NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES

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2266 – **NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES**

Introduction

The School Board of the Porter Township School Corporation (hereinafter referred to as "the Board" or "the Corporation") does not discriminate on the basis of sex in its education programs or activities and is required by Title IX of the Education Amendments of 1972 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 Board is committed to maintaining an education and work environment that is free from discrimination based on sex, including sexual harassment.

The Board prohibits Sexual Harassment that occurs within its education programs and activities. When the Corporation 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 Corporation Community who commit Sexual Harassment are subject to the full range of disciplinary sanctions set forth in this policy. Third Parties who engage in Sexual Harassment also are subject to the disciplinary sanctions listed in this policy. The Board will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to the Corporation's education programs and activities.

Coverage

This policy applies to Sexual Harassment that occurs within the Corporation's education programs and activities and that is committed by a member of the Corporation Community or Third Party.

This policy does not apply to Sexual Harassment that occurs off school grounds, in a private setting, and outside the scope of the Corporation's education programs and activities; such Sexual Misconduct/Sexual Activity may be prohibited by the Student Code of Conduct if committed by a student, or by Board policies and administrative guidelines, applicable State and/or Federal laws and/or Employee/Administrator Handbook(s) if committed by a Corporation employee.

Consistent with the U.S. Department of Education's implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in the Corporation'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 Board policies and administrative guidelines, applicable State and/or Federal laws and/or Employee/Administrator Handbook(s) if committed by a Corporation employee.

Complaints alleging sexual harassment and/or discrimination on the basis of sex also are covered by and subject to the investigation procedures in Board Policy 5517 - Anti-Harassment. Complaints not covered by this policy still may be governed by and subject to the procedures in Policy 5517 - Anti-Harassment.

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

A. a Corporation employee conditioning the provision of an aid, benefit, or service of the Corporation on an individual's participation in unwelcome sexual conduct (often called "quid pro quo" harassment);

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 Corporation's education program or activity; or

C. “sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), or “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

“Sexual assault” means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent, and the "nonforcible" sex offenses of Incest and Statutory Rape. Sexual assault includes rape, sodomy, sexual assault with an object, criminal sexual contact (f.ka. fondling), incest, and statutory rape.

1. 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. (Effective upon the retirement of the Summary Reporting System, which is scheduled for January 2021)

2. 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.

3. 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.

4. Criminal Sexual Contact (f.k.a. Fondling) is the intentional touching of the clothed or unclothed body parts, without consent, of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation; or the forced touching by the victim of the other individual’s clothed or unclothed body parts, without consent of the victim, for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

5. Incest is nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by State law.

6. Statutory Rape is nonforcible sexual intercourse with a person who is under the statutory age of consent as defined by State law.

7. Consent refers to words or actions that a reasonable person would understand as agreement to engage in the sexual conduct at issue. A person may be incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. A person who is incapacitated is not capable of giving consent.

8. 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.

"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 who is 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.

"Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. 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.

"Stalking" means 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: “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

Respondent: “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

Formal Complaint: “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the Corporation investigate the allegation(s) of Sexual Harassment. At the time of filing a Formal Complaint with the Corporation, a Complainant must be participating in or attempting to participate in the Corporation'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: “Actual knowledge” means notice of Sexual Harassment or allegations of Sexual Harassment to the Corporation's Title IX Coordinator, or any Corporation official who has authority to institute corrective measures on behalf of the Board, or any Corporation 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 Corporation. “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 Corporation official with actual knowledge is the Respondent.

Supportive Measures: “Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the Corporation's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Corporation'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: “Education program or activity” refers to all operations of the Corporation, including but not limited to in-person and online educational instruction, employment, extracurricular 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 Corporation. It also includes locations, events, and circumstances that take place off-school property/grounds over which the Board exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs.

Corporation Community: “Corporation Community” refers to students and Corporation employees (i.e., administrators and professional and classified staff), as well as Board members, agents, volunteers, contractors, and other persons subject to the control and supervision of the Board.

Third Parties: “Third Parties” include, but are not limited to, guests and/or visitors on Corporation property (e.g., 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 Corporation Community at school-related events/activities (whether on or off Corporation property).

Inculpatory Evidence: “Inculpatory evidence” is evidence that tends to establish a Respondent’s responsibility for alleged Sexual Harassment.

Exculpatory Evidence: “Exculpatory evidence” is evidence that tends to clear or excuse a Respondent from allegations of Sexual Harassment.

Day(s): Unless expressly stated otherwise, the term “day” or “days” as used in this policy means business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays),

Eligible Student: “Eligible Student” means a student who has reached eighteen (18) years of age or is attending an institution of postsecondary education.

