



Book	Rules
Section	5000 Students
Title	Sexual Harassment/Title IX
Number	5116
Status	Active
Adopted	
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I. Purpose

The purposes of this rule are as follows.

- A. Provision of information regarding Title IX.
- B. Adoption of procedures which:
 - 1. Address the prompt and equitable resolution of complaints which allege a violation of Title IX and its implementing regulations and which do not involve sexual harassment or allegations of sexual harassment.
 - 2. Address sexual harassment as defined herein.
- C. Designation of a Title IX Coordinator responsible to coordinate efforts to comply with Title IX, its implementing regulations, and this procedure.

II. Discrimination on the Basis of Sex Not Involving Sexual Harassment Or Allegations of Sexual Harassment

A. Definitions For This Section II

- 1. **Complainant** means any person who files a report under this Section II.

2. **Complaint** means a written or verbal statement which sets forth an allegation that a member of the school community has been subject to conduct which is in violation Title IX or retaliation under this Section II.
3. **Days** means calendar days.
4. **Discrimination** means the following.
 - a. Being, on the basis of sex, including sexual orientation and gender identity, unlawfully subject to: exclusion from participation in, denial of the benefits of, or, unfavorable differential treatment with respect to, any academic, extra-curricular, research, occupational training, or other education program or activity provided by CCPS.
 - b. Being, on the basis of sex, including sexual orientation and gender identity, unlawfully subject to: exclusion from, participation in, denial of the benefits of, or being subject to unfavorable differential treatment with respect to employment, recruitment, consideration or selection for employment by CCPS.
5. **CCPS** means Charles County Public Schools.
6. **Member Of School Community** means:
 - a. Board of Education member.
 - b. Any employee of CCPS.
 - c. Any CCPS volunteer.
 - d. A CCPS student.
 - e. Any other person who participates in activities of CCPS or is present on CCPS grounds or premises and is under the authority or control of CCPS.
7. **Retaliation** means
 - a. Unfavorable differential treatment of a person because that person has opposed any act or practice which is unlawful under Title IX or has made a charge, testified, assisted or participated in an investigation, proceeding or other matter pursuant to Title IX; or
 - b. Threatening, coercing, intimidating or interfering with any person because that person has opposed any act or practice which is unlawful under the Title IX or has made a charge,

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

Title IX means Title IX of the Education Amendments of 1972, codified at 20 U.S. Code Section 1681, *et seq.* and its implementing regulations codified at 34 Code of Federal Regulations (CFR) Part 106.1, *et seq.* which, in pertinent part, prohibit discrimination on the basis of sex in employment with respect to access to facilities, program or activities and prohibit sexual harassment.

9. **CCPS Title IX Coordinator** - Kathy Kiessling
10. **School Based Title IX Coordinator** – Those individuals selected by each school’s Principal to fulfill requirements of this procedure within their school.

B. Complaint Procedure

Complaints alleging discrimination on the basis of sex, sexual orientation or gender identity or retaliation which do not involve sexual harassment or allegations of sexual harassment shall be submitted orally or in writing to the CCPS Title IX Coordinator, 5980 Radio Station Road, P.O. Box 2770, La Plata, MD 20646. Kathy Kiessling, Phone: 301-934-7325 or Email: kkiessling@ccboe.com.

1. A Complainant shall file a complaint within ninety (90) days of the date the alleged act of discrimination occurred.
2. The CCPS Title IX Coordinator shall attempt to informally resolve a complaint within thirty (30) days of the receipt of same.
3. If an informal resolution cannot be reached, the CCPS Title IX Coordinator shall issue a written decision setting forth in concise fashion his/her decision regarding the complaint and the reasons for the decision. Such written decision shall be issued within sixty (60) days of receipt of the complaint.
4. All decisions of the CCPS Title IX Coordinator, under this Section, may be appealed to the Superintendent or designee pursuant to Section 4-205 of the Education Article of the Maryland Annotated Code.
5. The complaint procedure described herein is in addition to any other administrative or judicial action the Complainant may pursue.

