



SCHOOL BOARD OF BREVARD COUNTY, FLORIDA
School Board Policy Executive Summary
 Form D

Policy Number:	2266
Title of Policy:	Nondiscrimination on The Basis of Sex in Education Programs and Activities – *NEW*
Cabinet Member:	Valerie Londono, Chris Moore, Dr. Beth Theady
Purpose of Revisions:	The purpose of the new policy is to ensure compliance with all applicable federal and state laws, Florida State Board of Education Rules, Board policies, administrative rules, procedures, and guidelines. In addition, the proposed revisions promote transparency and accountability.
Tentative Schedule:	<ul style="list-style-type: none"> • Cabinet – 11/15/2021 • Work Session – 12/14/2021 • Rule Development Workshop – 1/18/2022 • School Board Meeting Information – 1/18/2022 • School Board Meeting Approval – 2/8/2022 • Effective Date – upon approval
Summary of Proposed Policy Revisions:	<ul style="list-style-type: none"> • This is a new policy being proposed in light of changes to federal law. • The federal Department of Education issued historic and sweeping regulations governing the implementation of Title IX, with particular emphasis on specific due process procedures mandated in cases of sexual harassment that occurs in the scope of education programs and activities. • The proposed new policy encompasses the suggested language from NEOLA. • The specific definitions and procedures presented herein are required by the federal regulations in 34 C.F.R. Part 106.
Specific Authority:	§ 1000.05, F.S.; 20 U.S.C. 1681 et seq., Title IX of Education Amendment Act of 1972 (Title IX); 20 U.S.C. 1400 et seq., The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA); 42 U.S.C. 2000c et seq.; Title IV of the Civil Rights Act of 1964; 42 U.S.C. 2000c et seq.; 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 (Title IX Regulations)
Next Steps:	<ul style="list-style-type: none"> • Implementation of new accompanying Administrative Procedures • Training for BPS employees regarding the new policy and procedures • Updates to BPS website concerning Title IX information

**No
Current
Version
New Policy**

Neola Template



Book: Florida Policies for Update

Section: Vol. 21, No. 2 - Feb. 2021

Title: REVISED POLICY - VOL. 21, NO. 2 - NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES

Number: po2266

REVISED POLICY - VOL. 21, NO. 2

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

Introduction

The School Board does not discriminate on the basis of sex (including sexual orientation or gender identity), in its education programs or activities, and is required by Title IX of the Education Amendments Act 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. **[DRAFTING NOTE: In the new Title IX regulations, the term “admission” refers to admission to postsecondary institutions (i.e., institutions of graduate higher education, institutions of undergraduate higher education, institutions of professional education, and institutions of vocational education); thus, if a K-12 school does not operate a vocational program (e.g., a school or institution that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study), the K-12 school does not officially need to include “admission and” in the preceding sentence (and where that phrase is used throughout this policy); Neola, however, has elected to include it because all K-12 schools “enroll” students and often the term “enroll” is viewed as synonymous with the term “admit.” Since K-12 schools cannot discriminate when enrolling students into the education programs or activities that they operate, it seems appropriate to include the term “admission.”]** 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 District has actual knowledge of Sexual Harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner that is not deliberately indifferent.

Pursuant to its Title IX obligations, the Board is committed to eliminating Sexual Harassment and will take appropriate action when an individual is determined responsible for violating this policy. Board employees, students, third-party vendors and contractors, guests, and other members of the School District community who commit Sexual Harassment are subject to the full range of disciplinary sanctions set forth 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 District's education programs and activities.

Coverage

This policy applies to Sexual Harassment that occurs within the District's education programs and activities and that is committed by a member of the School District community or a 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 District'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 procedures, applicable State and/or Federal laws () and/or Employee/Administrator Handbook(s) **[END OF OPTION]** if committed by a Board 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 District's education programs or activities. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by the Student Code of Conduct if committed by a student, or by Board policies and administrative procedures, applicable State and/or Federal laws () and/or Employee/Administrator Handbook(s) **[END OF OPTION]** if committed by a Board employee.

Definitions

Words used in this policy shall have those meanings defined herein; words 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 Board employee conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct (often called “*quid pro quo*” harassment);

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the District’s education program or activity; or

“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. Sexual assault includes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.

~~[DRAFTING NOTE: Select Option 1 or Option 2. While Neola is comfortable with Option 2, given that offenses 2 (sodomy) and 3 (sexual assault with an object) pick-up parts of Option 1 that are not included in Option 2, Neola suggests the Board consult with its local legal counsel concerning which definition of “Rape” to adopt. By way of background, Option 1 represents the definition of “Rape” that is required by the Clery Act’s regulations – i.e., the definition contained in the Summary Reporting System (“SRS”) of the FBI’s Uniform Crime Reporting (“UCR”) Program. Unfortunately, the SRS is being phased out effective January 2021; at that time, the SRS is being replaced by the National Incident-Based Reporting System (NIBRS), which contains a different definition of “Rape” – i.e., the definition contained in Option 2. Additionally, it is relevant to note that the definitions of the remaining sexual assault offenses are already derived from the NIBRS’s definitions. If a Board selects Option 1, it may be necessary to later update the policy to a new definition of “Rape” (i.e., the one contained in Option 2) once the SRS is retired. Alternatively, a Board could include both definitions to hopefully minimize the need to amend this policy – even on a technical amendment~~

~~basis so soon after it is adopted. If a Board elects to include both definitions, it should include the following parentheticals: (a) at the end of Option 1: “(effective until the FBI retires the Summary Reporting System, which is scheduled for January 2021”;~~ and (b) at the end of Option 2: “(effective upon retirement of the Summary Reporting System, which is scheduled for January 2021.”]

~~[] [OPTION 1] Rape is penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ 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. Attempted rape is included. [END OF OPTION 1]~~

~~[] [OPTION 2] 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. [END OF OPTION 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.

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.

Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, 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.

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

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

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. **[DRAFTING NOTE: The Title IX regulations do not require the Board to adopt a particular definition of “consent,” but it is advisable to adopt a definition because “consent” is an element of each of the first four terms listed above. Since there are a number of different definitions of consent from which to choose, the Board should consult its local legal counsel concerning selecting a specific definition of consent that represents its position on the topic; the investigator(s) and decision-maker(s) will then uniformly apply the adopted definition.]**

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. **[DRAFTING NOTE: Depending on the definition of “consent” that the Board adopts, it may be necessary to define “incapacitated” in the policy. If it is not defined in the policy, it should certainly be defined in the administrative procedure; even if defined in the policy, the administrative procedure provides an opportunity to expand on the concept of “consent” and what the Board means by the term “incapacitated.”]**

“Domestic violence” includes felony or misdemeanor crimes of violence committed by:

a current or former spouse or intimate partner of the victim;

a person with whom the victim shares a child in common;

a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

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

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 District investigate the allegation(s) of Sexual Harassment. At the time of filing a Formal Complaint with the District, a Complainant must be participating in or attempting to participate in the District's education program or activity. A "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal that the Board provides for this purpose) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or a party to the Formal Complaint and must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

Actual Knowledge: "Actual knowledge" means notice of Sexual Harassment or allegations of Sexual Harassment to the District's Title IX Coordinator, or any District official who has authority to institute corrective measures on behalf of the Board, or any Board employee. The mere ability or obligation to report Sexual Harassment or to inform a student about how to report Sexual Harassment, or having been trained to do so,

does not qualify an individual as one who has the authority to institute corrective measures on behalf of the District. "Notice" includes, but is not limited to, a report of Sexual Harassment to the Title IX Coordinator. This standard is not met when the only District official with actual knowledge is the Respondent.

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 District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment or deter Sexual Harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, school/campus escort services, mutual restrictions of contact between the parties, changes in work locations), leaves of absence, increased security and monitoring of certain areas of the campus (including school buildings and facilities), () referral to Employee Assistance Program **[END OF OPTION]**, and other similar measures.

Education Program or Activity: "Education program or activity" refers to all operations of the District, 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 Board. 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.

School District community: "School District community" refers to students and Board employees (i.e., administrators, and professional and classified staff), as well as Board members, agents, volunteers, contractors, or 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 School District 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 School District community at school-related events/activities (whether on or off District 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:

[DRAFTING NOTE: Neola suggests the Board consider appointing both a male and a female Title IX Coordinator. The Board must list either the Name *or* Title of the Title IX Coordinator; while the Board may list both the Name *and* Title, Neola suggests that the Board consider only listing the Title in this policy (so it does not need to revise/amend its policy whenever there is a change in the actual person(s) holding the designated position(s)), but list both the Name *and* Title in the requisite postings (e.g., website) and publications (e.g., handbooks) () and in the administrative procedure. If the Name of the Coordinator is listed in the policy, it can be changed when necessary as a Technical Correction in accordance with Bylaw 0131.1]

(Name)

(School District Title)

(Telephone Number)

(Office Address)

(E-mail Address)

(Name)

(School District Title)

(Telephone Number)

(Office Address)

(E-mail Address)

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, Board employees, and all unions or professional organizations holding collective bargaining or professional agreements with the Board of the following information:

The School Board of _____ County, Florida 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 District's Title IX Coordinator(s) is/are:

(Name)

(School District Title)

(Telephone Number)

(Office Address)

(E-mail Address)

(Name)

(School District Title)

(Telephone Number)

(Office Address)

(E-mail Address)

Any inquiries about the application of Title IX and its implementing regulations to the District may be referred to the Title IX Coordinator(s), the Assistant Secretary for the U.S. Department of Education's Office for Civil Rights, or both.

The 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: **[insert the web address at which Policy 2266 can be found; or insert a hyperlink tied to the title of the policy]**. The grievance process specifically addresses how to report or file a complaint of sex discrimination, how to report or file a formal complaint of Sexual Harassment, and how the District will respond.

The Superintendent shall also prominently display the Title IX Coordinator's(s') contact information – including name(s) and/or title(s), phone number(s), office address(es), and e-mail address(es) – and this policy on the District'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, Board 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 District'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 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 District's education program or activity. Potential remedies include, but are not limited to, individualized services that constitute supportive measures. Remedies may also be disciplinary or punitive in nature and may burden the Respondent.

Report of Sexual Discrimination/Harassment

Any person may report sex discrimination, including Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or Sexual Harassment), in person, by mail, by telephone, or by electronic mail, using the Title IX Coordinator's(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). () Anonymous reports may be submitted using [] the online reporting form posted at **[insert the web address for the reporting form, or insert a hyperlink tied to the phrase "online reporting form" [or] [] the hotline reporting number ([insert phone number])**.

Students, Board members, and Board employees are required, and other members of the School District community, and Third Parties) are encouraged, to report allegations of sex discrimination or Sexual Harassment promptly to the/a Title IX Coordinator or to any Board employee, who will in turn notify the/a Title IX Coordinator. **[DRAFTING NOTE: All Board employees are mandatory reporters pursuant to the Title IX regulations. Existing policy, however, also requires students and Board members to report any information they have concerning allegations of sex discrimination or Sexual Harassment. Neola suggests that the Board continue this additional requirement in this policy, along with the language encouraging other individuals to make such reports; this will coincide with similar requirements that are imposed on Board members and students in other nondiscrimination and anti-harassment policies. If the Board**

decides it does not want to go beyond the scope of the regulations for purposes of this policy, it should replace the first sentence of this paragraph with either of the following: “Board employees are required to report allegations of sex discrimination or Sexual Harassment promptly to the Title IX Coordinator.”