Title IX Coordinator(s)

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

Superintendent
Porter Township School Corporation
248 S 500 W
Valparaiso, IN 46385
219-477-4933 Ext. 1000
superintendent@ptsc.k12.in.us

Assistant Superintendent
Porter Township School Corporation
248 S 500 W
Valparaiso, IN 46385
219-477-4933 Ext. 1000
assistant.superintendent@ptsc.k12.in.us

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 Attorney. Questions about this policy should be directed to the Title IX Coordinator.

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

The Board of the Porter Township School Corporation does not discriminate on the basis of sex 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 Corporation's Title IX Coordinator(s) is/are:

Superintendent
Porter Township School Corporation
248 S 500 W
Valparaiso, IN 46385
219-477-4933 Ext. 1000
superintendent@ptsc.k12.in.us

Assistant Superintendent
Porter Township School Corporation

248 S 500 W
Valparaiso, IN 46385
219-477-4933 Ext. 1000
assistant.superintendent@ptsc.k12.in.us

Any inquiries about the application of Title IX and its implementing regulations to the Corporation 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 Board has adopted a grievance process that provides for the prompt and equitable resolution of student and employee complaints alleging any action that is prohibited by Title IX and/or its implementing regulations. The grievance process is included in Policy 2266 – Nondiscrimination on the Basis of Sex in Education Programs or Activities, which is available at: ptsc.k12.in.us. 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 Corporation will respond.

The Superintendent also shall prominently display the Title IX Coordinator's(s') contact information – including Name(s) and/or Title(s), Phone Number(s), Office Address(es), and Email Address(es) – and this Policy on the Corporation's website and in each handbook or catalog that the Board makes available to applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, Corporation employees, and all unions or professional organizations holding collective bargaining or professional agreements.

Grievance Process

The Board is committed to promptly and equitably resolving student and employee complaints alleging Sexual Harassment. The Corporation's response to allegations of Sexual Harassment will treat Complainants and Respondents equitably, including providing supportive measures to the Complainant and Respondent, as appropriate, and following this Grievance Process before the imposition of any disciplinary sanctions or other actions, other than supportive measures, against the Respondent.

The Title IX Coordinator(s), 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 Corporation's education program or activity. Potential remedies include, but are not limited to, individualized services that constitute supportive measures. Remedies also may be disciplinary or punitive in nature and may burden the Respondent.

The Process described herein relates exclusively to complaints brought under this Policy. The Corporation will continue to handle complaints subject to the Corporation's other nondiscrimination and anti-harassment policies, including Policy 5517 - Anti-Harassment; Policy 5517.01 - Bullying; Policy 2260 - Nondiscrimination and Access to Equal Educational Opportunity; Policy 2260.01 - Section 504/ADA Prohibition Against Discrimination Based on Disability; Policies 1422/3122/4122 - Nondiscrimination and Equal Employment Opportunity; and Policies 1662/3362/4362 - Anti-Harassment.

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(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(s) or electronic mail address(es), or by mail to the office address(es), listed for the Title IX Coordinator(s).

Students, Board Members, Corporation employees, are required, all Corporation Community members and Third Parties are required to report allegations of sex discrimination or Sexual Harassment promptly to the/a Title IX Coordinator or to any Corporation employee, who in turn will notify the/a 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 one of the Title IX Coordinators, the person making the report should submit it to the other Title IX Coordinators, or another Board employee who, in turn, will notify the Board Attorney of the report. The Board Attorney will then serve in place of the Title IX Coordinator for purposes of addressing that report of Sexual Harassment.

The Board does business with Third Parties who are not students or employees of the Board. Notwithstanding any rights that a given Third-Party Respondent may have under this policy, the

Board retains the right to limit any vendor's, contractor's, or Third Party's access to school grounds for any reason. The Board further retains all rights it enjoys by contract or law to 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. Likewise, 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 Board policies and/or administrative guidelines, the applicable Student Code of Conduct, or Employee/Administrator Handbook(s).

Because the Board is considered to have actual knowledge of Sexual Harassment or allegations of Sexual Harassment if any Corporation 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 Corporation 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 within two (2) days of learning the information or receiving the report. The Corporation employee must also comply with mandatory reporting responsibilities regarding suspected abuse, abandonment or neglect of a child pursuant to I.C. 31-33-5-1 and Policy 8462– Student Abuse and Neglect, if applicable. If the Corporation employee's knowledge is based on another individual bringing the information to the Corporation employee's attention and the reporting individual submitted a written complaint to the Corporation employee, the Corporation employee must provide the written complaint to the Title IX Coordinator.