III. Discrimination on the Basis of Sex Involving Sexual Harassment or Allegations of Sexual Harassment

A. Definitions

1. **Complainant** means a person who is alleged to be the victim of conduct which constitutes sexual harassment and includes, if the victim is under the age of 18, the parent or guardian of the victim.
2. **Days** means calendar days unless specified otherwise.
3. **Decision-Maker** means the school official responsible for making a determination regarding responsibility in response to an investigation of sexual harassment triggered by a formal complaint.
4. **Disciplinary Sanctions** mean consequences imposed on a Respondent when the Respondent is found responsible for sexual harassment.
5. **Eligible Complainant** means a Complainant who is participating in a CCPS education program or activity at the time of the filing of a formal complaint.
6. **Formal Complaint** means a document filed and signed by a Complainant or signed by the CCPS or School Based Title IX Coordinator, alleging sexual harassment against a Respondent and which requests that CCPS investigate the allegations of sexual harassment.
7. **Investigative Report** means a written account of the findings of the investigation conducted in response to a formal complaint.
8. **Investigator** means the school official responsible for investigating and responding to a formal complaint.
9. **Member Of School Community** means:
 - a. Board of Education member.
 - b. Any employee of CCPS.
 - c. Any CCPS volunteer.
 - d. A CCPS student.
 - e. Any other person who participates in activities of CCPS or is present on CCPS grounds or premises and is under the authority or control of CCPS.
10. **Remedies** means individualized measures provided to a Complainant designed to restore or preserve the Complainant's equal access to the education program and activities of the school system when a Respondent is found responsible for sexual harassment.

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

11. **Removal** means requiring a Respondent to discontinue his or her attendance or participation in a CCPS education program or activity on an emergency basis.
12. **Report** means a communication whether verbal or written, in which any person notifies the CCPS or School Based Title IX Coordinator of sexual harassment.
13. **Reporter** means a person who submits a report.
14. **Respondent** means a person who is alleged in a report or formal complaint to have committed sexual harassment.
15. **Sexual Harassment** means
 - a. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo sexual harassment);
 - b. welcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or,
 - c. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "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).
16. **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 school system's education program and activities without unreasonably burdening the other party, including measures designed

to protect the safety of all parties or the school system's educational environment, or deter sexual harassment.

Supportive measures available to the parties include, but are not limited to, counseling, mental health services referral, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring, and other similar measures determined by school officials to be legally permissible and necessary to protect the safety or educational or employment activities of a party.

17. **Victim** means a person who has been subjected to or is alleged to have been subjected to sexual harassment.

B. General Rules

1. Prohibition of Sexual Harassment

Sexual harassment is prohibited in CCPS, its properties, activities, programs and in employment whether occurring on CCPS premises, CCPS controlled properties, or at activities or functions supervised and sanctioned by CCPS.

2. Conduct is not sexual harassment for purposes of this rule if the conduct occurred (1) outside the United States or (2) under circumstances in which the school system did not have substantial control over both the harasser and the context in which the harassment occurred.

3. Examples of conduct on the basis of sex that would be considered sexual harassment if the conduct satisfies the criteria above include, but are not limited to: unwelcome sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature, such as deliberate, unwelcome touching that has sexual connotations or is of a sexual nature; suggestions or demands for sexual involvement accompanied by implied or overt promises of preferential treatment or threats; pressure for sexual activity; continued or repeated offensive sexual flirtations, advances, or propositions; continued or repeated verbal remarks about an individual's body; sexually degrading words used toward an individual or to describe an individual; sexual assault; sexual violence; the display of sexually suggestive drawings, objects, pictures, or written materials; posting sexually suggestive pictures of a person without the person's consent; and forwarding pornographic material depicting a classmate or other member of the school community. Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping but not involving conduct of a sexual nature may also constitute sexual harassment.

4. Conduct that is determined not to meet the definition above may violate other Board policies or established standards of conduct and will be treated accordingly. For example, conduct that does not meet the definition of Title IX sexual harassment above may nevertheless violate other standards of conduct. Nothing in this rule is intended to limit discipline for violation of other expectations when appropriate and consistent with law.

C. Reporting Relating to Sexual Harassment or Allegations of Sexual Harassment

1. Student Reports

Any student who believes he or she is a victim of sexual harassment occurring in the school system's education programs or activities is encouraged to report the matter to the student's principal or to the CCPS or School Based Title IX Coordinator. Reports may also be made to a teacher, counselor, vice principal, teacher assistant, any other school employee, or through the See Something, Say Something Bullying and Harassment portal. Reporters may also report sexual harassment through the anonymous tip line, but school officials may be limited in their ability to respond if the report does not identify the victim.

2. Mandatory Reporting by School Employees and Board Members

- a. Any CCPS employee or member of the Board of Education who has knowledge of or is on notice of conduct that may constitute sexual harassment or allegations of sexual harassment occurring in the education program or any activity of the school system must report that information immediately to the CCPS or School Based Title IX Coordinator or administrator who will contact the CCPS or School Based Title IX Coordinator.
- b. Any CCPS employee or Board member must report any of the following immediately:
 - i. A report of sexual harassment received from a student or other person;
 - ii. The conduct witnessed by the employee or Board member that is or reasonably could be sexual harassment; or
 - iii. Evidence of sexual harassment discovered by the employee or Board member, such as sexualized graffiti on school property, or otherwise has reliable information or reason to believe that a student, employee, or other individual may have been sexually harassed in violation of this policy, even if no other person has reported the sexual harassment.
- c. Any doubt about whether particular conduct is sexual harassment must be resolved in favor of reporting the conduct.