OR “Board employees are required, and other members of the School District community and Third Parties are encouraged, to report allegations of sex discrimination or Sexual Harassment promptly to the/a Title IX Coordinator or to any Board 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 the Title IX Coordinator, the person making the report should submit it to the Superintendent, or another Board employee who, in turn, will notify the Superintendent of the report. The Superintendent will then serve in place of the Title IX Coordinator for purposes of addressing that report of Sexual Harassment. **[DRAFTING NOTE: If the Superintendent is the Title IX Coordinator, substitute [] _____ [] “Board Chairman” in place of “Superintendent.”]**

The Board does business with various vendors, contractors, and other third-parties who are not students or employees of the Board. Notwithstanding any rights that a given vendor, contractor, or 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 vendor, contractor, or 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 procedures, **[END OF OPTION]** the applicable Student Code of Conduct, applicable collective bargaining agreement, and/or Employee/Administrator Handbook.

Because the Board is considered to have actual knowledge of Sexual Harassment or allegations of Sexual Harassment if any Board employee has such knowledge, and because the Board must take specific actions when it has notice of Sexual Harassment or allegations of Sexual Harassment, a Board employee who has independent knowledge of or receives a report involving allegations of sex discrimination and/or Sexual Harassment must notify the/a Title IX Coordinator within two (2) days of learning the information or receiving the report. **[DRAFTING NOTE: The regulations do not specify within how many days the Board employee must notify the Title IX Coordinator of receiving a report of Sexual Harassment; Neola suggests “two (2) days”. Alternatively, the Board could make this language more open-ended – e.g., “* * * must immediately/promptly notify the/a Title IX Coordinator of such information or report.”]** The Board employee must also comply with mandatory reporting responsibilities regarding suspected abuse, abandonment, or neglect of a child pursuant to F.S. 39.201 and Policy 8462 – Student Abuse, Abandonment, and Neglect, if applicable. If the Board employee’s knowledge is based on another individual bringing the information to the Board employee’s attention and the reporting individual submitted a written complaint to the Board employee, the Board employee must provide the written complaint to the Title IX Coordinator.

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

When a report of Sexual Harassment is made, the Title IX Coordinator shall promptly (i.e., within two (2) days **[DRAFTING NOTE: The regulations do not define “promptly” or otherwise specify within how many days the contact has to be made; Neola suggests “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 District to provide the supportive measures.

Emergency Removal: Subject to limitations and/or procedures imposed by State and/or Federal law, the

District may remove a student Respondent from its education program or activity on an emergency basis after conducting an individualized safety and risk analysis. The purposes of the individualized safety and risk analysis is to determine whether the student Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment that justifies removal. If the District determines the student Respondent poses such a threat, it will so notify the student Respondent and the student Respondent will have an opportunity to challenge the decision immediately following the removal. See Policy 5610 – Removal, Out-of-School Suspension, Disciplinary Placement, and Expulsion of Students, Policy 5610.01 – Emergency Removal of Students, and Policy 5611 – Due Process Rights. **[DRAFTING NOTE: The Board may substitute “Superintendent” or “Title IX Coordinator” in place of “District” in the first sentence. Alternatively, the Superintendent could designate, through the administrative procedure, one or more administrators, including the Title IX Coordinator, to make emergency removal decisions after conducting the individualized safety and risk analysis. In Florida, emergency removals may only be imposed in the manner delineated in F.S. 1006.07-1006.09. Additionally, emergency removals must be conducted in compliance with the Individuals with Disabilities Education Improvement Act and/or Section 504 of the Rehabilitation Act of 1973.]**

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

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

Formal Complaint of Sexual Harassment

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information set forth above () and by _____ **[DRAFTING NOTE: The Board may set forth additional method(s) by which a Formal Complaint may be filed (e.g., online portal submission).]** If a Formal Complaint involves allegations of Sexual Harassment by or involving the Title IX Coordinator, the Complainant should submit the Formal Complaint to the Superintendent, who will designate another person to serve in place of the Title IX Coordinator for the limited purpose of implementing the grievance process with respect to that Formal Complaint. **[DRAFTING NOTE: If the Superintendent is the Title IX Coordinator,**

substitute [] _____ [] "Board Attorney" [] "Board Chairman" in place of "Superintendent" in the preceding sentence.]

When the Title IX Coordinator receives a Formal Complaint or signs a Formal Complaint, the District will follow its Grievance Process, as set forth herein. Specifically, the District will undertake an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations will not be based 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. **[DRAFTING NOTE: The Board should confirm/verify that its Student Code of Conduct and any Employee/Administrator Handbook(s) include a prohibition against intentionally making a false report, submitting a false Formal Complaint, or making a false statement or submitting false information during a Title IX grievance process. Such misconduct should be a sanctionable offense pursuant to the Student Code of Conduct and Employee/Administrator Handbook(s).]**

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

Timeline

The District will seek to conclude the grievance process, including resolving any appeals, within sixty (60) days of receipt of the Formal Complaint. **[DRAFTING NOTE: The Title IX regulations do not specify a deadline for completing the grievance process; Neola suggests sixty (60) days (i.e., twelve (12) weeks) based on the following considerations: (1) within two (2) days of receipt of the Formal Complaint, the Title IX Coordinator sends requisite notice to parties; (2) two (2) weeks (fourteen (14) calendar days) to investigate (remember the need for advance written notice to a party and adequate time for the party to prepare before any interviews/hearings/meetings; time for parties to present witnesses (including expert witnesses) and other inculpatory or exculpatory evidence); (3) at the conclusion of the investigation and before finalizing the investigative report, two (2) weeks (a minimum of ten (10)**

calendar days) for the parties to review the evidence and submit their feedback; (4) up to a week (i.e., seven (7) calendar days) for the investigator to consider such feedback and prepare the investigative report; (4) two (2) week (a minimum of ten (10) calendar days) for the parties to review the investigative report and submit questions and receive answers to questions submitted to parties and witnesses (if the Board permits hearings, the hearing cannot occur until the Complainant and Respondent have had a minimum of ten (10) calendar days to review the investigative report); (5) a week (i.e., seven (7) calendar days) for the decision-maker(s) to prepare the decision; (6) up to a week (Neola suggests three (3) to five (5) calendar days) for the parties to review the decision and submit a notice of appeal; (7) a week (seven (7) calendar days) for the parties to submit their written statements in support of or in opposition to the appeal; and (8) a week (seven (7) calendar days) for the appeal decision-maker(s) to prepare a final decision. Any informal resolution process could impact this schedule. Given this fairly aggressive timeline, the Board may want to remove the appeal process from this timeline – i.e., delete the phrase “, including resolving any appeals,” from the sentence, which would allow more time for the potential use of the informal resolution process. Further, the preceding schedule does not provide time for a hearing that could further extend the timeline needed to complete the grievance process.]

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 an accommodation of disabilities. **[DRAFTING NOTE: The Board should consult with its local legal counsel on a case-by-case basis to determine whether there may be other reasons/good cause for a delay or extension of time – e.g., the complexity and severity of the matter, or school breaks.] ()** 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:

Notice of the Board's grievance process, including any informal resolution processes;

Notice of the allegations of misconduct that potentially constitutes 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:

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;

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.

inform the parties of any provision in the Student Code of Conduct (), this policy, () and/or Employee/Administrator Handbook **[DRAFTING NOTE: While the Title IX regulations only reference “code of conduct” Neola suggests that the Board reference other applicable documents that expressly prohibit an individual from making false statements or knowingly submitting false information as part of the grievance process]** that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

[DRAFTING NOTE: The Title IX regulations do not define “upon receipt” or otherwise specify within how many days the notice must be sent; Neola suggests the Title IX Coordinator send the notice within “two (2) days” of receipt of the Formal Complaint; this suggestion is memorialized in the corresponding administrative procedure. Please note, however, that it could be argued that the notice should be sent sooner. Regardless, the Title IX Coordinator should have a template notice form available that can be quickly completed with the requisite information after receipt of the Formal Complaint.]

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

Dismissal of a Formal Complaint

The District shall investigate the allegations in a Formal Complaint, *unless* the conduct alleged in the Formal Complaint:

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

did not occur in the District's education program or activity; or

did not occur against a person in the United States.

If one of the preceding circumstances exist, the Title IX Coordinator *shall* dismiss the Formal Complaint. If the Title IX Coordinator dismisses the Formal Complaint due to one of the preceding reasons, the District may still investigate and take action with respect to such alleged misconduct pursuant to another provision of an applicable 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 () or hearing [**DRAFTING NOTE: Select this option if the Board permits hearings.**]:

a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;

the Respondent is no longer enrolled in the District or employed by the Board; or

specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

If the Title IX Coordinator dismisses a Formal Complaint or allegations therein, the Title IX Coordinator must promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

Consolidation of Formal Complaints

The Title IX Coordinator may consolidate Formal Complaints 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.

[DRAFTING NOTE: The Board may adopt provisions, rules, or practices other than those required by the Title IX regulations as part of its grievance process for handling Formal Complaints of Sexual Harassment, provided they apply equally to both parties and do not violate the language in the regulations. The Board should discuss this option with its local legal counsel.]

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:

- the allegations;

- the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations; and

- 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 would otherwise occur have stayed and all related deadlines are suspended.

The informal resolution process is not available to resolve allegations that a Board employee () or another adult member of the School District community or Third Party [END OF OPTION] sexually harassed a student.

[DRAFTING NOTE: The Title IX regulations prohibit the use of an informal resolution process when the allegations involve a Board employee sexually harassing a student; Neola suggests that it also may not be appropriate to use informal resolution processes when a Third Party is alleged to have sexually harassed a student. Since this is not a requirement, it is offered as an option. If the optional language is not selected, the Board retains the discretion to use informal resolution processes as may be determined appropriate by the Title IX Coordinator on a case-by-case basis.]

[] The informal resolution process is not available to resolve allegations involving a sexual assault involving a student Complainant and a student Respondent. **[DRAFTING NOTE: While this language is not required by the Title IX regulations, Neola suggests the Board select this option because of the severity of this type of Sexual Harassment.]**

Investigation of a Formal Complaint of Sexual Harassment

In conducting the investigation of a Formal Complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is on the District, not the parties.

In making the determination of responsibility, the decision-maker(s) is(are) directed to use the () preponderance of the evidence standard () clear and convincing evidence standard [END OF OPTION]. The decision-maker(s) is charged with considering the totality of all available evidence, from all relevant sources.