If a Corporation employee fails to report an incident of Sexual Harassment of which the Corporation employee is aware, the Corporation 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 (i.e., within two (2) days) of the Title IX Coordinator's receipt of the report of Sexual Harassment) contact the Complainant (including the parent/guardian if the Complainant is under eighteen (18) years of age 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 Corporation to provide the supportive measures. The Title IX Coordinator shall consider whether any action should be taken to prioritize the safety of and protect the Complainant from further harassment or retaliation.

Emergency Removal: Subject to limitations and/or procedures imposed by State and/or Federal law, the Corporation may remove a student Respondent from its education program or activity on an emergency basis after conducting an individualized safety and risk analysis. The purpose 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 Corporation 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. See Policy 5605 – Suspension and Expulsion of Students with Disabilities, Policy 5610 – Suspension and Expulsion of Students, Policy 5611 – Due Process Rights, and 5620 – Court Assisted Resolution of Suspension and Expulsion.

If the Respondent is a non-student employee, the Corporation may place the Respondent on administrative leave during the pendency of the grievance process.

For all other Respondents, including other members of the Corporation 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 above. If a Formal Complaint involves allegations of Sexual Harassment by or involving a Title IX Coordinator, the Complainant should submit the Formal Complaint to the other Title IX Coordinator, 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.

When the Title IX Coordinator receives a Formal Complaint or signs a Formal Complaint, the Corporation will follow its Grievance Process, as set forth herein. Specifically, the Corporation 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. The Board will not tolerate such conduct, which is a violation of the Student Code of Conduct and the Employee/Administrator Handbook.

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 Corporation will seek to conclude the grievance process within ninety (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. 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 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;

3. inform the parties of any provision in the Student Code of Conduct, this policy, and/or Employee/Administrator Handbook that prohibits 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 Corporation shall investigate the allegations in a Formal Complaint, unless the conduct alleged in the Formal Complaint:

A. would not constitute Sexual Harassment (as defined in this policy) even if proved;

B. did not occur in the Corporation's education program or activity; or

C. did not occur against a person in the United States.

If one of the preceding circumstances exists, 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 Corporation may still investigate and take action with respect to such alleged misconduct pursuant to another provision of an applicable code of conduct, Board policy, and/or Employee/Administrator Handbook.

The Title IX Coordinator may dismiss a Formal Complaint, or any allegations therein, if at any time during the investigation.

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 in the Corporation or employed by the Board; or

C. specific circumstances prevent the Corporation 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 promptly must 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 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 the other party, where the allegations of Sexual Harassment 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:

A. the allegations;

B. 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

C. 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 Corporation employee or another adult member of the Corporation 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 Corporation, 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 Corporation 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 Corporation with voluntary, written consent to do so; if a student party is not an Eligible Student, the Corporation 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:

A. present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; and

B. 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 Corporation may not limit the choice or presence of an advisor for either the Complainant or Respondent in any meeting or grievance proceeding.

   The Corporation establishes the following restriction, which applies equally to both parties, regarding the extent to which an advisor may participate in the proceedings:

   The meeting will proceed in an orderly manner and follow general rules of decorum.

C. Board Policy 2461 – Recording of Corporation Meetings Involving Students and/or Parents controls whether a person is allowed to audio record or video record 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 Corporation 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 a minimum of one (1) days' notice with respect to investigative interviews and other meetings.

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 Corporation 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 at least ten (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 ten (10) calendar days prior to the decision-maker(s) issuing a determination regarding 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 questions 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 Corporation impose on the Respondent(s) and whether remedies designed to restore or preserve equal access to the Corporation's education program or activity should be provided by the Corporation to the Complainant(s); and

F. the procedures and permissible bases for the Complainant(s) and Respondent(s) to appeal.

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:

A. Informal Discipline

1. writing assignments;

2. changing of seating or location;

3. before-school, lunchtime, after-school detention;

4. in-school discipline;

5. Saturday school.

B. Formal Discipline

1. suspension of bus riding/transportation privileges;

2. removal from co-curricular and/or extra-curricular activity(ies), including athletics;

3. emergency removal;

4. suspension for up to ten (10) school days;

5. expulsion for up to eighty (80) school days or the number of school days remaining, whichever is greater;

6. expulsion for up to one (1) year; 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) in compliance with Policy 5600 – Student Discipline, Policy 5605 – Suspension/Expulsion of Students with Disabilities, Policy 5610 – Suspension and Expulsion of Students, Policy 5610.02 – In-School Discipline, and Policy 5611 – Due Process Rights. Discipline of a student Respondent must comply with the applicable provisions of the Individuals with Disabilities Education Act (IDEA), as amended, and/or Section 504 of the Rehabilitation Act of 1972, and their respective implementing regulations.