- d. Employees who observe an incident of sexual harassment are expected to intervene to stop the conduct in situations in which they have supervisory control over the perpetrator, and it is safe to do so.
- e. Any employee who fails to comply with any of the reporting requirements of this Section, or who knowingly provides false information in a report will be subject to disciplinary action up to and including dismissal.
- f. Any Board member who fails to comply with any of the reporting requirements of this Section, or who knowingly provides false information in a report will be reported to the Board Chair or Vice Chair.

3. Reporting by Others

All other members of the school community are strongly encouraged to report any act that may constitute sexual harassment in violation of this policy to the CCPS or School Based Title IX Coordinator.

4. Content of Report

To the extent possible, reports should be sufficient to put the CCPS or School Based Title IX Coordinator on notice of conduct that could constitute sexual harassment. Reports should provide as much detail about the alleged sexual harassment as is known, unless such disclosure would violate law or standards of professional ethics. Reports, other than mandatory reports by employees, may be made anonymously, but anonymous reports may limit the school system's ability to respond fully if the alleged victim is not identified.

5. Time Period for Making a Report

- a. Reports can be made at any time. During non-business hours, reports can be made by using the contact information for the CCPS or School Based Title IX Coordinator provided on the school system's website.
- b. A report should be made as soon as possible after disclosure or discovery of the facts giving rise to the report. Delays in reporting may impair the ability of school officials to investigate and respond to any subsequent formal complaint.
- c. School employees and Board members must report information regarding sexual harassment or allegations of sexual harassment immediately.

6. CCPS Response to Reports of Sexual Harassment

- a. The CCPS or School Based Title IX Coordinator shall respond promptly and impartially to reports of sexual harassment or alleged sexual harassment.
- b. The CCPS or School Based Title IX Coordinator shall respond to all reports of sexual harassment or alleged sexual harassment in accordance with this section. However, a report alleging conduct that is not sexual harassment as defined in this policy is not subject to this policy but may be referred to appropriate school officials as a possible violation of other Board policies or expectations.
- c. School Based Title IX Coordinator initiates interactive process at the school.

Upon receiving a report of alleged sexual harassment, the School Based Title IX Coordinator shall promptly contact the victim and if the victim is under age 18, the victim's parent or guardian confidentially. This contact must occur within three days, excluding weekends, absent extenuating circumstances. The School Based Title IX Coordinator shall also notify the principal of any school involved in the report and, if an employee is the Complainant or Respondent, the Assistant Superintendent of Human Resources.

- d. When contacting the victim, and, if applicable, the victim's parent or guardian, the School Based Title IX Coordinator shall do all of the following during the contact and shall document the same:
 - i. offer supportive measures;
 - ii. consider the victim's wishes with respect to supportive measures;
 - iii. explain that supportive measures are available with or without the filing of a formal complaint; and
 - iv. explain the process for filing a formal complaint with the CCPS Title IX Coordinator and the response required of the school system when a complaint is filed, including all the following:
 - a) that at a formal complaint will initiate the grievance process;
 - b) that a formal complaint may be filed with the CCPS Title IX Coordinator in person, by mail, or by electronic mail;
 - c) the major steps in the grievance process, including:

- (1) a notice of the allegations that will be provided to the Respondent that includes identification of the Complainant and the allegations made;
- (2) an investigation of the allegations of sexual harassment in which both parties will have opportunity to have an advisor, present witnesses, review evidence, pose written questions of the other party, and receive a copy of the investigative report;
- (3) a decision on responsibility in which a decision-maker objectively evaluates all relevant evidence and determines whether the Respondent engaged in the alleged sexual harassment in violation of this rule; and
- (4) the opportunity for either party to appeal the decision;
 - (i) the approximate time frame for concluding the grievance process;
 - (ii) that school officials will treat both parties equitably by (1) providing remedies to the Complainant if the Respondent is found responsible, and (2) by not imposing disciplinary sanctions on the Respondent without first following the grievance process;
 - (iii) the circumstances under which a formal complaint might be consolidated with other formal complaints or dismissed; and
 - (iv) that the CCPS or School Based Title IX Coordinator may have an obligation to initiate the grievance process in the absence of a formal complaint filed by the victim and the time frame in which that decision will be made.

7. CCPS or School Based Title IX Coordinator Arranges Implementation of Supportive Measures

After considering the victim's wishes, the CCPS or School Based Title IX Coordinator shall arrange the effective implementation of appropriate supportive measures unless, in the exercise of his/her discretion, the CCPS or School Based Title IX Coordinator determines that supportive measures should not be provided. If supportive measures are not provided to the victim, the CCPS or School Based Title IX Coordinator shall document why supportive measures were not provided.