[DRAFTING NOTE: Neola suggests the Board adopts the “preponderance of the evidence standard.” The preponderance of the evidence standard is an equitable standard of proof and the legal standard by

which most civil lawsuits, including civil rights claims, are adjudicated in the United States. This standard requires the decision-maker(s) to determine that there is a greater than fifty percent (50%) likelihood (i.e., it is more probable/likely than not) that the Respondent engaged in the alleged Sexual Harassment. The “clear and convincing evidence standard,” on the other hand, is a higher standard of evidence, in which the District would need to show to the decision-maker(s) that the truth of the allegations is highly probable (i.e., that the contention is substantially more likely to be true than untrue). Some argue that using the clear and convincing standard may skew the playing field toward the Respondent by enhancing protection for the Respondent at the expense of the Complainant. The same standard of evidence must be applied for Formal Complaints against students as is applied to Formal Complaints against employees, and the same standard of evidence must be used for all Formal Complaints of Sexual Harassment.]

The District is not permitted to access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the party provides the District with voluntary, written consent to do so; if a student party is not an Eligible Student, the District must obtain the voluntary, written consent of a parent.

Similarly, the investigator(s) and decision-maker(s) may not require, allow, rely upon or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege in writing.

As part of the investigation, the parties have the right to:

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

- have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The District may not limit the choice or presence of an advisor for either the Complainant or Respondent in any meeting or grievance proceeding.

() The District establishes the following restrictions, which apply equally to both parties, regarding the extent

to which an advisor may participate in the proceedings:

[DRAFTING NOTE: The Board should consult with its local legal counsel concerning any restrictions it may want to place on an advisor’s participation in the proceedings, including rules of decorum. This topic is also addressed in AP 2266.]

Board Policy 2461 – Recording of IEP Team Meetings 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 District will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, **[DRAFTING NOTE: Select this option if the Board permits hearings.]** 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 _____ days’ notice with respect to investigative interviews and other meetings and ____ days’ notice with respect to hearings **[END OF OPTION]. [DRAFTING NOTE: The Board should consult with its local legal counsel concerning whether to set a minimum amount of advance notice – i.e., define “sufficient time”; Neola suggests a minimum of three (3) days’ advanced notice for hearings and one (1) day’s advanced notice for 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 District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

Prior to completion of the investigative report, the () investigator () Title IX Coordinator **[END OF OPTION]** 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. **[DRAFTING NOTE: The Board should select the following option if it provides for a hearing before the decision-maker]** () The District will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

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 **[DRAFTING NOTE: Select one of the following two options. The Board should select the second option if it is providing a hearing or permitting the decision-maker(s) to decide whether to conduct a hearing on a case-by-case basis.]**

() the decision-maker(s) issuing a determination regarding responsibility.

() a hearing or 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).

[DRAFTING NOTE: The Board may, but need not, provide for a hearing before the decision-maker(s) reaches a determination of responsibility. Neola suggests that the Board not provide for a hearing. If the Board decides not to provide for a hearing, the Board should select OPTION 1; if the Board elects to provide a hearing or to provide the decision-maker(s) with the discretion to conduct a hearing on a case-by-case basis, the Board should select OPTION 2. Additionally, if the Board operates a vocational program [see the Drafting Note contained in the first paragraph of the Introduction for a definition of

“vocational program”], Neola suggests that the Board consult its local legal counsel concerning whether it must provide for a live hearing related to Formal Complaints involving parties associated with the vocational program. If the Board determines, in consultation with its legal counsel, that it must provide for a live hearing, it should select Option E of OPTION 2, at least with respect to Formal Complaints involving parties involved in the vocational program (i.e., it does not need to provide for a live hearing for its regular K-12 education programs and activities that it operates.)

[] OPTION 1

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. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

[END OF OPTION 1]

[] OPTION 2

After the investigator sends the investigative report to the parties and the decision-maker(s), and prior to the decision-maker(s) issuing a determination of responsibility, the decision-maker(s) () may () will conduct a hearing.

[DRAFTING NOTE: Select Option A or Option B. If the Board selects “may,” it should select Option A; if it selects “will,” it should select Option B.]

[] Option A

If the decision-maker(s) decides not to conduct a hearing, the decision-maker(s) will state in writing the reason for not conducting a hearing and provide that explanation to the parties. Additionally, 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.

If the decision-maker(s) elects to conduct a hearing, the hearing will proceed as follows:

[END OF OPTION A]

[] Option B

The hearing will proceed as follows:

[END OF OPTION B]

[DRAFTING NOTE: Select Option C or Option D or Option E; Neola suggests Option C]

[] Option C

At the hearing, the decision-maker(s) will allow each party or each party's advisor to submit relevant questions to the decision-maker(s) who will ask the questions to the other party and any witnesses. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Only relevant cross-examination and other questions, including follow-up questions and questions challenging credibility, will be permitted. Such cross-examination and questioning at the live hearing shall be conducted orally and in real time.

If a party does not have an advisor present at the live hearing, the District will provide, without fee or charge to that party, an advisor of the District's choice, who may be, but is not required to be, an attorney, to submit questions on behalf of that party.

[END OF OPTION C]

Option D

Prior to commencing the hearing, the decision-maker(s) will decide whether to allow each party's advisor to ask questions directly of the other party and any witnesses, or instead to have the questions submitted to the decision-maker(s) who will ask the other party and any witnesses the questions.

If the decision-maker(s) permits each party's advisor to ask the other party and any witnesses relevant questions and follow-up questions, including questions challenging credibility, such cross-examination at the hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. If the decision-maker(s) permit each party's advisor to ask questions directly to the other party and any witnesses, the decision-maker(s) shall not restrict the extent to which advisors may participate in the hearing.

If, on the other hand, the decision-maker(s) decides to have each party's advisor (or the party, if the party does not have an advisor) submit relevant questions to the decision-maker(s), the decision-maker will ask the questions to the other party and any witnesses. Such cross-examination at the hearing will be conducted orally and in real time by the decision-maker(s) based upon questions submitted by a party's advisor or the party.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If the decision-maker(s) permits the parties' advisors to ask the questions directly, and a party does not have an advisor present at the hearing, the District will provide, without fee or charge to that party, an advisor of the District's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of

that party.

If the decision-maker(s) decides not to have the parties' advisors ask the questions directly, and a party does not have an advisor present at the hearing, the District will provide, without fee or charge to that party, an advisor of the District's choice, who may be, but is not required to be, an attorney, to submit questions on behalf of that party.

[END OF OPTION D]

Option E

At the hearing, the decision-maker(s) shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally; notwithstanding anything to the contrary in this policy, the decision-maker shall not restrict the extent to which advisors may participate in the hearing.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If a party does not have an advisor present at the hearing, the District will provide, without fee or charge to that party, an advisor of the District's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

[END OF OPTION E]

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.

If a party or witness does not submit to cross-examination at the hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

Hearings may be conducted with all parties physically present in the same geographic location or, at the discretion of the () decision-maker(s) () Title IX Coordinator(s), any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the decision-maker shall provide for the hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or witness answering questions. The District will create an audio or audiovisual recording, or transcript, of any hearing and make it available to the parties for inspection and review.

[END OF OPTION 2]

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 () clear and convincing evidence standard. **[DRAFTING NOTE: Be sure to select the evidence standard selected previously (i.e., above).]**

The written determination will include the following content:

Identification of the allegations potentially constituting Sexual Harassment pursuant to this policy;

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, () and hearings held; **[DRAFTING NOTE: The Board should only select this option if it permits hearings.]**

Findings of fact supporting the determination;

Conclusions regarding the application of the applicable code of conduct to the facts;

A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the decision-maker(s) is recommending that the District impose on the Respondent(s), and whether remedies designed to restore or preserve equal access to the District's education program or activity should be provided by the District to the Complainant(s); and

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

The following disciplinary sanctions/consequences may be imposed on a student Respondent who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):

Informal Discipline

() writing assignments;

() changing of seating or location:

() pre-school, () lunchtime, () after-school detention;

() in-school discipline;

() Saturday school;

Formal Discipline

suspension of bus riding/transportation privileges;

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

emergency removal;

suspension for up to ten (10) school days;

expulsion not to exceed the remainder of the term or school year and one (1) additional year of attendance;

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 Disabled Students, Policy 5610 – Removal, Out-of-School Suspension, Disciplinary Placement, and Expulsion of Students, Policy 5601.01 – Emergency Removal of Students, Policy 5610.02 – In-School Discipline, Policy 5610.04 – Suspension of Bus Riding/Transportation Privileges, Policy 5610.05 – Participation in Extra-Curricular Activities, and Policy 5611 – Due Process Rights. Discipline of a student Respondent must comply with the applicable provisions of the Individuals with Disabilities Education Improvement Act (IDEA) and/or Section 504 of the Rehabilitation Act of 1972, and their respective implementing regulations.

The following disciplinary sanctions/consequences may be imposed on an employee Respondent who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):

- () oral or written warning;

- () written reprimands;

- () performance improvement plan;

- () required counseling;

- () required training or education;

- () demotion;

- () suspension with pay;

suspension without pay;

termination, and any other sanction authorized by any applicable Employee/Administrator Handbook and/or 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. **[DRAFTING NOTE: If the Superintendent is the Respondent, the Title IX Coordinator will notify the Board Attorney Board Chairman of the recommended remedies for consideration and, if necessary and appropriate, implementation in compliance with applicable due process procedures, whether statutory or contractual. The Board should review applicable policy(ies)/administrative procedures/employee handbooks to determine whether changes are needed to stated timelines related to imposition of discipline as result of possible delays caused by the Board's obligation to follow this grievance process and procedures; likewise, the Board may need to discuss with union representatives how implementation of this grievance process may impact any disciplinary provisions contained in applicable collective bargaining (e.g., timelines, permitted attendees at investigative interviews, etc.).]**

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.

The following disciplinary sanctions/consequences may be imposed on a non-student/non-employee member of the School District community or Third Party who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):

oral or written warning;

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

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

() restriction/prohibition on the third-party's ability to be on school property; and

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 appointed Superintendent is the Respondent) will consider the severity of the incident, previous disciplinary violations (if any), and any mitigating circumstances. If the Respondent is an elected Superintendent or Member of the Board, the Board shall notify the appropriate Florida governmental authority(ies).

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

At any point in the grievance process, the Superintendent (or the Title IX Coordinator if the Superintendent is the Respondent) may involve local law enforcement and/or file criminal charges related to allegations of Sexual Harassment that involve a sexual assault.

The Title IX Coordinator is responsible for 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:

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

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

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.

[DRAFTING NOTE: The Board may insert additional grounds on which an appeal may be filed.]

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 _____ (____) 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. **[DRAFTING NOTE: If the Board indicated above an intent to ordinarily complete the grievance process, including any appeal, within sixty (60) days of receipt of the Formal Complaint, Neola suggests that the deadline for submitting a written appeal be set at "within () three (3) () five (5) days" of the appealing party's receipt of the decision-makers(s)' determination of responsibility.]**

Nothing herein shall prevent the Superintendent (or the Board when the appointed Superintendent is the Respondent) from **implementing appropriate remedies; however, excluding imposing any remedy, including** disciplinary sanction, while the appeal is pending.

