with findings of fact; conclusions about whether the alleged conduct occurred; rationale for the result as to each allegation; a recommendation of any disciplinary sanction(s) to be imposed on the Respondent, and remedies to be provided to the parties. The Decision Maker does not need to be an employee of the District and may be outside counsel or any other person designated by the District. The Decision-Maker shall not be the Title IX Coordinator or the Investigator.

G. District or School District - The “District” or “School District” is the Board of Education of the County of Berkeley, West Virginia.

H. Disciplinary Sanctions – “Disciplinary Sanctions” are consequences imposed on a Respondent when s/he is found responsible for sexual harassment under this Policy.

I. Formal Complaint - A “formal complaint” is a document filed by a Complainant or 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, a Complainant must be participating in or attempting to participate in the education program or activity of the District with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, or through the District’s on-line portal on its webpage.

J. Grievance Process - The “Grievance Process” shall be those provisions, rules, or practices included within this Policy for processing formal complaints of sexual harassment.

The Grievance Process shall be applied equally to both the Complainant and the Respondent.

K. Educational Program or Educational Activity – An “Educational Program” or “Educational Activity” shall mean locations, events, or circumstances over which the District exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.

L. Exculpatory Evidence – “Exculpatory Evidence” is evidence gathered during an investigation that is favorable to the Respondent that exonerates or tends to exonerate the Respondent.

M. Inculpatory Evidence – “Inculpatory Evidence” is evidence gathered during an investigation that is unfavorable to the Respondent and shows an individual’s involvement in an act or evidence that tends to show involvement in an act.

N. Informal Resolution Process – The “Informal Resolution Process,” as more fully described in Section X, is offered to the Complainant and the Respondent after a formal complaint has been filed as a mechanism to resolve a formal complaint prior to its final adjudication. Both the Complainant and the Respondent must consent to participate in the Informal Resolution Process. Informal resolution of a formal complaint is prohibited when the formal complaint involves allegations of a District employee sexually harassing a student.

O. Investigator(s) – An “Investigator” is an individual trained pursuant to this policy and Federal Title IX Regulations, who is tasked with conducting the investigation into allegations of sexual harassment addressed in a formal complaint. The Investigator does not need to be an employee of the District and may be outside counsel or any other person designated by the District. The Investigator shall not be the Title IX Coordinator or the Decision Maker.

P. Evidentiary Standard- The “Preponderance of the Evidence Standard” is the evidentiary standard to be used during the investigation and final determination of a formal complaint. Preponderance of the Evidence means that the evidence shows that the action

alleged is more likely to have occurred than not to have occurred.

Q. Remedial Actions or Remedial Remedies - “Remedial Actions or Remedial Remedies” are those actions intended to restore or preserve a Complainant’s equal access to the educational programs and activities of the District.

R. Respondent – The “Respondent” is any individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

S. Retaliation – “Retaliation” is the action(s) of another to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or reused to participate in any manner in an investigation or proceeding 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 or this Policy, constitutes retaliation.

T. Sexual Harassment – “Sexual Harassment” is defined by this policy to mean conduct on the basis of sex that satisfies one or more of the following:

- (1) “Quid Pro Quo”- An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct; or
- (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 the District’s educational program(s) or activity(ies); or
- (3) “Sexual assault” as defined in 20 U. S. C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U. S. C. 12291 (a)(8), or “stalking” as defined in 34 U. S. C. 12291 (a)(30).

U. Supportive Measures – “Supportive Measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant and/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, campus escort services, mutual restrictions on contact between the parties, changes in work or class locations, leaves of absence, increased

security and monitoring of certain areas of the District's facilities, and other similar measures. The District shall maintain as confidential any supportive measures provided to the Complainant and/or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide supportive measures. The Title IX Coordinator will coordinate the effective implementation of supportive measures.

