Fort Wayne Community Schools

Sexual Discrimination and Harassment Grievance Procedure

FWCS will not tolerate the unjust or prejudicial treatment of any individual or group's actual or perceived sex, gender identity or sexual orientation. FWCS is committed to providing a workplace and educational environment free from sexual discrimination and harassment. This grievance procedure balances the rights of the parties to ensure compliance with federal and state law.

FWCS and federal law define sexual harassment as:

1. an FWCS employee (including contracted staff, coaches and volunteers) conditioning the provision of an aid, benefit, or service of FWCS on an individual's participation in unwelcome sexual conduct;
2. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an FWCS education program or activity;
3. "sexual assault" defined as forcible rape, sexual assault with an object, forcible fondling, incest, or statutory rape;
4. "dating violence" defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant (based on a consideration of the length and type of the relationship and the frequency of interaction between the persons involved);
5. "domestic violence" defined as crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Indiana, or by any other person against an adult or youth complainant who is protected from that person's acts under Indiana law; or
6. "stalking" defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

Grievance Procedure

All staff involved in this procedure must act without bias or conflict of interest and shall presume that respondents are not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

1. **Coordinators**. Coordinators oversee the implementation of this procedure. FWCS designates the following employees as Title IX coordinators:
    - For complaints of employee discrimination: Nikki Quintana, General Counsel (Nikki.Quintana@fwcs.k12.in.us)
    - For complaints of student discrimination: the student's principal

    Anyone may contact Ms. Quintana at:

    1200 S. Clinton Street
    Fort Wayne, IN 46802
    (260) 467-2015
2. **Reporting**. Any person may report sexual discrimination or harassment to a coordinator in person, by mail, by telephone, by email, online via Onflo (formerly Let's Talk), or in any verbal or written manner that conveys actual notice.
    - Anyone may report discrimination or harassment anonymously, but coordinators will be better able to address violations with specific information about the alleged act or omission and the parties involved. FWCS will take care to keep the identity of complainants and respondents confidential if that is their request but may not be able to guarantee anonymity. FWCS will respect the right of confidentiality consistent with legal obligations, including the necessity to investigate allegations of misconduct and to take corrective action when such conduct has occurred.
    - All FWCS employees must report discrimination or harassment about which they have actual knowledge to a coordinator. Anyone who has reason to believe that child abuse or neglect occurred must also immediately report the abuse or neglect to law enforcement or the Department of Child Services. (See the FWCS Procedure for Reporting Child Abuse and Neglect.)

- If a complainant does not want an investigation to occur, he or she may make that request to the coordinator, who will decide whether or not to proceed considering the health/safety of others and compliance with state and federal law.
- There is no time limitation on providing notice of discrimination, but if a significant amount of time has passed, the ability to investigate and respond may be limited.

3. **Supportive Measures**. These are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge to the complainant or respondent regardless of whether a formal complaint is filed. The coordinator will design supportive measures to restore or preserve equal access to education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties, the educational environment and to deter discrimination or harassment. The coordinator shall provide information to complainants about supportive measures including but not limited to:
    - Counseling, medical and/or healthcare services, including the Employee or Student Assistance Program
    - Contact limitations between parties (no contact directives)
    - Extensions of deadlines
    - Work or class schedule modifications/adjustments
    - Safety planning or escorts
    - Increased security and monitoring

    FWCS will maintain as confidential any supporting measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The coordinator is responsible for coordinating the effective implementation of supportive measures.
4. **Intake.** Upon receipt of a report, the coordinator must promptly contact the complainant (if known) to discuss
    - the availability of supportive measures with or without filing a formal complaint; and
    - the process of filing a formal complaint and proceeding with formal resolution under this procedure; including the investigation process.
5. **Formal Complaints.** A formal complaint is a written document filed by a complainant or signed by a coordinator alleging discrimination or harassment against a respondent and requesting investigation of the allegation. While discrimination or harassment may be vernally reported, formal complaints must be documented in writing (by the complainant or coordinator) and the complainant must specifically request investigation by FWCS.
    - **Initial Notice.** Upon receipt of a formal complaint, the coordinator must provide written notice to the parties who are known. School coordinators must notify parents/guardians of the students involved.
    - **Mandatory Dismissal.** FWCS may investigate any reported discrimination or harassment. However, formal complaints must be dismissed if the reported conduct:
        i. would not constitute discrimination or harassment as defined above;
        ii. did not occur in an education program or activity controlled by FWCS; or
        iii. did not occur against a person in the United States.

