



Bullitt County Public Schools

1040 Highway 44 East
Shepherdsville, Kentucky 40165

Phone: 502-869-8000
Fax: 502-543-3608
www.bullittschools.org

TO: Dr. Jesse Bacon
FROM: Dr. Tom Brillhart
DATE: January 12, 2022
RE: Revised Policies and Procedures

Attached for the Board's review and approval are the following updated Title IX Sexual Harassment Policies and Procedures:

03.1621 - Title IX Sexual Harassment (Certified)
03.2621 - Title IX Sexual Harassment (Classified)
03.1621 AP.2 - Title IX Sexual Harassment Grievance Procedures (Certified)
03.1621 AP.21 - Title IX Sexual Harassment Reporting Form (Certified) (New)
03.2621 AP.2 - Title IX Sexual Harassment Grievance Procedures (Classified)
03.2621 AP.21 - Title IX Sexual Harassment Reporting Form (Classified) (New)
09.428111 AP. 11- Title IX Sexual Harassment Grievance Procedures (Students)
09.428111 AP.21 - Title IX Sexual Harassment Reporting Form (Students)

These changes clarify several steps and complete important references for a more thorough handling by staff. The attachments have been reviewed by Board Attorney Joe Mills.

Let me know if you have additional questions.

Attachments:

- Policies 03.1621 and 03.2621
- Procedures 03.1621 AP.2, 03.1621 AP.21, 03.2621 AP.2, 09.428111 AP. 11, 09.428111 AP.21

- CERTIFIED PERSONNEL -

Title IX Sexual Harassment

INTRODUCTION AND SCOPE

A United States Department of Education regulation published on May 19, 2020 defines sexual harassment for purposes of Title IX (sometimes referred to in policy and procedure as “Title IX Sexual Harassment”). In addition to numerous other matters, the regulation sets forth grievance procedure requirements that apply (including the initiation of a “formal complaint”) before there is a determination that an employee is responsible for Title IX Sexual Harassment. The applicable definition of sexual harassment describes serious sexual misconduct. If the alleged actions that are the subject of a formal complaint do not descend to the level of conduct described in the definition of Title IX Sexual Harassment; do not take place in a “program or activity” of the school District within the meaning of Title IX; or do not take place in the United States, the formal complaint must be dismissed.

Such a dismissal does not mean that the alleged offending party cannot be the subject of investigation or discipline on grounds other than “Title IX Sexual Harassment” as addressed in Board policy or law, including conduct allegedly constituting sexual harassment or other sexual misconduct that does fall within the definition of “Title IX Sexual Harassment.”¹

PROHIBITION

Title IX Sexual Harassment in educational programs or activities of the District is prohibited.

The District’s grievance procedure for all employees and students may be found in 09.428111 AP.11.

GRIEVANCE PROCEDURE

The District shall provide a Title IX Sexual Harassment grievance procedure that treats complainants and respondents equitably as required by Federal Regulation.²

DEFINITIONS

TITLE IX SEXUAL HARASSMENT

“Title IX Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following:

- 1) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct (i.e., quid pro quo sexual harassment);
- 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District’s education program or activity;

Title IX Sexual Harassment**DEFINITIONS (CONTINUED)****TITLE IX SEXUAL HARASSMENT (CONTINUED)**

- 3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(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). For purposes of this definition, “sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting system. A sex offense is an act directed against another person, without the consent of the second person, including instances where the second person is incapable of giving consent.³

The term “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 and where the existence of such a relationship shall be based on the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by 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.

The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress.

Consent

“Consent” means a voluntary expression of willingness, permission, or agreement to engage in sexual activity throughout a sexual encounter. Consent cannot be granted by an individual: who is less than the statutory age of consent under Kentucky criminal law, has a mental or physical condition or incapacity that prevents the giving of consent; or from whom ostensible “consent” is extracted through threat, coercion, or forcible compulsion.

Complainant

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. This applies to such individual even if no formal complaint is filed. Only a complainant who is participating or attempting to participate in the District’s educational programs or activities may file a formal complaint.

Respondent

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. This applies to such individual even if no formal

complaint is filed. Only a person in his or her individual capacity is subject to a Title IX investigation.

PERSONNEL

03.1621
(CONTINUED)

Title IX Sexual Harassment

DEFINITIONS (CONTINUED)

Title IX Coordinator (TIXC)

The TIXC is the individual or individuals designated and authorized to coordinate District Title IX programs. The TIXC is expected to engage in activities intended to provide a fair and neutral process for all parties, including implementation of supportive measures and remedies where appropriate. The District may use co-coordinators and/or deputy coordinators.

Formal Complaint

“Formal complaint” means a document filed by a complainant or signed by the TIXC alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. A formal complaint may be filed with the TIXC in person, by mail, or by electronic mail, by using the contact information provided by the District. The complaint document may be physical or electronic, shall contain the complainant’s physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. Where the TIXC signs a formal complaint, the TIXC is not “the complainant” or otherwise considered a party, but is to comply with applicable procedures.

Supportive Measures

“Supportive measures” mean nondisciplinary, 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. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, unilateral restrictions on contact that are not unreasonably burdensome on a respondent, changes in work or housing locations, authorized leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures shall be confidential, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. The TIXC is responsible for coordinating the effective implementation of supportive measures.

Education Program or Activity

“Education program or activity” means District operations and includes locations, events, or circumstances over which the District exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

Preponderance of the Evidence

“Preponderance of evidence” means evidence that is of greater weight or more convincing than evidence in opposition to such facts. It is evidence which as a whole shows that an assertion to be proven is more likely than not.