II. TITLE IX COORDINATOR

- (1) The Title IX Coordinator is tasked with coordinating the District's response to all allegations involving possible sexual harassment. The Title IX Coordinator's responsibilities are critical to the development, implementation, and monitoring of meaningful efforts to comply with District and Federal Title IX regulations.
- (2) The Title IX Coordinator can be reached at:

Elice Gregory
Berkeley County Board of Education
1453 Winchester Avenue
Martinsburg, West Virginia 25405
(304) 267-3500

E-mail address: emgregor@k12.wv.us

<https://www.berkeleycountyschools.org/site/default.aspx?PageType=3&DomainID=5283&ModuleInstanceID=19179&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=40758&PageID=14417>

- (3) The name, title, office address, electronic mail address, and telephone number of the designated Title IX Coordinator shall be provided to applicants for admission and employment, students, parents or legal guardians of students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school district.
- (4) The Title IX Coordinator's duties include:
 - a) Understanding the District's policies and procedures;
 - b) Training of students and staff on the Title IX grievance procedures, reporting suspected sexual harassment and any other procedures used for investigating reports of

sexual violence;

- c) Identifying and addressing any patterns or systemic problems;
 - d) Cooperating with law enforcement and crisis centers;
 - e) Coordinating responses to all allegations of sex discrimination, including:
 - Implementing supportive measures
 - Monitoring outcomes
 - Identifying and addressing any patterns
 - Assessing effects on the District climate
 - f) Being mindful of school culture and climate and collecting and analyzing data on school climate as appropriate;
 - g) Being available to meet with students, parents and legal guardians, and employees as needed;
 - h) Avoiding and identifying conflicts of interest.
- (5) The Title IX Coordinator is independent and reports directly to the Superintendent,
- (6) The Title IX Coordinator shall not serve as either an Investigator or a Decision Maker.

III. TRAINING

- (1) The Title IX Coordinator is charged with coordinating, tracking and implementing all training and preventative educational programming related to this Policy and Federal Title IX compliance.
- (2) The Title IX Coordinator is charged with coordinating, tracking, and implementing the required training for all District employees, and ensuring that all training materials and contact information is available on the District's website and readily accessible as required by the Federal Title IX regulations and this Policy.
- (3) All Title IX Coordinator(s), Investigator(s), Decision-Maker(s), and any person who facilitates an informal resolution process shall receive annual training on the definition of sexual harassment, the scope of the District's education programs or activities, how to conduct an investigation and grievance process, including appeals and informal resolution process, as applicable, and how to serve

impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

- (4) Additionally, Decision-Makers shall receive training annually on any technology to be used during the decision-making process and on issues of relevance of questions and evidence, including when questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant.
- (5) Any materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

IV. REPORTING COMPLAINTS

- (1) Any District employee with actual knowledge of sex discrimination, including sexual harassment in an education program or activity as defined in the Policy, must report the sex discrimination to the Title IX Coordinator. Failure to report may result in disciplinary action, up to and including termination, being taken against the employee.
- (2) Any person may report sex discrimination, including sexual harassment as defined by this Policy, (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), to the Title IX Coordinator in person, by mail, by telephone, by electronic mail, or through the District's on-line portal. Reports may be made at any time, including during non-business hours.
- (3) Upon receipt of a report of alleged sexual harassment, the Title IX Coordinator shall ensure that the District's response treats Complainants and Respondents equitably by offering supportive measures to a Complainant and/or Respondent, and by following a grievance process as further discussed below, before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent.
- (4) Upon receipt of a report of alleged sexual harassment, the Title IX Coordinator will promptly provide the Complainant with information containing the following :
 - a) The availability of supportive measures that are available to the Complainant to immediately restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party.

- b) The availability of supportive measures with or without the filing of a formal complaint; and
 - c) The process for filing the formal complaint.
- (5) The Title IX Coordinator shall document which, if any, supportive measures were offered and accepted. If the Complainant refuses supportive measures, the Title IX must document why supportive measures were not offered and/or not accepted.
- (6) The Title IX Coordinator shall also contact the Respondent and inform them of the availability of supportive measures available to them.
- (7) The Complainant's parents or guardian will be informed of the availability to file a formal complaint if the Complainant is under the age of 18.