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

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

Both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. **[DRAFTING NOTE: Select OPTION 1, OPTION 2, OPTION 3, or OPTION 4.]**

[OPTION 1] The decision-maker(s) for the appeal shall determine when each party's written statement is due. **[END OF OPTION 1]**

[OPTION 2] The parties' written statements in support of, or challenging, the determination of responsibility must be submitted within ____ days after the Title IX Coordinator provides notice to the non-appealing party of the appeal. **[END OF OPTION 2]**

[OPTION 3] The appealing party's written statement must be submitted within ____ days after the Title IX Coordinator receives notice of the appeal. The other party's written statement must be submitted within ____ days after the Title IX Coordinator provides that party a copy of the appealing party's written statement. () The appealing party will have ____ days to submit a rebuttal to the other party's written statement. **[DRAFTING NOTE: Neola does not suggest that the Board select this extra option.] [END OF OPTION 3]**

[OPTION 4] Specifically, the appealing party must submit with the notice of appeal a written statement challenging the determination of responsibility. The nonappealing party shall have up to ____ days after receipt of the appealing party's written statement to submit his/her written statement in support of the determination of responsibility. **[END OF OPTION 4]**

[DRAFTING NOTE: If the Board indicated above an intent to ordinarily complete the grievance process, including any appeal, within sixty (60) days of receipt of the Formal Complaint, Neola suggests that the deadline for both parties to submit a written statement pursuant to OPTION 2 be set at "within five (5) days" of the Title IX Coordinator providing notice to the non-appealing party of the appeal. If the Board selects OPTION 3, Neola suggests that the party's respective written statements be submitted within

three (3) days of the triggering event (i.e., submission of the notice of appeal for the appealing party, and receipt of the appealing party's written statement for the nonappealing party), and if the Board selects the extra option in OPTION 3, Neola suggests the appealing party only have two (2) days after receipt of the non-appealing party's written statement to submit the rebuttal. Alternatively, in order to expedite the appeal, the Board could select OPTION 4 and require the appealing party to submit his/her written statement challenging the determination of responsibility at the same time s/he submits his/her notice of appeal. The nonappealing party would then be permitted to submit a written statement in support of the determination of responsibility within the same number of days that the appealing party had to submit the notice of appeal/statement challenging the determination of responsibility (e.g., three or five days, depending on the appeal deadline selected above).]

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)' 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 _____ days of when the parties' written statements were submitted. **[DRAFTING NOTE: If the Board indicated above an intent to ordinarily complete the grievance process, including any appeal, within sixty (60) days of receipt of the Formal Complaint, Neola suggests that the deadline for the decision-maker(s) of the appeal to issue the final decision be set at "within five (5) days" of the date the parties submitted their written statements, or the date a last written statement is submitted pursuant to Option 3 or Option 4.]**

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, constitutes retaliation. Retaliation against a person for making a report of Sexual Harassment, filing a Formal Complaint, or participating in an investigation () and/or hearing **[DRAFT NOTE: Select this option if the Board permits hearings.]**, is a serious violation of this policy that can result in imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Complaints alleging retaliation may be filed according to the grievance process set forth above.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

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

Confidentiality

The District will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, F.S. 1002.22-1002.222, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the District's obligation to maintain confidentiality shall not impair or otherwise affect the Complainant's and Respondent's receipt of the information to which they are entitled 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 () and the principles of academic freedom as set forth in the applicable collective bargaining agreement. In no case will a Respondent be found to have committed Sexual Harassment based on expressive conduct that is protected by the First Amendment () and/or the principles of academic freedom specified in the Board's collective bargaining agreement with its teachers.

Training

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

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

the scope of the District's education program or activity;

how to conduct an investigation and implement the grievance process () that includes hearings,

[DRAFTING NOTE: Select this option if the Board permits hearings.] appeals and informal resolution processes, as applicable; and

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

All Board employees will be trained concerning their legal obligation to report Sexual Harassment to the Title IX Coordinator. This training will include practical information about how to identify and report Sexual Harassment. **[DRAFTING NOTE: While the Title IX regulations do not specifically require this training, it is critical that the Board train all of the employees concerning this legal obligation since the Board will be considered to have "actual knowledge" of Sexual Harassment if any Board employee has notice of such conduct.]**

Recordkeeping

As part of its response to alleged violations of this policy, the District 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 District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity. If the District does not provide a Complainant with supportive measures, then the District will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

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

each Sexual Harassment investigation including any determination regarding responsibility () and any audio or audiovisual recording or transcript that is made of any hearing **[DRAFTING NOTE: Select this option if the Board permits live hearings.]**, 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 District's education program or activity

any appeal and the result therefrom

any informal resolution and the result therefrom, and

all materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process.

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

Outside Appointments, Dual Appointments, and Delegations

The Board retains discretion to appoint suitably qualified persons who are not Board 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 Board employee under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor, to any suitably qualified individual and such delegation may be rescinded by the Superintendent at any time.

[DRAFTING NOTE: The following option expressly sets forth authority that the Board has regardless of whether it is included in this policy, but is offered for those Boards that may want to affirmatively communicate to/address these issues for readers of this policy.]

[] 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.

Legal References

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 Improvement Act of 2004 (IDEIA)

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

Dear Colleague Letter on Sexual Violence (Office for Civil Rights, 2011)

F.S. 1000.05

OCR's Revised Sexual Harassment Guidance (2001)

**Redline
Draft**

NEOLA TEMPLATE – Special Update (Feb. 2021)

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

A. Title IX Introduction Policy

1. The School Board does not discriminate on the basis of sex (including sexual orientation or gender identity), in its education programs or activities, and is required by Title IX of the Education Amendments Act 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/enrollment and employment. The Board is committed to maintaining an education and work environment that is free from discrimination based on sex, including sexual harassment.

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2. The Board prohibits Sexual Harassment that occurs within its education programs and activities. When the District has actual knowledge of Sexual Harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner that is not deliberately indifferent.

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— 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. Board employees, students, third-party vendors and contractors, guests, and other members of the School District community who commit Sexual Harassment are subject to the full range of disciplinary sanctions set forth 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 District’s education programs and activities.

3.

B. Title IX Coverage

1. This Title IX policy applies only to Sexual Harassment that occurs within the scope of the District’s education programs and activities and that is committed in the United States by a member of the School District community or a Third Party.

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2. This Title IX policy does not apply to Sexual Harassment that occurs off school grounds, in a private setting, and outside the scope of the District’s education programs and activities; however, such Sexual Misconduct/Sexual Activity may be prohibited and subject to discipline under by the Student Code of Conduct if committed by a student, or by pursuant to Board policies and administrative procedures, applicable State and/or Federal laws, the Code of Ethics, and/or any applicable Employee/Administrator Handbook(s) if committed by a Board employee.

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3. 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 District’s education programs or activities. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by the Student Code of Conduct if committed by a student, or by Board policies and administrative procedures, applicable State and/or Federal laws, the Code of Ethics, and/or any applicable Employee/Administrator Handbook(s) if committed by a Board employee.

4. The Board does business with various vendors, contractors, and other third-parties who are not students or employees of the Board. Notwithstanding any rights that a given vendor, contractor, or 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 vendor, contractor, or third-party irrespective of any process or outcome under this Title IX policy.

—Title IX

—Definitions

C.

1. Words used in this Title IX policy shall have those meanings defined herein; words not defined herein shall be construed according to their plain and ordinary meanings.

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~~4.2.~~ **Sexual Harassment:** “Sexual Harassment” for Title IX purposes means conduct on the basis of sex that satisfies one or more of the following:

- a. A Board employee conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct (often called “*quid pro quo*” harassment);
- 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 District’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\(a\)\(30\)](#). The Superintendent or designee is directed to develop and implement Administrative Procedures to accompany this policy [LINK WHEN AVAILABLE] that include the current statutory definitions referenced in this paragraph, consistent with any future statutory amendments. ~~“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. Sexual assault includes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.~~

~~i. 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.~~

- ii. ~~Domestic violence includes felony or misdemeanor crimes of violence committed by:~~
 - 1. ~~a current or former spouse or intimate partner of the victim;~~
 - 2. ~~a person with whom the victim shares a child in common;~~
 - 3. ~~a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;~~
 - 4. ~~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~~
- iii. ~~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.~~
- iv. ~~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.~~
- v. ~~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.~~
- vi. ~~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.~~
- vii. ~~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.~~
- viii. ~~Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, 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.~~
- ix. ~~Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by State law.~~
- x. ~~Statutory Rape is sexual intercourse with a person who is under the statutory age of consent as defined by State law.~~
- 2.i. 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.

3-ii. *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.

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

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

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5. **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 District investigate the allegation(s) of Sexual Harassment. At the time of filing a Formal Complaint with the District, a Complainant must be participating in or attempting to participate in the District’s education program or activity. A “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal that the Board provides for this purpose) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or a party to the Formal Complaint and must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

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6. **Actual Knowledge:** “Actual knowledge” means notice of Sexual Harassment or allegations of Sexual Harassment to the District’s Title IX Coordinator, or any District official who has authority to institute corrective measures on behalf of the Board, or any Board employee. The mere ability or obligation to report Sexual Harassment or to inform a student about how to report Sexual Harassment, or having been trained to do so, does not qualify an individual as one who has the authority to institute corrective measures on behalf of the District. “Notice” includes, but is not limited to, a report of Sexual Harassment to the Title IX Coordinator. This standard is not met when the only District official with actual knowledge is the Respondent.

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7. **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 District’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District’s educational environment or deter Sexual Harassment. Supportive measures may include but are not limited to

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.

8. Education Program or Activity: “Education program or activity” refers to all operations of the District, 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 Board. 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.

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

10. Third Parties: “Third Parties” include, but are not limited to, guests and/or visitors on School District 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 School District community at school-related events/activities (whether on or off District property).

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

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

13. 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).7

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

D. Title IX Coordinator(s)

1. The Board designates and authorizes the Superintendent to appoint the following individual~~(s)~~ to oversee and coordinate its district-wide efforts to comply with Title IX and its implementing regulations:

District Title IX Coordinator

Brevard County Public Schools

2700 Judge Fran Jamieson Way

Viera, FL 32940-6601

(321) 633-1000 ext. 11438

titleix@brevardschools.org

2. In addition, the Board designates and authorizes each school principal and/or department leader within its jurisdiction to appoint a site-specific Deputy Title IX Coordinator.

4.3. The District Title IX Coordinator shall report directly to the Superintendent or designee except when the Superintendent is a Respondent. In such matters, the Title IX Coordinator shall report directly to the General Counsel/School Board Attorney.

2.4. Questions about application or interpretation of this Title IX policy should be directed to the District Title IX Coordinator.

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

The School Board of Brevard _____ County, Florida 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/enrollment and employment. The District’s Title IX Coordinator~~r(s)~~ is/are:

(Name)

(School District Title)

(Telephone Number)

(Office Address)

(E-mail Address)

Any inquiries about the application of Title IX and its implementing regulations to the District may be referred to the Title IX Coordinator(s), the Assistant Secretary for the U.S. Department of Education’s Office for Civil Rights, or both.