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

8. CCPS or School Based Title IX Coordinator Determines Whether to Sign a Formal Complaint

- a. If the victim declines to file a formal complaint within the designated time period following the interactive process described above, the CCPS or School Based Title IX Coordinator shall determine on a case-by-case basis whether to sign, i.e., file, a formal complaint to initiate the grievance process.
- b. Notwithstanding the provision above, the CCPS or School Based Title IX Coordinator shall file a formal complaint (1) if the Respondent is a school employee and the Complainant is a student; and (2) in other cases where, in the CCPS or School Based Title IX Coordinator's discretion, and in consultation with the school attorney as appropriate, the coordinator determines that a grievance process is necessary to comply with the obligation not to be deliberately indifferent to known allegations of sexual harassment. Credibility or merit of the report shall not be considered in making this determination
- c. A decision by the CCPS or School Based Title IX Coordinator to sign a formal complaint is not to be construed as supportive of the victim or in opposition to the Respondent or as an indication of whether the allegations are credible or have merit, or whether there is evidence sufficient to determine responsibility. Signing a formal complaint does not make the CCPS or School Based Title IX Coordinator a Complainant or party to the Complaint nor relieve the CCPS or School Based Title IX Coordinator from any responsibilities under this rule.

- d. The CCPS or School Based Title IX Coordinator shall document the decision of whether to sign a complaint and the reasons for that decision.
9. Presumption of Non-responsibility of Respondent and Bar on Disciplinary Sanctions without Due Process
- a. The Respondent identified in any report alleging sexual harassment under this rule will be presumed not responsible for the alleged conduct until the Respondent's responsibility is conclusively established through the grievance process.
 - b. No disciplinary sanction or other action that is not a supportive measure, including but not limited to (1) short or long-term suspension, expulsion, or transfer to an alternative school or program for student Respondents and (2) reprimand, suspension, demotion, or dismissal for employee Respondents, may be imposed for a violation of this rule unless the Respondent agrees to a specific disciplinary sanction in an informal resolution or has been determined to be responsible for the sexual harassment or other violation at the conclusion of a grievance process.
 - c. An employee Respondent, however, may be placed on administrative leave during the pendency of the grievance process if consistent with applicable state and federal laws.
 - d. Notwithstanding the limitation just described, Respondents are subject to emergency removal as described in the next paragraph.
10. Emergency Removal of Respondent from School or Employment
- a. Any Respondent is subject to removal from the school system's education program and activities, or any part of the program or activities, on an emergency basis if a school-based threat assessment team conducts an individualized safety and risk analysis and determines that removal is justified because the person poses an immediate health or safety threat to any person arising from the allegations of sexual harassment.
 - b. Removing a student from an extracurricular activity is also considered a removal under this subsection where such action would not otherwise constitute a supportive measure.
 - c. The emergency removal of a student may take place regardless of whether a formal complaint of a student has been filed.
 - i. Any such removal shall not violate the rights of any person under the Section 504 and the Individuals with Disabilities Education Act ("IDEA").

- ii. The Respondent shall receive notice of the removal and an opportunity to challenge the decision in an informal hearing with the Superintendent or designee immediately following the removal.
- d. An employee may be placed on administrative leave with or without pay during the pendency of the grievance process. Any such action may not violate the rights of the person placed on leave under Section 504 or the Americans with Disabilities Act of 1990 (“ADA”).
- e. The Superintendent or designee shall document all emergency removal decisions under this subsection, including the immediate threat to health or safety that justified the removal.

11. Supportive Measures

Supportive measures shall be available to both the Complainant and Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures will remain confidential to the extent that maintaining such confidentiality does not impair the ability to provide the supportive measures. The CCPS or School Based Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

D. Grievance Procedures For Formal Complaints

The grievance process for formal complaints of sexual harassment under this rule is set forth in this Section.

The CCPS or School Based Title IX Coordinator may also initiate the grievance process, as needed.

1. Filing a Formal Complaint to Initiate the Grievance Process
a formal complaint initiates the grievance process.

a. Individuals Who May File a Formal Complaint

Any eligible Complainant may file a formal complaint.

b. The CCPS or School Based Title IX Coordinator

If the Complainant does not wish to file a formal complaint and the matter has not been adequately resolved through the provision of supportive measures, the CCPS or School Based Title IX Coordinator may initiate the grievance process by signing a formal complaint. In accordance with law, only the Complainant and the CCPS or School Based Title IX Coordinator may initiate the grievance process. No

other individuals or school officials shall have authority to do so.

c. Time Period for Filing a Formal Complaint

- i. There is no deadline for filing a complaint. School officials shall initiate the grievance process regardless of when the formal complaint is submitted, but delays in reporting may impair the ability of school officials to investigate and respond to the allegations.
- ii. In some circumstances it may be necessary for the CCPS or School Based Title IX Coordinator to sign a formal complaint to initiate the grievance process in order to meet the school system's legal obligations when the coordinator is aware of sexual harassment or alleged sexual harassment and the Complainant has not yet filed a formal complaint. The CCPS or School Based Title IX Coordinator can do so at any time.