      Note that out-of-school or online conduct may be actionable if it deprives someone of access to an educational program or activity. Even where reports require dismissal, the coordinator should consider making supportive measures available to the complainant.
    - **Permissive Dismissal.** Formal complaints may also be dismissed in the discretion of the coordinator when:
        i. a complainant notifies the coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations;
        ii. the respondent is no longer enrolled or employed by FWCS; or

iii. specific circumstances prevent FWCS from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

- **Dismissal Notice.** Upon dismissal FWCS must promptly send a written notice of the dismissal and reason(s) therefor simultaneously to the parties. Dismissal does not preclude action under another provision of the Code of Conduct or work rules.
- **Investigation.** FWCS will investigate all formal complaints and will objectively evaluate all relevant (inculpatory and exculpatory) evidence.
    i. The investigator must interview all available, relevant witnesses and allow each party to suggest witnesses and questions they want investigators to ask.
    ii. The coordinator will provide any party whose participation is invited/expected written notice of the date, time, location, participants and purpose of all interviews or meetings, with sufficient time to prepare.
    iii. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
    iv. The investigator shall complete the investigation within ten (10) work or school days. If an extension becomes necessary for good cause, coordinators shall provide written explanation to complainants and respondents for the delay. Good cause may include, but it is not limited to absence of a party, a party's advisor or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- **Investigator.** The coordinator may not serve as the complaint investigator. Investigators may neither have nor demonstrate conflicts of interest or bias for any party.
    i. For complaints of employee discrimination: the Human Resources Senior Business Partner Employee Relations, Andrea Cady, will investigate.
    ii. For complaints of student discrimination: the school principal shall designate an individual in the building to investigate.
- **Advisors.** The coordinator must provide the parties with the same opportunities 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, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- **Investigation Report.** At the conclusion of the investigation, the investigator shall prepare a comprehensive investigation report. Each party must have equal opportunity to inspect and review any evidence obtained as part of the investigation, including evidence upon which the recipient does not intend to rely in reaching a determination so that each party can reasonably respond. Coordinators shall provide each party ten (10) days to respond to the investigation report, after which time it will become final.

6. **Determination.** Neither the investigator nor the coordinator may serve as the decision maker for resolution of complaints.
    - For reports of employee discrimination: the Human Resources Director of Labor and Employee Relations, Austin Couch, will serve as decision maker.
    - For reports of student discrimination: the school's level director will serve as decision maker.
    - The investigator will share his or her report with the decision maker, who will independently evaluate the evidence, free from any conflict of interest or bias.

- The decision maker must 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 may not render a decision until the investigation report is final. The decision maker must render a decision within fourteen (14) calendar days of the receipt of the final investigation report.
- The outcome shall be determined using a preponderance of the evidence standard (the greatest weight of the evidence; more likely than not).
- The decision maker must issue a written determination to the parties simultaneously.

7. **Appeal.** Any party may appeal a dismissal or determination in writing within five (5) days of the dismissal/determination on the following grounds:
    - Procedural irregularity that affected the outcome
    - Discovery of new evidence
    - Conflict of interest or bias affected the outcome

    An appeal is not a review of the merits of a determination. As to all appeals, coordinators must:
    - notify the other party in writing when the appeal is filed;
    - ensure that the decision maker for the appeal is not the same person as the decision maker that reached the determination regarding responsibility or dismissal, the investigator(s), or a coordinator;
        i. for reports of employee discrimination: the Chief Human Resources Officer, Michelle Bosworth, will serve as appellate decision maker.
        ii. for reports of student discrimination: the Director of Student Climate and Culture, Dr. Virgil Griffin, will serve as appellate decision maker.
    - give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
8. **False Allegations or Evidence.** Deliberately false reports of discrimination or harassment will be subject to appropriate disciplinary action, excluding allegations made in good faith.

9. **Retaliation.** No school or person may retaliate against anyone for exercising their rights under this policy or procedure. Anyone may report retaliation for exercising rights under this policy or procedure to any coordinator, who will promptly investigate the allegation.

10. **Record Retention.** FWCS must preserve all records for at least seven (7) years, or longer as determined by the Indiana Education Records Retention Schedule.