The 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: [\[insert web link when available\]](#). The grievance process specifically addresses how to report or file a complaint of sex discrimination, how to report or file a formal complaint of Sexual Harassment, and how the District will respond.

4.6. The Superintendent or designee shall also prominently display the Title IX Coordinators’ contact information – including name(s) and/or title(s), phone number(s), office address(es), and e-mail address(es) – and this policy on the District’s website and in each handbook or catalog that the Board makes available to applicants for admission/enrollment and employment, students, parents or legal guardians of elementary and secondary school students, Board employees, and all unions or professional organizations holding collective bargaining or professional agreements.

E. Grievance Process

1. The Board is committed to promptly and equitably resolving student and employee complaints alleging Sexual Harassment. The District’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 imposition of any disciplinary sanctions or other actions, other than supportive measures, against the Respondent.

—The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Any supportive measures provided to the Complainant or Respondent shall be maintained as confidential, to the extent that maintaining such confidentiality will not impair the ability of the District to provide the supportive measures.

2. _____

3. 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.

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

F. Report of Sexual Discrimination/Harassment

1. 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 District Title IX Coordinator's(s') contact information ~~listed above~~, or by any other means that results in the District Title IX Coordinator or Deputy 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). The District will exercise due diligence to consider and respond to any anonymous reports received, though the District's ability to follow up with a full investigation may be limited if the information provided does not allow it to reasonably identify the alleged Respondent(s) and/or individuals subject to the alleged harassment. ~~{ } Anonymous reports may be submitted using [] the online reporting form posted at [insert the web address for the reporting form, or insert a hyperlink tied to the phrase "online reporting form" [or] [] the hotline reporting number ([insert phone number]).~~
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2. ~~Students,~~ Board members, and Board employees are *required*, and other members of the School District community ~~(including students,~~ and Third Parties) are *encouraged*, to report allegations of sex discrimination or Sexual Harassment promptly to ~~the/a~~ Title IX Coordinator or to any Board employee, who will in turn 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).
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3. If a report involves allegations of Sexual Harassment by or involving ~~the-a~~ Title IX Coordinator, the person making the report should submit it to the Superintendent, or to another Board employee who, in turn, will notify the Superintendent of the report. The Superintendent will then designate another person to serve in place of the Title IX Coordinator for the limited purpose of addressing that report of Sexual Harassment. ~~serve in place of the Title IX Coordinator for purposes of addressing that report of Sexual Harassment.~~
4. A reporting person may file criminal charges simultaneously with filing a Formal Complaint. A reporting 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.

5. Because the Board is considered to have actual knowledge of Sexual Harassment or allegations of Sexual Harassment if any Board employee has such knowledge, and because the Board must take specific actions when it has notice of Sexual Harassment or allegations of Sexual Harassment, a Board employee who has independent knowledge of or receives a report involving allegations of sex discrimination and/or Sexual Harassment must promptly notify ~~the/a~~ Title IX Coordinator within two (2) days of upon learning the information or receiving the report. If the Board employee's knowledge is based on another individual bringing the information to the Board employee's attention and the reporting individual submitted a written complaint to the Board employee, the Board employee must provide the written complaint to the Title IX Coordinator.

6. ~~**DRAFTING NOTE: The regulations do not specify within how many days the Board employee must notify the Title IX Coordinator of receiving a report of Sexual Harassment; Neola suggests "two (2) days". Alternatively, the Board could make this language more open-ended – e.g., " * * * must immediately/promptly notify the/a Title IX Coordinator of such information or report."**~~ The Board employee must also comply with any mandatory reporting responsibilities regarding suspected abuse, abandonment, or neglect of a child pursuant to F.S. 39.201 and Policy 8462 – Student Abuse, Abandonment, and Neglect, if applicable. ~~If the Board employee's knowledge is based on another individual bringing the information to the Board employee's attention and the reporting individual submitted a written complaint to the Board employee, the Board employee must provide the written complaint to the Title IX Coordinator.~~

If the reported activity is criminal in nature, the Board employee must be immediately report it to the School Resource Officer and/or the appropriate law enforcement agency.

7.

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

9. When a report of Sexual Harassment is made/received, the Title IX Coordinator shall promptly (i.e., within two (2) days ~~[DRAFTING NOTE: The regulations do not define "promptly" or otherwise specify within how many days the contact has to be made; Neola suggests "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:

- a. discuss the availability of supportive measures,
- b. consider the Complainant's wishes with respect to supportive measures,
- c. inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and
- d. explain to the Complainant the process for filing a Formal Complaint. ~~The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Any supportive measures provided to the Complainant or Respondent shall be maintained as confidential, to the extent that maintaining such confidentiality will not impair the ability of the District to provide the supportive measures.~~

10. A report of allegations of Sexual Misconduct/Sexual Activity not involving the Title IX definitions of Sexual Harassment will be addressed through the alternate disciplinary procedures outlined in

Board policies, the Student Code of Conduct, the Code of Ethics, any applicable collective bargaining agreement, and/or any applicable Employee/Administrator Handbook.

G. Emergency Removal:

1. Subject to limitations and/or procedures imposed by State and/or Federal law, the District may remove a student Respondent from its education program or activity on an emergency basis after conducting an individualized safety and risk analysis. The purposes of the individualized safety and risk analysis is to determine whether the student Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment that justifies removal. If the District determines the student Respondent poses such a threat, it will so notify the student Respondent and the student Respondent will have an opportunity to challenge the decision immediately following the removal. See Policy 5610 – Removal, Out-of-School Suspension, Disciplinary Placement, and Expulsion of Students, Policy 5610.01 – Emergency Removal of Students, and Policy 5611 – Due Process Rights.

~~— [DRAFTING NOTE: The Board may substitute “Superintendent” or “Title IX Coordinator” in place of “District” in the first sentence. Alternatively, the Superintendent could designate, through the administrative procedure, one or more administrators, including the Title IX Coordinator, to make emergency removal decisions after conducting the individualized safety and risk analysis. In Florida, emergency removals may only be imposed in the manner delineated in F.S. 1006.07-1006.09. Additionally, emergency removals must be conducted in compliance with the Individuals with Disabilities Education Improvement Act and/or Section 504 of the Rehabilitation Act of 1973.]~~

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

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

— Formal Complaint of Sexual Harassment

H. -

~~— A~~
~~— A~~ Formal Complaint may be filed with ~~the a~~ Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information set forth above ~~()~~ and by ~~_____ [DRAFTING NOTE: The Board may set forth additional method(s) by which a Formal Complaint may be filed (e.g., online portal submission).] If a Formal Complaint involves allegations of Sexual Harassment by or involving the Title IX Coordinator, the Complainant should submit the Formal Complaint to the Superintendent, who will designate another person to serve in place of the Title IX Coordinator for the limited purpose of implementing the grievance process with respect to that Formal Complaint. [DRAFTING NOTE: If the Superintendent is the Title IX Coordinator, substitute [] _____ [] “Board Attorney” [] “Board Chairman” in place of “Superintendent” in the preceding sentence.]~~

- 1.

- 4.2. When the Title IX Coordinator receives a Formal Complaint or signs a Formal Complaint of Sexual Harassment, the District will follow its Grievance Process, as set forth herein. Specifically, the District will undertake an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations will not be based on a person’s status as a Complainant, Respondent, or witness.
- 2.3. 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 Code of Ethics.

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

4.

I. Timeline
Timeline

1. The District will ~~seek endeavor~~ to conclude the grievance process, ~~including resolving any appeals,~~ within sixty (60) days of receipt of the Formal Complaint. ~~[DRAFTING NOTE: The Title IX regulations do not specify a deadline for completing the grievance process; Neola suggests sixty (60) days (i.e., twelve (12) weeks) based on the following considerations: (1) within two (2) days of receipt of the Formal Complaint, the Title IX Coordinator sends requisite notice to parties; (2) two (2) weeks (fourteen (14) calendar days) to investigate (remember the need for advance written notice to a party and adequate time for the party to prepare before any interviews/hearings/meetings; time for parties to present witnesses (including expert witnesses) and other inculpatory or exculpatory evidence); (3) at the conclusion of the investigation and before finalizing the investigative report, two (2) weeks (a minimum of ten (10) calendar days) for the parties to review the evidence and submit their feedback; (4) up to a week (i.e., seven (7) calendar days) for the investigator to consider such feedback and prepare the investigative report; (4) two (2) week (a minimum of ten (10) calendar days) for the parties to review the investigative report and submit questions and receive answers to questions submitted to parties and witnesses (if the Board permits hearings, the hearing cannot occur until the Complainant and Respondent have had a minimum of ten (10) calendar days to review the investigative report); (5) a week (i.e., seven (7) calendar days) for the decision-maker(s) to prepare the decision; (6) up to a week (Neola suggests three (3) to five (5) calendar days) for the parties to review the decision and submit a notice of appeal; (7) a week (seven (7) calendar days) for the parties to submit their written statements in support of or in opposition to the appeal; and (8) a week (seven (7) calendar days) for the appeal decision-maker(s) to prepare a final decision. Any informal resolution process could impact this schedule. Given this fairly aggressive timeline, the Board may want to remove the appeal process from this timeline – i.e., delete the phrase “, including resolving any appeals,” from the sentence, which would allow more time for the potential use of the informal resolution process. Further, the preceding schedule does not provide time for a hearing that could further extend the timeline needed to complete the grievance process.]~~

2. 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 ~~or of the grievance process of~~ a limited extension~~in~~ 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;~~;~~ availability of a party's advisor;~~;~~ ~~or a~~ witness; concurrent law enforcement activity; complexity and severity of the matter; intervening holidays or school breaks; and the need for language assistance or disability an accommodations of disabilities. The Title IX Coordinator will provide the parties with reasonable updates on the status of the grievance process.

4.3. Upon receipt of a Formal Complaint, the Title IX Coordinator will promptly 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 constitutes 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.
- c. The written notice must:
 - i. 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;
 - ii. 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 all relevant and directly related evidence; and
 - iii. inform the parties of any provision in the Student Code of Conduct, this Title IX Policy, the Code of Ethics or any other applicable Handbook that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

4.4. 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.

J. **Dismissal of a Formal Complaint**

1. The District 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 Title IX policy) as alleged even if proved true;

- b. did not occur in or during the District's education program or activity; or
 - c. did not occur against a person in the United States.
2. **Mandatory Dismissal.** If one of the preceding circumstances exist, the Title IX Coordinator *shall* dismiss the Formal Complaint and close the Title IX Investigation. However, if the Title IX Coordinator dismisses the Formal Complaint due to one of the preceding reasons, the District may still investigate and take action with respect to such alleged misconduct pursuant to another provision of any applicable student or employee code of conduct, Board policy, and/or Employee/Administrator Handbook.
3. **Permissive Dismissal.** 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 District or employed by the Board; or
 - c. specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

~~d.4.~~ If the Title IX Coordinator dismisses a Formal Complaint or any allegations therein, the Title IX Coordinator must promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

A.K. Consolidation of Formal Complaints

1. 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.