d. Contents of the Formal Complaint

The Complaint shall (1) contain the name and address of the Complainant and the student's parent or guardian if the Complainant is a minor student, (2) describe the alleged sexual harassment, (3) request an investigation of the matter, and (4) be signed by the Complainant or otherwise indicate that the Complainant is the person filing the complaint.

e. How to File the Formal Complaint

The complaint must be filed with the CCPS or School Based Title IX Coordinator.

f. CCPS' Response to Receipt of the Formal Complaint

- i. Upon receipt of a formal complaint of sexual harassment, the CCPS or School Based Title IX Coordinator shall engage in an interactive process with the Complainant, consider the provision of supportive measures in light of the Complainant's wishes, provide supportive measures as appropriate, and otherwise fulfill the requirements of this rule, unless the CCPS or School Based Title IX Coordinator has already done so in response to an initial report of the same allegation of sexual harassment.

- ii. The CCPS or School Based Title IX Coordinator may consolidate formal complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. The CCPS or School Based Title IX Coordinator shall advise the Complainant if the formal complaint will be consolidated with others.
- iii. The formal complaint initiates the grievance process as described below.

2. General Principles Of The Grievance Process For Formal Complaints

To ensure a complete, thorough, and fair grievance process for formal complaints of sexual harassment, school officials responsible for the investigation, adjudication, or appeal of a formal complaint of sexual harassment shall comply with the following requirements. Failure by any school official to comply with these requirements or other standards or procedures established in this rule is cause for disciplinary action.

- a. Equitable Treatment
 - i. Complainants and Respondents must be treated equitably throughout the grievance process.
 - ii. Relevant evidence collected in the investigation of a formal complaint must be evaluated objectively.
 - iii. No individual designated as a CCPS or School Based Title IX Coordinator, investigator, decision-maker, or appeal decision-maker shall have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
 - iv. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- b. The Complainant and Respondent shall be provided an equal opportunity to have others present during any grievance proceeding, including the opportunity to be accompanied to

any related meeting or proceeding by the advisor of their choice, who may be an attorney. If a party elects to be represented by an attorney, the party should notify school officials in advance so that an attorney for the school system may also be present if deemed necessary by CCPS. Any restrictions on advisor participation in any proceeding must be applied equally to both parties.

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

d. Adequate Training

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

ii. Decision-makers will be trained on any technology to be used at a live hearing and on issues of relevance of questions and evidence.

iii. Materials used to train coordinators, investigators, decision-makers, and appeal decision-makers will not rely on sex stereotypes and shall promote impartial investigations and adjudications of sexual harassment. Copyright restrictions will be taken into consideration in selecting training materials in order to comply with the school system's legal obligation to make all training materials available on the school system's website.

e. Presumption of Non-Responsibility/Innocence

At all times prior to a determination regarding responsibility by the decision-maker, there will be a presumption that the Respondent is not responsible for the alleged conduct.

f. Burden of Proof and Production of Evidence

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility will at all times rest on the school system

and not on the Complainant or Respondent. Formal rules of evidence shall not apply in the grievance process.

g. Written Notice of Meetings and Other Proceedings

Parties whose participation is invited or expected at any hearing, investigative interview, or other meeting will be provided written notice of the event's date, time, location, participants, and purpose with sufficient time for the party to prepare to participate.

h. Confidentiality and Privacy

i. The school system will keep confidential the identity of any individual who has made a report or formal complaint of sexual harassment, any Complainant, any Respondent, and any witness, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. A violation of this provision may constitute retaliation.

ii. All meetings, hearings, or other proceedings conducted pursuant to this policy will be private except to the extent that the parties are permitted to be accompanied by others as provided by this rule.

iii. School officials shall not access, consider, disclose, or otherwise use a party's medical, mental health, or other records that are made or maintained by a professional or paraprofessional in connection with the provision of treatment to the party without the party's voluntary written consent.

i. Non Disclosure of Privileged Information

No person acting on behalf of the school system shall 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.

j. Timeliness of Process

i. School officials shall make a good faith effort to conduct a fair, impartial grievance process in a timely manner designed to provide all parties with a prompt and equitable resolution. It is expected that in most cases, the grievance process will be concluded through the adjudication phase within 90 days after filing the formal complaint. CCPS reserves the right to extend

this time frame or any deadline contained in this rule for good cause with written notice to the parties of the delay and the reason for the delay. Good cause may include but is not limited to the absence of the parties or witnesses, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.

- ii. The CCPS or School Based Title IX Coordinator or other responsible school official shall make reasonable efforts to keep the Complainant and Respondent apprised of progress being made during any period of delay.