V. PROCEDURES FOR THE FORMAL COMPLAINT PROCESS

A. Filing a Formal Complaint

- (1) Based upon the allegation and information received from the Complainant, the Title IX Coordinator will determine if there was a possible likelihood of sexual harassment, at which point the Complainant and/or the Complainant's parent(s), or guardian(s) may decide to file a formal complaint. In the event that the Complainant and/or the Complainant's parent(s) or guardian(s) elect not to file a formal complaint, the Title IX Coordinator may file a formal complaint if the Title IX Coordinator determines that there is a possible likelihood of sex discrimination/harassment.
- (2) The filing of a formal complaint does not preclude the District from responding to the complaint by also applying other District policy violations, such as Code of Conduct violations, violations of the Berkeley County Student or Employee Handbook, Safe Schools Act, to allegations that are not related to sexual harassment. Non-sexual harassment allegations and/or findings shall be promptly reported to the principal of the student and/or the supervisor of the Respondent to process pursuant to the District's applicable policies, including its disciplinary policies.
- (3) At the outset of filing the formal complaint, the Title IX Coordinator shall contact the Complainant, and if the Complainant is under the age of 18, the Complainant's parent or guardian, and inform them of the Complaint. The Complainant and his/her parents, and/or guardian shall be told that the Complainant may be accompanied by an advisor during all steps of the complaint procedure. If the Complainant is over the age of 18, the parent and guardian contact will be at the option of the Complainant provided

the Complainant has capacity to make such determination.

- (4) If the Complainant refuses to initiate a formal complaint, the Title IX Coordinator may submit a signed, written formal complaint to initiate a formal investigation and complaint process, regardless of the Complainant/Complainant's parent's or guardian's consent, if based upon the allegations and information received there is the possible likelihood of sexual harassment.
- (5) The Title IX Coordinator shall submit a signed, written formal complaint to initiate a formal investigation and complaint process, regardless of the Complainant/Complainant's parent's or guardian's consent, if the allegations and information received involve sexual harassment of a student by an employee.
- (6) Once a formal complaint has been filed, the Title IX Coordinator will promptly provide the Complainant with a copy of this Policy.
- (7) Immediately following the filing of a Formal Complaint, the Title IX Coordinator will initiate the investigation of the allegations by a trained Investigator.

B. CONSOLIDATION OF FORMAL COMPLAINTS

- (8) The District may consolidate formal complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, where the allegations of sexual harassment arise out of the same facts or circumstances.
- (9) Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular "party," "Complainant," or "Respondent" include the plural, as applicable.

C. Investigation of a formal complaint

Notice of Allegation(s):

- (10) Upon receipt of a formal complaint, the Title IX Coordinator must provide written notice to the Complainant and Respondent, if known, informing them that a formal complaint has been filed. The Notice of Allegation shall include, but is not limited to, the following information:
 - a) Notice of the District's grievance process, including the informal resolution process.
 - b) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined by

this Policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview(s).

- 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.
- c) A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
 - d) A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
 - e) A statement that the parties have a right under this Policy to inspect and review evidence gathered during the course of the investigation and grievance process.
 - f) A statement that knowingly making false statements or knowingly submitting false information during the grievance process is prohibited and a violation of the District's code of conduct policy, for which disciplinary action may be taken.
- (11) If, in the course of an investigation, the District learns of or decides to investigate additional allegations about the Complainant or Respondent that are not included in a prior Notice of Allegation provided to the parties, the District shall provide notice of the additional allegations to the parties whose identities are known.
- (12) The Title IX Coordinator or his/her designee shall provide, to any 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.

Burden of Proof:

- (13) Throughout the course of the investigation of the formal complaint and throughout the grievance process (collectively, "Formal Complaint Process"), the burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on the parties.
- (14) At the outset of an investigation, there is a presumption that the

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

Disclosure of Medical Records:

- (15) Throughout the Formal Complaint Process, the District cannot 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 District obtains that party's voluntary, written consent to do so for use in the Formal Complaint Process under this section. If party is not able to consent because s/he is not 18 years of age or otherwise emancipated, the District must obtain the voluntary, written consent of the party's parent or legal guardian.