2. 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.

B.L. Informal Resolution Process

- 1. Under no circumstances shall a Complainant be required as a condition of admission, 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.
- 2. If a Formal Complaint is filed, the Title IX Coordinator may offer to the parties an informal resolution process, if deemed appropriate given the nature of the allegations and circumstances. (For example, informal resolution may not be appropriate for cases involving violent incidents.) Should 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.

3. If the Title IX Coordinator decides 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.
4. 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.
5. Before commencing the informal resolution process, the Title IX Coordinator shall obtain from the parties their voluntary, written consent to the informal resolution process.
6. During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur have stayed and all related deadlines are suspended.
7. The informal resolution process is not available to resolve allegations that a Board employee or another adult member of the School District community or adult Third Party sexually harassed a student.

G.M. Investigation of a Formal Complaint of Sexual Harassment

1. In conducting the investigation of a Formal Complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is on the District, not the parties.
- 4.2. In making the determination of responsibility, the decision-maker(s) are directed to use the preponderance of the evidence standard. The decision-maker(s) are charged with considering the totality of all available directly related, relevant evidence to consider whether it is more likely than not the Respondent(s) engaged in the alleged Sexual Harassment.
- 2.3. The District is not permitted to access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the party provides the District with voluntary, written consent to do so; if a student party is not an Eligible Student, the District must obtain the voluntary, written consent of a parent.
- 3.4. 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.
- 4.5. 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 District may not limit the choice or presence of an advisor for either the Complainant or Respondent in any meeting or grievance proceeding.

6. Advisors should be reminded that their role in the Title IX process is limited to a supportive, rather than participatory, role. Advisors shall not unreasonably interfere with or disrupt the investigative process.

5-7. Neither party shall be restricted in their ability to gather and present relevant evidence.

6-8. The District will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate.

7-9. Both parties shall have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

10. Prior to completion of the investigative report, the investigator or Title IX Coordinator will make available to each party and the party's advisor, if any, the evidence subject to inspection and review, 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. The form of any written evidence may be provided in electronic or hard copy format; any video or audio evidence must be made available for viewing or listening in person.

8-11. 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 issuing a determination regarding responsibility.

N. Determination of Responsibility

1. 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)~~.
2. 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.
3. 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. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

4. Should the decision-maker feel additional information is required to make a determination, the decision-maker may coordinate with the Title IX Coordinator to request the investigator(s) conduct additional interviews, ask additional questions, or gather additional evidence. Any such additional material will be appended to the investigative report and a final copy will be made available to the parties for response, at least ten (10) calendar days prior to the decision-maker issuing a determination regarding responsibility.

4.5. ~~T~~Once the investigative report is finalized and all parties have had an opportunity to respond, the decision-maker will issue a written determination regarding responsibility. To reach this determination, the decision-maker must apply the preponderance of the evidence standard.

5.6. The written determination will include the following content:

- a. Identification of the allegations potentially constituting Sexual Harassment pursuant to this Title IX 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 is recommending that the District impose on the Respondent(s), and whether remedies designed to restore or preserve equal access to the District's education program or activity should be provided by the District to the Complainant(s); and
- f. The procedures and permissible bases for the parties to appeal.

6.7. The following types of disciplinary sanctions/consequences may be imposed on a student Respondent who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):

- a. Informal Discipline
 - i. writing assignments;
 - ii. changing of seating or location;
 - iii. pre-school, lunchtime, or after-school detention;
 - iv. in-school discipline; or
 - v. Saturday school.
- b. Formal Discipline

- i. suspension of bus riding/transportation privileges;
- ii. removal from co-curricular and/or extra-curricular activity(ies), including athletics;
- iii. emergency removal;
- iv. suspension for up to ten (10) school days;
- v. expulsion not to exceed the remainder of the term or school year and one (1) additional year of attendance; or
- vi. any other sanction authorized by the Student Code of Conduct.

~~7-8.~~ If the decision-maker determines the student Respondent is responsible for violating this policy (i.e., engaging in Sexual Harassment), the decision-maker will recommend appropriate remedies, including disciplinary sanctions/consequences. The Title IX Coordinator will notify the authorized administrator who can consider the recommendation(s) and implement an appropriate remedy(ies) in compliance with Policy 5600 – Student Discipline, Policy 5605 – Suspension/Expulsion of Disabled Students, Policy 5610 – Removal, Out-of-School Suspension, Disciplinary Placement, and Expulsion of Students, Policy 5601.01 – Emergency Removal of Students, Policy 5610.02 – In-School Discipline, Policy 5610.04 – Suspension of Bus Riding/Transportation Privileges, Policy 5610.05 – Participation in Extra-Curricular Activities, and Policy 5611 – Due Process Rights. Discipline of a student Respondent must comply with the applicable provisions of the Individuals with Disabilities Education Improvement Act (IDEA) and/or Section 504 of the Rehabilitation Act of 1972, and their respective implementing regulations.

~~i.~~ The

~~8-9.~~ The following disciplinary sanctions/consequences may be imposed on an employee Respondent who is determined responsible for violating this policy (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; and
- j. any other sanction authorized by any applicable Employee/Administrator Handbook and/or collective bargaining agreement.

~~10.~~ 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. ~~{DRAFTING NOTE:~~

~~9.~~~~11.~~ If the Superintendent is the Respondent, the Title IX Coordinator will notify the ~~{}~~ Board Attorney ~~{}~~ Board Chairman of the recommended remedies for consideration and, if necessary and appropriate, implementation in compliance with applicable due process procedures, whether statutory or contractual.

~~10.~~~~12.~~ 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.

~~11.~~~~13.~~ The following disciplinary sanctions/consequences may be imposed on a non-student/non-employee member of the School District community or Third Party who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):

- 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.

~~13.~~~~14.~~ 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.

~~14.~~
15. The decision-maker(s) will provide the written determination to the Title IX Coordinator who will provide the written determination to the parties simultaneously.

~~14.~~
~~17.~~~~16.~~ Ultimately, in imposing a disciplinary sanction/consequence, the Superintendent (or the Board when the appointed 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 Superintendent or Member of the Board, the Board shall notify the appropriate Florida governmental authority(ies).

~~18.~~
~~19.~~~~17.~~ The District's resolution of a Formal Complaint ordinarily will not be impacted by the fact that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

~~20.~~
~~21.~~~~18.~~ At any point in the grievance process, the Superintendent (or the Title IX Coordinator if the Superintendent is the Respondent) may involve local law enforcement and/or file criminal charges related to allegations of Sexual Harassment that involve a sexual assault.

~~22.~~
~~23.~~~~19.~~ The Title IX Coordinator is responsible for effective implementation of any remedies.

O. Appeal

1. 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:
 - ~~D.~~a. Procedural irregularity that affected the outcome of the matter (e.g., material deviation from established procedures);
 - ~~E.~~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
 - ~~F.~~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.
- ~~1.2.~~ The Complainant(s) may not challenge the ultimate disciplinary sanction/consequence that is imposed.
- ~~2.3.~~ 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.
- ~~4.~~ Nothing herein shall prevent the Superintendent (or the Board when the appointed Superintendent is the Respondent) from implementing appropriate remedies ~~---~~; however, excluding disciplinary sanction ~~---~~, while the appeal is pending.
- ~~5.~~ 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.
- ~~3.6.~~ 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.
- ~~4.7.~~ Both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. The decision-maker(s) for the appeal shall determine when each party's written statement is due.
- ~~5.8.~~ 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-makers(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.
- ~~6.9.~~ 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 except to any extent permitted by Board policy or procedure concerning expellable offenses.

G.P. **Retaliation**

1. 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, constitutes retaliation. Retaliation against a person for making a report of Sexual Harassment, filing a Formal Complaint, or participating in an investigation ~~(-) and/or hearing~~ **[DRAFT NOTE: Select this option if the Board permits hearings.]** is a serious violation of this policy that can result in imposition of disciplinary sanctions/consequences and/or other appropriate remedies.
2. Complaints alleging retaliation may be filed according to the grievance process set forth above.
3. The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.
4. 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.

H.Q. **Confidentiality**

1. The District ~~shall maintain~~**will keep** ~~as~~ 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 regulations, 34 CFR part 99, F.S. 1002.22-1002.222, or as required by law, or **as is reasonably necessary** to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.
2. ~~T(i.e.,~~ the District's obligation to maintain confidentiality shall not impair or otherwise affect the Complainant's and Respondent's receipt of ~~the~~ information to which they are entitled related to the investigative record and determination of responsibility~~.)~~.

R. Application of the First Amendment

1. The Board will construe and apply this policy consistent with the First Amendment to the U.S. Constitution ~~(-) and the principles of academic freedom as set forth in the applicable collective bargaining agreement.~~

2. In no case will a Respondent be found to have committed Sexual Harassment based on expressive conduct that is protected by the First Amendment ~~() and/or the principles of academic freedom specified in the Board's collective bargaining agreement with its teachers.~~

I.S. Training

1. The District's Title IX Coordinator, along with any investigator(s), decision-maker(s), or person(s) designated to facilitate an informal resolution process, ~~must~~ shall receive training at a minimum on:
 - ~~a.~~ the definition of Sexual Harassment (as that term is used in this policy);
 - a.
 - b. the scope of the District's education program or activity;
 - c. how to conduct an investigation and implement the grievance process that includes 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.
2. Additionally, all Board employees shall 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.

I.T. Recordkeeping

1. As part of its response to alleged violations of this policy, the District 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 District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity. If the District does not provide a Complainant with supportive measures, then the District will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.
2. The District shall maintain for a period of seven (7) calendar years the following records:
 - a. Each Sexual Harassment investigation file, including
 - i. any determination regarding responsibility,
 - ii. any disciplinary sanctions recommended and/or imposed on the Respondent(s), and
 - iii. any remedies provided to the Complainant(s) designed to restore or preserve equal access to the District's education program or activity.
 - b. Any appeal and the result therefrom.
 - c. Any informal resolution and the result therefrom.

- d. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

~~e.3.~~ The District will make its training materials publicly available on its website. If a person is unable to access the District’s website, the Title IX Coordinator will make the training materials available upon request for inspection by members of the public.

U. **Outside Appointments, Dual Appointments, and Delegations**

- 1. The Board retains discretion to appoint suitably qualified persons who are not Board 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.

~~— I~~

- 2. 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 Board employee under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor, to any suitably qualified individual and such delegation may be rescinded by the Superintendent at any time.~~

~~3. -~~

~~The Superintendent may delegate functions assigned to a specific Board employee under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor, to any suitably qualified individual and such delegation may be rescinded by the Superintendent at any time.~~

~~[DRAFTING NOTE: The following option expressly sets forth authority that the Board has regardless of whether it is included in this policy, but is offered for those Boards that may want to affirmatively communicate to/address these issues for readers of this policy.]~~

V. ~~I~~ **Discretion in Application**

- 1. 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.

~~— Des~~

- 2. ~~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.

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3. 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.