3. The Grievance Process For Formal Complaints:
Investigation

a. Step 1 – Notice of Allegations

- i. Upon the filing of a formal complaint, the CCPS or School Based Title IX Coordinator shall, within five school business days, provide the parties written notice of the allegations that includes:
 - a) notice of the allegations of sexual harassment in sufficient detail to permit the parties to prepare a response before any initial interview, including:
 - (1) the identities of the parties involved, if known;
 - (2) the conduct allegedly constituting sexual harassment; and
 - (3) the date and location of the alleged incident, if known;
 - b) a copy of this rule to give notice of the school system's grievance process, including the investigative and adjudication procedures, and any informal resolution process available;
 - c) notice that the parties may have an advisor of their choice and that either party may inspect and review any evidence;
 - d) a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process.

- ii. If during the investigation, the investigator decides to investigate allegations of sexual harassment not included in the initial notice provided above, notice of the additional allegations will be provided to the parties.

- 4. Step 2 – Review Grounds for Dismissal of the Formal Complaint
 - a. The CCPS Title IX Coordinator shall review the allegations and determine whether the formal complaint must be dismissed without further investigation because the conduct alleged in the formal complaint, even if assumed true, would not constitute sexual harassment as defined in this policy, did not occur in the school system’s education program or activities, or did not occur against a person in the United States. Such a dismissal does not preclude action under another provision of the Code of Student Conduct or Student Discipline Procedure, Board policy, or expected standards of employee behavior. The complaint will not be dismissed at this stage on the basis that the allegations are frivolous, without merit, or otherwise unfounded.
 - b. Upon a dismissal, the CCPS Title IX Coordinator must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties. The parties have the right to appeal the decision as provided in this rule.
 - c. The CCPS Title IX Coordinator shall refer the matter that was the subject of the dismissed complaint to appropriate CCPS officials for further action as warranted.

- 5. Step 3 – Initiating the Investigation
 - a. If the complaint proceeds, the CCPS Title IX Coordinator shall notify the appropriate investigator, who shall investigate the formal complaint.
 - i. In order to provide a neutral and objective investigation, the investigator shall not be a party to the complaint under investigation.
 - ii. The investigator of a formal complaint is ordinarily determined as described below; however, the CCPS Title IX Coordinator, in consultation with the Superintendent, may determine that conflict of interest, bias, or other individual circumstances warrant the assignment of a different investigator.

- a) If the Respondent is the Superintendent, the Director of School Safety and Security, the CCPS Title IX Coordinator, or member of the Board, the Board Chair and Vice Chair shall engage outside counsel to investigate.
- b) In all other cases the investigator will be the Director of School Safety and Security or designee.
- c) The investigator may request assistance from the CCPS Title IX Coordinator to conduct the investigation.
- d) The CCPS Title IX Coordinator and the investigator shall jointly assess the need for supportive measures for either party, including assessing the effectiveness of any supportive measures currently being provided to the Complainant, and, as necessary, will implement appropriate measures in a timely manner and monitor the effectiveness of the measures during the pendency of the investigation and prior to a final determination regarding responsibility. Supportive measures provided to the Complainant or Respondent will be maintained as confidential to the extent that maintaining such confidentiality does not impair the ability to provide the supportive measures.
- e) The investigator shall explain the process of the investigation to the Complainant and Respondent.

6. Step 4 – Conducting the Investigation

- a. The investigator is responsible for gathering evidence sufficient to reach a determination of whether the allegations in the formal complaint are true and whether the facts as determined by the investigator establish that sexual harassment as defined in this rule occurred. In so doing, the investigator shall impartially, promptly, and thoroughly investigate the complaint.
 - i. The investigator shall interview all individuals who may have relevant information, including
 - a) the Complainant;
 - b) the Respondent;

- c) individuals identified as witnesses by the Complainant or Respondent; and
 - d) any other individuals who are thought possibly to have relevant information. Prior written notice shall be provided to a party whose participation is invited or expected for any investigative interview or meeting. The investigator shall provide the Complainant and Respondent an equal opportunity to present fact and expert witnesses and other evidence tending to prove or disprove the allegations.
- ii. The investigator shall ensure that the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on CCPS and not on the Complainant or Respondent.
 - iii. The investigator shall not restrict the ability of either party to gather and present relevant evidence or to discuss the allegations under investigation.
 - iv. The formal complaint and the investigation will kept confidential to the extent possible. Information may be shared only with individuals who need the information in order to investigate and address the complaint appropriately and those with a legal right to access the information. Any requests by the Complainant or Respondent for further confidentiality will be evaluated based on the legal responsibilities of CCPS.
 - v. The investigator may, with approval of the CCPS Title IX Coordinator, dismiss the formal complaint or any allegations therein if at any time during the investigation or decision-making process:
 - a) the Complainant notifies the CCPS Title IX Coordinator in writing that he or she would like to withdraw the formal complaint or any allegations therein;
 - b) the Respondent is no longer enrolled or employed by the school system; or, if a Board member is no longer a member of the Board.
 - c) specific circumstances prevent school officials from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