Conflicts of Interest:

- (16) Any individual designated by the District as a Title IX Coordinator, Investigator, Decision-Maker, or any person designated by a recipient to facilitate an informal resolution process, must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

Investigation Timeframe:

- (17) The District will endeavor to complete investigations within sixty (60) days of the date on which the formal complaint was received, however, the District's primary objective is a thorough and equitable investigation and grievance process.
- (18) The District shall coordinate its investigation and grievance process with any other ongoing criminal investigation of the incident, if any. The District may determine whether to delay its investigation pending the conclusion of a criminal investigation or for criminal proceedings to begin. If the fact-finding portion of the investigation is suspended due to the existence of a criminal investigation, the District's investigation shall resume promptly once law enforcement officials have completed their evidence gathering state of the criminal investigation.
- (19) In the event of a temporary delay of the process or the limited extension of time frames for good cause, the Title IX Coordinator shall provide written notice to both the Complainant and the Respondent notifying them of the delay or extension and providing

the reason for the action.

- (20) Good cause for a delay of the process or extension of the time frames may include, but is not limited to, considerations such as:
- a) The absence of a party; a party's advisor, or a witness;
 - b) Concurrent law enforcement activity; or
 - c) The need for language assistance or accommodation of disabilities.

Contents of Investigation:

- (21) An investigation must include interviews with the Complainant, Respondent, and any witnesses. An investigation may include, but is not limited to, the following: review of any documentary or electronic evidence; a review of medical evidence if a waiver has been obtained by the party to which the medical records belong; a review of security data; and a review of any other material which the Investigator deems relevant to an assessment of the facts surrounding the formal complaint.
- (22) District employees and students are required to participate fully in an investigation, but in no event will a Complainant be subjected to any disciplinary sanctions or consequences for refusing or failing to participate.
- (23) All parties shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
- (24) Neither party shall be restricted from discussing the allegations under investigation, nor shall they be restricted from gathering and presenting relevant evidence.
- (25) The parties shall be provided with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied by an advisor of their choice to any related interview, meeting or proceeding. The advisor may be, but is not required to be an attorney. The choice of or presence of the advisor for either the Complainant or Respondent in any meeting or grievance proceeding may not be limited; however, the advisor may only observe the proceedings and shall not actively participate in any part of the proceeding.

Review and Response to the Investigation Report:

- (26) Each party shall have equal opportunity to inspect and review any

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

- (27) Prior to the completion of the investigative report, the District must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or hard copy, and all parties must have at least ten (10) days to submit a written response, which the Investigator will consider prior to the completion of the investigative report.
- (28) The parties' written responses submitted to the Title IX Coordinator within the ten (10) day time frame, shall be included as an exhibit to the investigation report.

Investigation Report:

- (29) Upon receipt of each party's review of the evidence or after 10 days, whichever occurs first, the Investigator must create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to submitting the investigation report to the Decision Maker, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.
- (30) The investigation report and any responses thereto shall be submitted to the Title IX Coordinator, who shall, determine if all procedures and timelines for response were followed in the investigation. If not, the Title IX Coordinator shall return the report to the Investigator to comply with applicable procedures and timelines. If all procedures and timelines are complete, the Investigator shall submit the Investigation Report, all responses, and all evidence to the Decision Maker to determine whether or not there is responsibility under this Policy.

VI. DISMISSAL OF FORMAL COMPLAINT

- (1) If after an investigation it is determined that the formal complaint does not fit within the Federal definition of Title IX, the complaint will be mandatorily dismissed.
- (2) Mandatory dismissal is required when, after an investigation, the allegations:
 - a) Do not constitute sexual harassment, even if proven;

- b) Did not occur as part of the District's educational program/activity; or
 - c) Did not occur in the United States.
- (3) A dismissal does not preclude action under another provision or policy of the District, including codes of conduct.
- (4) The District may also dismiss the formal complaint or any allegations therein, if at any time during the investigation or prior to a decision being issued by the Decision Maker:
 - a) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
 - b) The Respondent is no longer enrolled or employed by the District; or
 - c) Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- (5) Upon a dismissal required or permitted pursuant to paragraph VI(2) or VI(4) of this section, the District must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the Complainant and the Respondent, and inform them of their right to appeal the dismissal pursuant to this Policy.