Adopted

Legal References

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 Improvement Act of 2004 (IDEIA)
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 (Title IX Regulations)
Dear Colleague Letter on Sexual Violence (Office for Civil Rights, 2011)
F.S. 1000.05
OCR's Revised Sexual Harassment Guidance (2001)

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**Clean
Version**

NEW POLICY**2266 – NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES****A. Title IX Policy**

1. The School Board does not discriminate on the basis of sex (including sexual orientation or gender identity), in its education programs or activities, and is required by Title IX of the Education Amendments Act 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/enrollment and employment. The Board is committed to maintaining an education and work environment that is free from discrimination based on sex, including sexual harassment.
2. The Board prohibits Sexual Harassment that occurs within its education programs and activities. When the District has actual knowledge of Sexual Harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner that is not deliberately indifferent.
3. 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. Board employees, students, third-party vendors and contractors, guests, and other members of the School District community who commit Sexual Harassment are subject to the full range of disciplinary sanctions set forth 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 District's education programs and activities.

B. Title IX Coverage

1. This Title IX policy applies only to Sexual Harassment that occurs within the scope of the District's education programs and activities and that is committed in the United States by a member of the School District community or a Third Party.
2. This Title IX policy does not apply to Sexual Harassment that occurs off school grounds, in a private setting, and outside the scope of the District's education programs and activities; however, such Sexual Misconduct/Sexual Activity may be prohibited and subject to discipline under the Student Code of Conduct if committed by a student, or pursuant to Board policies and administrative procedures, applicable State and/or Federal laws, the Code of Ethics, and/or any applicable Employee/Administrator Handbook(s) if committed by a Board employee.
3. 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 District's education programs or activities. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by the Student Code of Conduct if committed by a student, or by Board policies and administrative procedures, applicable State and/or Federal laws, the Code of Ethics, and/or any applicable Employee/Administrator Handbook(s) if committed by a Board employee.
4. The Board does business with various vendors, contractors, and other third-parties who are not students or employees of the Board. Notwithstanding any rights that a given vendor, contractor, or 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 vendor, contractor, or third-party irrespective of any process or outcome under this Title IX policy.

C. Title IX Definitions

1. Words used in this Title IX policy shall have those meanings defined herein; words not defined herein shall be construed according to their plain and ordinary meanings.
2. **Sexual Harassment:** “Sexual Harassment” for Title IX purposes means conduct on the basis of sex that satisfies one or more of the following:
 - a. A Board employee conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct (often called “*quid pro quo*” harassment);
 - 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 District’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\(a\)\(30\)](#). The Superintendent or designee is directed to develop and implement Administrative Procedures to accompany this policy [LINK WHEN AVAILABLE] that include the current statutory definitions referenced in this paragraph, consistent with any future statutory amendments.
 - i. *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.
 - ii. *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.
3. **Complainant:** “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
4. **Respondent:** “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
5. **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 District investigate the allegation(s) of Sexual Harassment. At the time of filing a Formal Complaint with the District, a Complainant must be participating in or attempting to participate in the District’s education program or activity. A “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal that the Board provides for this purpose) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or a party to the Formal Complaint and must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
6. **Actual Knowledge:** “Actual knowledge” means notice of Sexual Harassment or allegations of Sexual Harassment to the District’s Title IX Coordinator, or any District official who has authority to institute corrective measures on behalf of the Board, or any Board employee. The mere ability or obligation to report Sexual Harassment or to inform a student about how to report Sexual Harassment, or having been trained to do so, does not qualify an individual as one who has the

authority to institute corrective measures on behalf of the District. “Notice” includes, but is not limited to, a report of Sexual Harassment to the Title IX Coordinator. This standard is not met when the only District official with actual knowledge is the Respondent.

7. **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 District’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District’s educational environment or deter Sexual Harassment. Supportive measures may include but are not limited to 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.
 8. **Education Program or Activity:** “Education program or activity” refers to all operations of the District, 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 Board. 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.
 9. **School District community:** “School District community” refers to students and Board employees (i.e., administrators, and professional and classified staff), as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.
 10. **Third Parties:** “Third Parties” include, but are not limited to, guests and/or visitors on School District 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 School District community at school-related events/activities (whether on or off District property).
 11. **Inculpatory Evidence:** “Inculpatory evidence” is evidence that tends to establish a Respondent’s responsibility for alleged Sexual Harassment.
 12. **Exculpatory Evidence:** “Exculpatory evidence” is evidence that tends to clear or excuse a Respondent from allegations of Sexual Harassment.
 13. **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).
 14. **Eligible Student:** “Eligible Student” means a student who has reached eighteen (18) years of age or is attending an institution of postsecondary education.
- D. Title IX Coordinator(s)
1. The Board designates and authorizes the Superintendent to appoint the following individual to oversee and coordinate its district-wide efforts to comply with Title IX and its implementing regulations:

District Title IX Coordinator
Brevard County Public Schools
2700 Judge Fran Jamieson Way
Viera, FL 32940-6601
(321) 633-1000 ext. 11438
titleix@brevardschools.org

2. In addition, the Board designates and authorizes each school principal and/or department leader within its jurisdiction to appoint a site-specific Deputy Title IX Coordinator.
3. The District Title IX Coordinator shall report directly to the Superintendent or designee except when the Superintendent is a Respondent. In such matters, the Title IX Coordinator shall report directly to the General Counsel/School Board Attorney.
4. Questions about application or interpretation of this Title IX policy should be directed to the District Title IX Coordinator.
5. The Superintendent or designee shall notify all applicants for admission/enrollment and employment, students, parents or legal guardians of elementary and secondary school students, Board employees, and all unions or professional organizations holding collective bargaining or professional agreements with the Board of the following information:

The School Board of Brevard County, Florida 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/enrollment and employment. The District's Title IX Coordinator is:

(Name)

(School District Title)

(Telephone Number)

(Office Address)

(E-mail Address)

Any inquiries about the application of Title IX and its implementing regulations to the District may be referred to the Title IX Coordinator(s), the Assistant Secretary for the U.S. Department of Education's Office for Civil Rights, or both.

The 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: **[insert web link when available]**. The grievance process specifically addresses how to report or file a complaint of sex discrimination, how to report or file a formal complaint of Sexual Harassment, and how the District will respond.

6. The Superintendent or designee shall also prominently display the Title IX Coordinators' contact information – including name(s) and/or title(s), phone number(s), office address(es), and e-mail address(es) – and this policy on the District's website and in each handbook or catalog that the Board makes available to applicants for admission/enrollment and employment, students, parents or legal guardians of elementary and secondary school students, Board employees, and all unions or professional organizations holding collective bargaining or professional agreements.

E. Grievance Process

1. The Board is committed to promptly and equitably resolving student and employee complaints alleging Sexual Harassment. The District'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 imposition of any disciplinary sanctions or other actions, other than supportive measures, against the Respondent.
2. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Any supportive measures provided to the Complainant or Respondent shall be maintained as confidential, to the extent that maintaining such confidentiality will not impair the ability of the District to provide the supportive measures.
3. 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.
4. If a determination of responsibility for Sexual Harassment is made against the Respondent, the Board will provide remedies to the Complainant. The remedies will be designed to restore or preserve equal access to the District's education program or activity. Potential remedies include, but are not limited to, individualized services that constitute supportive measures. Remedies may also be disciplinary or punitive in nature and may burden the Respondent.

F. Report of Sexual Discrimination/Harassment

1. 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 District Title IX Coordinator's contact information, or by any other means that results in the District Title IX Coordinator or Deputy 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). The District will exercise due diligence to consider and respond to any anonymous reports received, though the District's ability to follow up with a full investigation may be limited if the information provided does not allow it to reasonably identify the alleged Respondent(s) and/or individuals subject to the alleged harassment.
2. Board members and Board employees are *required*, and other members of the School District community (including students and Third Parties) are *encouraged*, to report allegations of sex discrimination or Sexual Harassment promptly to a Title IX Coordinator or to any Board employee, who will in turn notify 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).
3. If a report involves allegations of Sexual Harassment by or involving a Title IX Coordinator, the person making the report should submit it to the Superintendent, or to another Board employee

who, in turn, will notify the Superintendent of the report. The Superintendent will then designate another person to serve in place of the Title IX Coordinator for the limited purpose of addressing that report of Sexual Harassment.

4. A reporting person may file criminal charges simultaneously with filing a Formal Complaint. A reporting 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.
5. Because the Board is considered to have actual knowledge of Sexual Harassment or allegations of Sexual Harassment if any Board employee has such knowledge, and because the Board must take specific actions when it has notice of Sexual Harassment or allegations of Sexual Harassment, a Board employee who has independent knowledge of or receives a report involving allegations of sex discrimination and/or Sexual Harassment must promptly notify a Title IX Coordinator upon learning the information or receiving the report. If the Board employee's knowledge is based on another individual bringing the information to the Board employee's attention and the reporting individual submitted a written complaint to the Board employee, the Board employee must provide the written complaint to the Title IX Coordinator.
6. The Board employee must also comply with any mandatory reporting responsibilities regarding suspected abuse, abandonment, or neglect of a child pursuant to F.S. 39.201 and Policy 8462 – Student Abuse, Abandonment, and Neglect, if applicable.
7. If the reported activity is criminal in nature, the Board employee must be immediately report it to the School Resource Officer and/or the appropriate law enforcement agency.
8. If a Board employee fails to report an incident of Sexual Harassment of which the Board employee is aware, the Board employee may be subject to disciplinary action, up to and including termination.
9. When a report of Sexual Harassment is received, the Title IX Coordinator shall promptly contact the Complainant (including the parent/guardian if the Complainant is under eighteen (18) years of age or under guardianship) to:
 - a. discuss the availability of supportive measures,
 - b. consider the Complainant's wishes with respect to supportive measures,
 - c. inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and
 - d. explain to the Complainant the process for filing a Formal Complaint.
10. A report of allegations of Sexual Misconduct/Sexual Activity not involving the Title IX definitions of Sexual Harassment will be addressed through the alternate disciplinary procedures outlined in Board policies, the Student Code of Conduct, the Code of Ethics, any applicable collective bargaining agreement, and/or any applicable Employee/Administrator Handbook.

G. Emergency Removal:

1. Subject to limitations and/or procedures imposed by State and/or Federal law, the District may remove a student Respondent from its education program or activity on an emergency basis after conducting an individualized safety and risk analysis. The 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 District determines the student Respondent

poses such a threat, it will so notify the student Respondent and the student Respondent will have an opportunity to challenge the decision immediately following the removal. See Policy 5610 – Removal, Out-of-School Suspension, Disciplinary Placement, and Expulsion of Students, Policy 5610.01 – Emergency Removal of Students, and Policy 5611 – Due Process Rights.