- vi. Upon dismissal, the CCPS Title IX Coordinator shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
 - vii. The parties have the right to appeal the decision.
 - viii. The investigator may refer to other school officials the matter that was the subject of the dismissed complaint for action in accordance with Board policy/procedure for further action if he or she believes that the conduct referenced in the complaint may constitute violation of other required standards of student or employee conduct.
7. Step 5 – Investigative Report and Opportunity to Review Evidence
- a. The investigator shall prepare an investigative report that fairly summarizes the relevant evidence.
 - b. Before completing the final report, the investigator shall send to each party and the party’s advisor, if any, in hard copy or electronically, all the evidence collected which is directly related to the allegations raised in the formal complaint. The parties shall have 10 days to submit a written response for the investigator’s consideration before the investigator finalizes the investigative report.
 - c. Following the parties’ opportunity to respond to the written evidence, the investigator shall finalize the written investigative report, including a recommendation on the question of responsibility and any recommended discipline sanction.
 - d. The investigator shall provide a copy of the report to each party and the party’s advisor, if any, for their review and written response.
 - e. The investigator shall also notify the parties of the opportunity to submit written questions to the other party and witnesses as provided below.
 - f. The parties shall have 10 days to provide a written response to the investigative report, along with the party’s initial set of written questions.
 - g. The investigator shall provide to the decision-maker a copy of the investigative report, the relevant evidence, and the parties’ written responses to the report and initial sets of written questions.
 - h. The investigator shall also provide a description of the procedural steps taken, starting with the receipt of the

formal complaint and continuing through the preparation of the investigative report, and including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence.

8. The Grievance Process For Formal Complaints:
Adjudication

The Superintendent or designee (hereinafter “Superintendent”) shall serve as the decision-maker. In his or her role as decision-maker, the Superintendent shall provide for the exchange of questions between the parties a decision on responsibility in a manner consistent with state law and as provided below.

a. Step 1 – Exchange of Questions and Answers

- i. After the parties are sent the investigative report, the Superintendent shall provide the parties an opportunity to submit written, relevant questions that the party wants asked of any other party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party in accordance with a reasonably prompt time frame established by the Superintendent. The parties shall submit their initial set of written questions at the time they submit their response to the investigative report as described above.
- ii. Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior will be considered not relevant, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s sexual behavior with respect to the Respondent and is offered to prove consent.
- iii. The Superintendent shall explain to the party proposing the questions any decision to exclude questions as not relevant.

b. Step 2 – Decision on the Question Regarding Responsibility

- i. Following the exchange of questions as described above, the Superintendent shall decide the question regarding responsibility, any disciplinary action, and any other measures the Superintendent deems appropriate. The Superintendent shall consider all the relevant evidence objectively, including evidence in the

investigative report, and any additional information provided by the parties through the exchange of questions and responses.

- ii. Based on an objective evaluation of the evidence, the Superintendent shall determine whether the preponderance of the evidence supports a finding that the Respondent is responsible for sexual harassment, and if so, what disciplinary sanction will be imposed.
- iii. The Superintendent shall provide remedies to the Complainant if the Respondent is found responsible.

c. Step 3 – Written Determination Regarding Responsibility

The Superintendent shall issue a written determination regarding responsibility simultaneously to both parties that includes:

- i. identification of the allegations potentially constituting sexual harassment under this rule;
- ii. 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, methods used to gather other evidence, and hearings held;
- iii. findings of fact supporting the determination;
- iv. conclusions regarding the application of Board policy and/or the Code of Student Conduct/Student Discipline Procedure or required standards of employee conduct to the facts including whether, the Respondent engaged in prohibited sexual harassment or other proscribed conduct;
- v. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent (which may be a recommendation to the Board for discipline that is beyond the authority of the Superintendent or other decision-maker), and whether remedies designed to restore or preserve equal access to the school system's education program and activities will be provided to the Complainant;

- vi. the procedures and permissible bases for the Complainant and Respondent to appeal; and
- vii. any other notices that are required to accompany the decision under state law, such as when the Superintendent imposes a long-term suspension or recommends dismissal of an employee.

9. Grievance Process For Formal Complaints: Appeal

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

a. Deadline and Grounds for Appeal

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

- i. procedural irregularity that affected the outcome of the matter;
- ii. new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- iii. the CCPS or School Based Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter;
- iv. the disciplinary sanction is inappropriate or unreasonable; or
- v. any other basis provided by law or Board policy governing appeals to the Board.

b. Notice of the Appeal

In all appeals, the other party will be notified in writing when an appeal is filed and be provided a copy of the appeal.

c. Appeal Procedures

- ii. The Board will hear the appeal. Unless otherwise required by law, the Board may designate a panel of two or more Board members to hear and act on behalf of the Board.
- ii. Appeal procedures shall apply to both parties and will follow the applicable procedures in Board policy modified as necessary to allow equal participation of the parties.
 - iii. If the appeal includes an appeal of a disciplinary sanction, relative to which a law, regulation or a collective bargaining agreement entitle a student or employee to a specific type of hearing and/or proceeding, the appeal shall be conducted in accordance with the provisions of such law, regulation or collective bargaining agreement which authorize such hearing or proceeding.
- iv. If no other procedural protections apply as described in paragraph iii above, then the hearing shall be governed by Board policy.

d. Decision on Appeal

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

e. Finality of Board's Decision

Any appeal of the Board's decision does not stay the ruling or effect of the decision.