Disciplinary sanctions/consequences may be imposed on an employee Respondent who is determined responsible for violating this policy including but not limited to (i.e., engaging in Sexual Harassment):

A. oral or written warning;

B. written reprimands;

C. performance improvement plan;

D. required counseling;

E. required training or education;

F. demotion;

G. suspension with pay;

H. suspension without pay;

I. termination;

J. any other sanction authorized by any applicable Employee/Administrator Handbook and/or applicable collective bargaining agreement.

If the decision-maker(s) determines the employee 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) in compliance with applicable due process procedures, whether statutory or contractual. If the Superintendent is the Respondent, the Title IX Coordinator will notify the Board Attorney of the recommended remedies for consideration and, if necessary and appropriate, implementation in compliance with applicable due process procedures, whether statutory or contractual.

Discipline of an employee will be implemented in accordance with Federal and State law, Board policy, and applicable provisions of any relevant collective bargaining agreement.

Disciplinary sanctions/consequences may be imposed on a non-student/non-employee member of the Corporation Community or a Third Party who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment), including but not limited to:

A. oral or written warning;

B. suspension or termination/ cancellation of the Board's contract with the third-party vendor or contractor;

C. mandatory monitoring of the third party while on school property and/or while working/interacting with students;

D. restriction/prohibition on the third party's ability to be on school property; and

E. any combination of the same.

If the decision-maker(s) determines the third party Respondent is responsible for violating this policy (i.e., engaging in Sexual Harassment), the decision-maker(s) will recommend appropriate remedies, including 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 ultimately imposing a disciplinary sanction/consequence, the Superintendent (or the Board when the Superintendent is the Respondent) 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 School Board members.

The Corporation'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 and procedures, 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 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:

A. procedural irregularity that affected the outcome of the matter (e.g., material deviation from established procedures);

B. 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

C. 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; and

D. the recommended remedies (including disciplinary sanctions/consequences) are unreasonable in light of the findings of fact (i.e., the nature and severity of the Sexual Harassment).

The Complainant(s) may not challenge the ultimate disciplinary sanction/consequence that is imposed.

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 (5) 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 (or the Board when the Superintendent is the Respondent) from implementing appropriate remedies, excluding disciplinary sanctions, 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 (5) 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 (5) 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 Corporation 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, 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 Corporation'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 related 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 Corporation'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:

A. the definition of Sexual Harassment (as that term is used in this policy);

B. the scope of the Corporation's education program or activity;

C. how to conduct an investigation and implement the grievance process, appeals and informal resolution processes, as applicable; and

D. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interests, and bias.

All Corporation 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.

Record-keeping

As part of its response to alleged violations of this policy, the Corporation shall create, and maintain for a period of seven (7) 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 Corporation 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 Corporation's education program or activity. If the Corporation does not provide a Complainant with supportive measures, then the Corporation 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 Corporation in the future from providing additional explanations or detailing additional measures taken.

The Corporation shall maintain for a period of seven (7) calendar years the following records:

A. each Sexual Harassment investigation including any determination regarding responsibility, any disciplinary sanctions recommended and/or imposed on the Respondent(s), and any remedies provided to the Complainant(s) designed to restore or preserve equal access to the Corporation's education 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.

The Corporation will make its training materials publicly available on its website.

Outside Appointments, Dual Appointments, and Delegations

The Board retains discretion to appoint suitably qualified persons who are not Corporation employees to fulfill any function of the Board under this policy, including, but not limited to, Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor.

The Board also retains discretion to 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 Corporation 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 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 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 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.

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Legal
I.C. 31-33-5-1
I.C. 20-33-8
20 U.S.C. 1681 et seq., Title IX of the Education Amendments of 1972 (Title IX)
20 U.S.C. 1400 et seq., The Individuals with Disabilities Education Act of 2004 (IDEA), as amended
42 U.S.C. 2000c et seq., Title IV of the Civil Rights Act of 1964
42 U.S.C. 2000d et seq.
42 U.S.C. 2000e et seq.
42 U.S.C. 1983
34 C.F.R. Part 106
OCRs Revised Sexual Harassment Guidance (2001)
20 U.S.C. 1092(F)(6)(A)(v)
34 U.S.C. 12291(a)(10)
34 U.S.C. 12291(a)(8)
34 U.S.C. 12291(a)(30)