2. If the Respondent is a non-student employee, the District may place the Respondent on administrative leave during the pendency of the grievance process.
3. For all other Respondents, including other members of the School District community and Third Parties, the Board retains broad discretion to prohibit such persons from entering onto its school grounds and other properties at any time and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

H. Formal Complaint of Sexual Harassment

1. A Formal Complaint may be filed with a 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 the Title IX Coordinator, the Complainant should submit the Formal Complaint to the Superintendent, who will designate another person to serve in place of the Title IX Coordinator for the limited purpose of implementing the grievance process with respect to that Formal Complaint.
2. When the Title IX Coordinator receives a Formal Complaint or signs a Formal Complaint of Sexual Harassment, the District will follow its Grievance Process, as set forth herein. Specifically, the District will undertake an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
3. 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 Code of Ethics.
4. The Respondent in a Title IX Investigation is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

I. Timeline

1. The District will endeavor to conclude the grievance process within sixty (60) days of receipt of the Formal Complaint.
2. 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 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; availability of a party's advisor or witness; concurrent law enforcement activity; complexity and severity of the matter; intervening holidays or school breaks; and the need for language assistance or disability accommodations. The Title IX Coordinator will provide the parties with reasonable updates on the status of the grievance process.
3. Upon receipt of a Formal Complaint, the Title IX Coordinator will promptly 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 constitutes 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.
 - c. The written notice must:
 - i. 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;
 - ii. 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 all relevant and directly related evidence; and
 - iii. inform the parties of any provision in the Student Code of Conduct, this Title IX Policy, the Code of Ethics or any other applicable Handbook that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
4. 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.

J. Dismissal of a Formal Complaint

1. The District 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 Title IX policy) as alleged even if proved true;
 - b. did not occur in or during the District's education program or activity; or
 - c. did not occur against a person in the United States.
2. **Mandatory Dismissal.** If one of the preceding circumstances exist, the Title IX Coordinator *shall* dismiss the Formal Complaint and close the Title IX Investigation. However, if the Title IX Coordinator dismisses the Formal Complaint due to one of the preceding reasons, the District may still investigate and take action with respect to such alleged misconduct pursuant to another provision of any applicable student or employee code of conduct, Board policy, and/or Employee/Administrator Handbook.
3. **Permissive Dismissal.** 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 District or employed by the Board; or
 - c. specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
4. If the Title IX Coordinator dismisses a Formal Complaint or any allegations therein, the Title IX Coordinator must promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

K. Consolidation of Formal Complaints

1. 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.
2. 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.

L. Informal Resolution Process

1. Under no circumstances shall a Complainant be required as a condition of admission, 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.
2. If a Formal Complaint is filed, the Title IX Coordinator may offer to the parties an informal resolution process, if deemed appropriate given the nature of the allegations and circumstances. (For example, informal resolution may not be appropriate for cases involving violent incidents.) Should 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.
3. If the Title IX Coordinator decides 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.
4. 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.
5. Before commencing the informal resolution process, the Title IX Coordinator shall obtain from the parties their voluntary, written consent to the informal resolution process.

6. During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur have stayed and all related deadlines are suspended.
7. The informal resolution process is not available to resolve allegations that a Board employee or another adult member of the School District community or adult Third Party sexually harassed a student.

M. Investigation of a Formal Complaint of Sexual Harassment

1. In conducting the investigation of a Formal Complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is on the District, not the parties.
2. In making the determination of responsibility, the decision-maker(s) are directed to use the preponderance of the evidence standard. The decision-maker(s) are charged with considering the totality of all available directly related, relevant evidence to consider whether it is more likely than not the Respondent(s) engaged in the alleged Sexual Harassment.
3. The District is not permitted to access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the party provides the District with voluntary, written consent to do so; if a student party is not an Eligible Student, the District must obtain the voluntary, written consent of a parent.
4. 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.
5. 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 District may not limit the choice or presence of an advisor for either the Complainant or Respondent in any meeting or grievance proceeding.
6. Advisors should be reminded that their role in the Title IX process is limited to a supportive, rather than participatory, role. Advisors shall not unreasonably interfere with or disrupt the investigative process.
7. Neither party shall be restricted in their ability to gather and present relevant evidence.
8. The District will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate.
9. Both parties shall have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the District does not intend to rely in reaching a determination

regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

10. Prior to completion of the investigative report, the investigator or Title IX Coordinator will make available to each party and the party's advisor, if any, the evidence subject to inspection and review, 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. The form of any written evidence may be provided in electronic or hard copy format; any video or audio evidence must be made available for viewing or listening in person.
11. 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 issuing a determination regarding responsibility.

N. Determination of Responsibility

1. The Title IX Coordinator shall appoint a decision-maker to issue a determination of responsibility. The decision-maker cannot be the same person as the Title IX Coordinator or the investigator.
2. 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.
3. 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. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.
4. Should the decision-maker feel additional information is required to make a determination, the decision-maker may coordinate with the Title IX Coordinator to request the investigator(s) conduct additional interviews, ask additional questions, or gather additional evidence. Any such additional material will be appended to the investigative report and a final copy will be made available to the parties for response, at least ten (10) calendar days prior to the decision-maker issuing a determination regarding responsibility.
5. Once the investigative report is finalized and all parties have had an opportunity to respond, the decision-maker will issue a written determination regarding responsibility. To reach this determination, the decision-maker must apply the preponderance of the evidence standard.
6. The written determination will include the following content:
 - a. Identification of the allegations potentially constituting Sexual Harassment pursuant to this Title IX 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 is recommending that the District impose on the Respondent(s), and whether remedies designed to restore or preserve equal access to the District's education program or activity should be provided by the District to the Complainant(s); and
 - f. The procedures and permissible bases for the parties to appeal.
7. The following types of disciplinary sanctions/consequences may be imposed on a student Respondent who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):
- a. Informal Discipline
 - i. writing assignments;
 - ii. changing of seating or location;
 - iii. pre-school, lunchtime, or after-school detention;
 - iv. in-school discipline; or
 - v. Saturday school.
 - b. Formal Discipline
 - i. suspension of bus riding/transportation privileges;
 - ii. removal from co-curricular and/or extra-curricular activity(ies), including athletics;
 - iii. emergency removal;
 - iv. suspension for up to ten (10) school days;
 - v. expulsion not to exceed the remainder of the term or school year and one (1) additional year of attendance; or
 - vi. any other sanction authorized by the Student Code of Conduct.
8. If the decision-maker determines the student Respondent is responsible for violating this policy (i.e., engaging in Sexual Harassment), the decision-maker will recommend appropriate remedies, including disciplinary sanctions/consequences. The Title IX Coordinator will notify the authorized administrator who can consider the recommendation(s) and implement an appropriate remedy(ies) in compliance with Policy 5600 – Student Discipline, Policy 5605 – Suspension/Expulsion of Disabled Students, Policy 5610 – Removal, Out-of-School Suspension, Disciplinary Placement, and Expulsion of Students, Policy 5601.01 – Emergency Removal of Students, Policy 5610.02 – In-School Discipline, Policy 5610.04 – Suspension of Bus

Riding/Transportation Privileges, Policy 5610.05 – Participation in Extra-Curricular Activities, and Policy 5611 – Due Process Rights. Discipline of a student Respondent must comply with the applicable provisions of the Individuals with Disabilities Education Improvement Act (IDEA) and/or Section 504 of the Rehabilitation Act of 1972, and their respective implementing regulations.

9. The following disciplinary sanctions/consequences may be imposed on an employee Respondent who is determined responsible for violating this policy (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; and
 - j. any other sanction authorized by any applicable Employee/Administrator Handbook and/or collective bargaining agreement.
10. 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.
11. 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.
12. 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.
13. The following disciplinary sanctions/consequences may be imposed on a non-student/non-employee member of the School District community or Third Party who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):
 - 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.
14. 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.
 15. The decision-maker(s) will provide the written determination to the Title IX Coordinator who will provide the written determination to the parties simultaneously.
 16. Ultimately, in imposing a disciplinary sanction/consequence, the Superintendent (or the Board when the appointed 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 Superintendent or Member of the Board, the Board shall notify the appropriate Florida governmental authority(ies).
 17. The District's resolution of a Formal Complaint ordinarily will not be impacted by the fact that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.
 18. At any point in the grievance process, the Superintendent (or the Title IX Coordinator if the Superintendent is the Respondent) may involve local law enforcement and/or file criminal charges related to allegations of Sexual Harassment that involve a sexual assault.
 19. The Title IX Coordinator is responsible for effective implementation of any remedies.

O. Appeal

1. 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.
2. The Complainant(s) may not challenge the ultimate disciplinary sanction/consequence that is imposed.
3. 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.

4. Nothing herein shall prevent the Superintendent (or the Board when the appointed Superintendent is the Respondent) from implementing appropriate remedies—however, excluding disciplinary sanction—while the appeal is pending.
5. 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.
6. 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.
7. Both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. The decision-maker(s) for the appeal shall determine when each party's written statement is due.
8. 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)' 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.
9. 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 except to any extent permitted by Board policy or procedure concerning expellable offenses.

P. Retaliation

1. 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, constitutes 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 imposition of disciplinary sanctions/consequences and/or other appropriate remedies.
2. Complaints alleging retaliation may be filed according to the grievance process set forth above.
3. The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

4. 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.

Q. Confidentiality

1. The District shall maintain as 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 regulations, 34 CFR part 99, F.S. 1002.22-1002.222, or as required by law, or as is reasonably necessary to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.
2. The District's obligation to maintain confidentiality shall not impair or otherwise affect the Complainant's and Respondent's receipt of information to which they are entitled related to the investigative record and determination of responsibility.

R. Application of the First Amendment

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

S. Training

1. The District's Title IX Coordinator, along with any investigator(s), decision-maker(s), or person(s) designated to facilitate an informal resolution process, shall receive training at a minimum on:
 - a. the definition of Sexual Harassment (as that term is used in this policy);
 - b. the scope of the District's education program or activity;
 - c. how to conduct an investigation and implement the grievance process that includes 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.
2. Additionally, all Board employees shall 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.

T. Recordkeeping

1. As part of its response to alleged violations of this policy, the District 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 District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity. If the District does not provide a Complainant with supportive measures, then the District will document the reasons why such a

response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

2. The District shall maintain for a period of seven (7) calendar years the following records:
 - a. Each Sexual Harassment investigation file, including
 - i. any determination regarding responsibility,
 - ii. any disciplinary sanctions recommended and/or imposed on the Respondent(s), and
 - iii. any remedies provided to the Complainant(s) designed to restore or preserve equal access to the District's education program or activity.
 - b. Any appeal and the result therefrom.
 - c. Any informal resolution and the result therefrom.
 - d. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.
3. The District will make its training materials publicly available on its website. If a person is unable to access the District's website, the Title IX Coordinator will make the training materials available upon request for inspection by members of the public.

U. Outside Appointments, Dual Appointments, and Delegations

1. The Board retains discretion to appoint suitably qualified persons who are not Board 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.
2. 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.
3. The Superintendent may delegate functions assigned to a specific Board employee under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor, to any suitably qualified individual and such delegation may be rescinded by the Superintendent at any time.

V. Discretion in Application

1. 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.
2. 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.

3. 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.

Adopted _____

Legal References

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 Improvement Act of 2004 (IDEIA)
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 (Title IX Regulations)
F.S. 1000.05

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