Final Determination of Responsibility:

- (6) After the investigative report has been sent to all parties and before reaching a final determination regarding responsibility, the Decision Maker must:
 - a) Afford each party the opportunity to submit written and relevant questions that a party wants to ask of any other party or witness involved in the allegations. The parties shall return the questions to the Decision Maker within 10, unless otherwise agreed upon and communicated in writing to the parties.
 - b) The questions will be provided to the relevant party or witness to answer in writing. The timeline for returning answers to the Decision Maker will be 10 days, unless otherwise agreed upon and communicated in writing to the parties.
 - c) Each party will be provided with the written answers to

all written questions.

- d) The Decision Maker will then allow for additional limited follow-up questions and answers from each party, as appropriate.
- e) The Decision Maker may exclude a question asked by a party as irrelevant. If the Decision Maker decides to exclude a question asked by a party as not relevant, the Decision Maker must explain in writing why the exclusion occurred.
- f) The Decision Maker shall not consider the Complainant's prior sexual predisposition or sexual behavior unless such evidence is being offered to prove someone other than the Respondent committed the alleged conduct or is offered to prove consent to the activity with the Respondent.
- g) After all questions and answers have been received, the Decision Maker must issue a written determination, to be given to the parties simultaneously, that provides a statement of, and rationale for, the result as to each allegation. The written determination must include the following:
 - Identification of the allegations constituting sexual harassment;
 - Description of procedural steps taken from the receipt of the formal complaint through the final determination of responsibility, including: any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and other actions taken;
 - Finding of facts supporting the determination;
 - Conclusions regarding the application of the District's policies to the facts; and
 - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions recommended by the Decision Maker regarding discipline to be imposed, and whether remedies designed to restore or preserve equal access to the

District's education program or activity will be provided by the District to the Complainant; and

- The District's procedures and permissible bases for the Complainant and Respondent to appeal the final determination.
- h) The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- i) After a determination becomes final, the Title IX Coordinator is responsible for the effective implementation of any remedies.
- j) Disciplinary actions and procedures shall be consistent with the Student and Employee Codes of Conduct, District policies, procedures, and other applicable state and federal laws, rules, regulations, and constitutional requirements.

VII. DISCIPLINARY SANCTIONS AND REMEDIAL ACTIONS UPON FINAL DETERMINATION OF RESPONSIBILITY

- (1) Disciplinary sanctions against an employee may include any available sanction available for the discipline of employees, up to and including termination of their employment contract pursuant to W. Va. Code 18A-2-8.
- (2) Disciplinary sanctions against a student may include any available discipline or sanction, up to and including expulsion, under the policies, rules and procedures that establish the District.
- (3) Remedial actions as to a Respondent after a final finding of responsibility, whether employee or student, may include the imposition upon a responsible Respondent of any additional non-disciplinary measures appropriate to effecting a remedy for sexual harassment, and may include such measures as no-contact requirements, scheduling adjustments, removal or exclusion from extracurricular activities, class reassignments, limits on future class registrations, restrictions on access to various spaces in the school buildings, reassignment of attendance, and similar measures to respond appropriately to the circumstances surrounding a successful Complainant's right to access the district's program and activity.

- (4) Additional remedial actions may include recommendations that a school-wide or system-wide response is needed in order to respond to the sexual harassment in a way that is not clearly unreasonable under the circumstances. In such cases, 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.

VIII. APPEALS

- (1) Both parties have the right to appeal a determination regarding responsibility, the dismissal of a formal complaint, or any allegations in the formal complaint on the basis of:
 - a) Procedural irregularity;
 - b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal as made that could affect the outcome of the matter;
 - c) Bias or conflict of interest against the Complainant or Respondent on the part of the Title IX Coordinator or the Decision-Maker that affected the outcome of the matter; and/or
 - d) Any other reasonable basis for an appeal.
- (2) The appeal must be submitted in writing to the Superintendent within ten (10) days from the receipt of the Decision-Maker's final determination.
- (3) Upon receipt of a party's notice of intent to appeal, the District must:
 - a) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
 - b) Ensure that the Decision-Maker(s) for the appeal is not the same as the Decision-Maker that reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator;
 - c) Ensure that the Decision-Maker(s) for the appeal complies with the standards set forth for the bases for the appeal;
 - d) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging,

the outcome;

- e) Issue a written decision describing the result of the appeal and the rationale for the result; and
- f) Provide the written decision simultaneously to both parties.