- f. The Superintendent shall ensure that a copy of the final decision is provided to the CCPS Title IX Coordinator and shall confer with the CCPS Title IX Coordinator regarding any remedies to be provided to the Complainant, as described below.

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

a. Disciplinary Consequences for Students

Students found responsible for sexual harassment will be assigned consequences in accordance with the Code of Student Conduct. Based on the nature and severity of the offense and the circumstances surrounding the incident, the student will be subject to appropriate consequences and remedial actions ranging from positive behavioral interventions up to, and

including, expulsion. In addition, the conduct also may be reported to law enforcement, as appropriate.

- i. Any disciplinary sanction imposed, pursuant to this procedure, upon a student, including any student with a disability, shall be subject to and shall not violate the student's rights under federal law.
- iii. Nothing in this rule will preclude the school system from taking disciplinary action against a student when the evidence does not establish sexual harassment as defined in this policy but the conduct violates other Board policy and/or the Code of Student Conduct.

b. Disciplinary Consequences for Employees

Employees found responsible for sexual harassment are subject to discipline up to and including dismissal. In addition, the conduct may also be reported to law enforcement, as appropriate.

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

c. Consequences for Other Perpetrators

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

Nothing in this rule will be construed to confer on any third party a right to due process or other proceedings to which student and employee Respondents are entitled under this rule unless such right exists under law.

d. Remedies

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

consult with the Complainant in determining appropriate remedies.

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

e. Consideration of Need for More Extensive Response

If the Superintendent determines that a school-wide or system-wide response is needed in order to respond to the sexual harassment, the Superintendent shall provide additional staff training, harassment prevention programs, or such other measures as determined appropriate to protect the safety of the educational environment and/or to deter sexual harassment.

11. Informal Resolution

a. CCPS provides informal resolution processes to resolve certain formal complaints of sexual harassment without a full investigation and adjudication.

b. Informal resolution is not available unless a formal complaint is filed and shall not be used to resolve formal complaints alleging that an employee sexually harassed a student.

c. School officials shall not condition an individual's enrollment, employment, or other rights on an agreement by the individual to waive his/her right to a formal investigation and adjudication of a formal complaint.

d. The School Based Title IX Coordinator, or other school official in consultation with the CCPS Title IX Coordinator, may offer the parties an informal process to resolve a formal complaint at any time prior to reaching a final determination regarding responsibility. Before using an informal resolution process, school officials must ensure that both parties have given voluntary, informed, written consent to attempt informal resolution. Accordingly, the CCPS Title IX Coordinator, investigator, or decision-maker shall:

i. provide the parties (including the parent of a minor) a written notice disclosing:

a) the allegations;

b) the nature and requirements of the informal resolution process, including that if the parties agree to a resolution of the matter, the agreement precludes either party from resuming

a formal complaint process arising from the same allegations; and

- c) any consequences that could result from participating in the informal resolution process, including whether records will be maintained and could be shared; and obtain the parties' voluntary, written consent to the informal resolution process.
- d) obtain the parties' voluntary, written consent to the informal resolution process.
- e. Any agreement reached by the parties through informal resolution may include measures that are designed to restore or preserve the parties' equal access to the education program and activities, including measures that may be punitive or disciplinary in nature.
- f. Any informal process should be completed within a reasonable period of time, not to exceed sixty (60) days from filing the complaint unless special circumstances necessitate more time. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

12. Retaliation Prohibited

Any act of retaliation or discrimination against any person for the purpose of interfering with any right or privilege secured by Title IX or because the person has made a report or filed a formal complaint or testified, assisted, or participated in any investigation, proceeding, or hearing involving sexual harassment is prohibited. Any person who is found to have engaged in retaliation will be subject to discipline, up to and including dismissal.

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

13. Records

- a. The Superintendent or designee shall maintain for a period of at least seven years records of the following:
 - i. each sexual harassment investigation including:
 - a) any determination regarding responsibility;

- b) any audio or audiovisual recording or transcript from any live hearing;
- c) any disciplinary sanctions imposed on the Respondent; and
- d) any remedies provided to the Complainant designed to restore or preserve equal access to the school system's education program and activities;
- e) any appeal and the result therefrom;
- f) any informal resolution and the result therefrom; and
- g) in conjunction with the CCPS Title IX Coordinator, all materials used to train CCPS and School Based Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These materials will be made publicly available on the school system's website.