IX. INFORMAL RESOLUTION PROCESS AND PROCEDURES

- (1) An informal resolution process may be facilitated at any time after the Formal Complaint is filed and prior to the determination regarding responsibility, with the exception that an informal resolution is not permitted to resolve allegations that an employee of the District sexually harassed a student.
- (2) The District will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.
- (3) The informal resolution process takes the form of an informal mediation and does not involve a full investigation and adjudication.
- (4) In order to have an informal resolution, the District will:
 - a) Provide to the parties a written notice disclosing the allegations, 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, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
 - b) Obtain the parties' voluntary, written consent to the informal resolution process.

X. RECORD KEEPING AND REPORTING

- (1) **Record Keeping-** The District will maintain for a period of seven years records of:
 - a) Each sexual harassment investigation including any determination regarding responsibility and any audio or

audiovisual recording or transcript required under this Policy, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the District's educational program or activity;

- b) Any appeal and the result therefrom;
- c) Any informal resolution and the result therefrom; and
- d) All materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process. These training materials will be made publicly available on the District's website, as well as available upon request for inspection by the public.
- e) All records of any actions taken in response to an allegation, including any supportive measures taken in response to a report or formal complaint of sexual harassment. If a Complainant or Respondent is not provided with or refuses supportive measures, then the District will document the reason(s) why supportive measures were not offered and/or accepted, and why such response was not clearly unreasonable in light of the known circumstances.

- (2) **Reporting-** The Superintendent will report any conviction of a felony, determination, hearing determination, or admission by any employee of "immorality" or "willful neglect of duty" to the West Virginia State Superintendent of Schools.

If an employee subject to possible discipline for violations of this Policy retires or resigns prior to the completion of the investigation, or before a final disposition is made, or during the course of a disciplinary hearing, the Superintendent shall report the allegations to the database maintained by the West Virginia State Superintendent of Schools pursuant to the requirements set forth in W. Va. Code 18A-2-8 and any revisions thereto. The report of allegations will be placed in the employee's personnel file and shall remain in said file until the District is specifically ordered to remove the same by an administrative body or court of competent jurisdiction, such as the West Virginia Education and Public Employees Grievance Board, the Circuit Court of Berkeley County, or West Virginia Supreme Court of Appeals.

XI. RETALIATION

No person shall, for the purpose of interfering with any right or privilege

secured by Title IX or this Policy, intimidate, threaten, coerce, or discriminate against any individual who is the victim of or who reports alleged sexual harassment or testifies, assists, or participates in an investigation, final determination of any proceeding or hearing related to a sexual harassment complaint. Should retaliation occur, the victim shall promptly report the actions to principal or the Title IX Coordinator. Persons found guilty of retaliation shall be subject to discipline.

XII. CONFIDENTIALITY

- (1) The District must keep confidential the identity of any individual who has made a report or complaint of sexual harassment; any individual who has been reported to be the perpetrator of sexual harassment; and any witnesses, except as to carry out the purposes of any investigation or proceeding.
- (2) Notwithstanding anything to the contrary in this Policy, while a Complainant has the right to all documents in the investigation and the written determination, any disciplinary action shall not be disclosed to a Complainant to the extent such disclosure is prohibited by the Family Educational Rights and Privacy Act (FERPA) or other applicable laws, regulations, rules, constitutional requirements, or orders.

XIII. NOTICE OF POLICY

- (1) The District will notify applicants for admission and employment, students, parents or legal guardians of students, employees, and all unions and professional organizations that the District does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX and its regulations not to discriminate in such manner.
- (2) Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX related to the District may be referred to the Title IX Coordinator, to the Assistant Secretary of the Department of Education, or both.
- (3) The District and each school within it must prominently display the contact information for the Title IX Coordinator and this policy on its website, if any, and in each handbook or catalog provided to students, parents or legal guardians of students, and employees
- (4) The District does not treat applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX or its regulations.