Title IX Sexual Harassment**REGULATION AND POLICY DOES NOT AFFECT PARENT RIGHTS**

Absent a court order or other legal requirement to the contrary, a parent or guardian is authorized to act on behalf of a minor student regarding decision-making and the exercise of rights under the Title IX Sexual Harassment policy and procedure, including the opportunity to accompany a minor student to meetings and interviews.

SEGREGATION OF FUNCTIONS / CONFLICT OF INTEREST

The TIXC, investigator, decisionmaker(s), and any informal resolution facilitator shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. These individuals are to serve impartially without prejudgment of the facts at issue. The investigative, initial decision-making, appellate decision-making, and resolution functions must be performed by different trained individuals, who may be District employees or contractors.

CONFIDENTIALITY

With respect to its administration of Title IX Sexual Harassment policies and corresponding procedures, the District must 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 under FERPA⁵, required by law, or to carry out Title IX purposes, including the conduct of any investigation, hearing or Title IX judicial proceedings.

Investigative evidence directly related to the allegations of a formal complaint gathered by the District is subject to inspection and review by the parties but is not to be disseminated to the public. The United States Department of Education rule commentary provides that under the applicable FERPA definition of “education records” a parent of a complainant or respondent (or eligible student) has a right to inspect and review any witness statement that is directly related to the student, even if that statement contains information that is also directly related to another student, if the information cannot be segregated or redacted without destroying its meaning.⁴

EMPLOYEES SHALL REPORT

Employees who believe or have been made aware that they or any other employee, student, or visitor has been subject to Title IX Sexual Harassment shall report it to the TIXC. Failure to make such a report shall be grounds for discipline up to and including termination. If the knowledge of the reporting party gives rise to reasonable cause to believe that the reported conduct constitutes child abuse Policy 09.227 or a reportable criminal offense Policy 09.2211, notification of state officials shall be made as required by law.⁶

FALSE REPORTS PROHIBITED

Employees or students who intentionally make false reports related to the District's administration of this policy and the corresponding procedures, are subject to disciplinary

sanctions under applicable District policy, law, or the Code of Acceptable Behavior and Discipline.

PERSONNEL

03.1621
(CONTINUED)

Title IX Sexual Harassment

RELATED EVIDENCE RULES SUMMARY

The following rules apply to the District investigation and grievance process under the Title IX Sexual Harassment regulation:

- a) The District shall not require, allow, rely upon, or otherwise use questions or evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.
- b) The District cannot access, consider, disclose, or otherwise use a party's records made or maintained in connection with provision of treatment to the party by medical or mental health professionals or paraprofessionals unless the District obtains written consent from the party.
- c) Questions and evidence about the complainant's sexual predisposition or prior behavior are not relevant unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct or, such questions or evidence are offered to prove consent.

RETALIATION PROHIBITED

No District or 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, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any Title IX investigation, proceeding, or hearing.

REFERENCES:

²34 C.F.R. § 106.45

³KRS 510.020

⁴85 Fed. Reg. 30433 (May 19, 2020)

Americans with Disabilities Act (42 U.S.C. §12101 et seq., as amended; 28 C.F.R. § 35.107)

Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 C.F.R. § 104.7)

Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.); 34 C.F.R. Part 106

Clery Act (20 U.S.C. §1092(f)(6)(A)(v))

Violence Against Women Act (34 U.S.C. § 1092(f)(6)(A)(v))

34 U.S.C. § 12291(a)(10)

34 U.S.C. §12291(a)(3)

34 U.S.C. §12291(a)(8)

RELATED POLICIES:

¹03.162; 03.262; 09.42811

⁵09.14

⁶09.227; 09.2211

03.2621; 09.428111

RELATED PROCEDURE:

09.428111 AP.11

- CLASSIFIED PERSONNEL -

Title IX Sexual Harassment

INTRODUCTION AND SCOPE

A United States Department of Education regulation published on May 19, 2020 defines sexual harassment for purposes of Title IX (sometimes referred to in policy and procedure as “Title IX Sexual Harassment”). In addition to numerous other matters, the regulation sets forth grievance procedure requirements that apply (including the initiation of a “formal complaint”) before there is a determination that an employee is responsible for Title IX Sexual Harassment. The applicable definition of sexual harassment describes serious sexual misconduct. If the alleged actions that are the subject of a formal complaint do not descend to the level of conduct described in the definition of Title IX Sexual Harassment; do not take place in a “program or activity” of the school District within the meaning of Title IX; or do not take place in the United States, the formal complaint must be dismissed.

Such a dismissal does not mean that the alleged offending party cannot be the subject of investigation or discipline on grounds other than “Title IX Sexual Harassment” as addressed in Board policy or law, including conduct allegedly constituting sexual harassment or other sexual misconduct that does fall within the definition of “Title IX Sexual Harassment.”¹

PROHIBITION

Title IX Sexual Harassment in educational programs or activities of the District is prohibited.

GRIEVANCE PROCEDURE

The District shall provide a Title IX Sexual Harassment grievance procedure that treats complainants and respondents equitably as required by Federal Regulation.²

The District’s grievance procedure for all employees and students may be found in 09.428111AP.11.

DEFINITIONS

TITLE IX SEXUAL HARASSMENT

“Title IX Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following:

- 1) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct (i.e., quid pro quo sexual harassment);
- 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District’s education program or activity;

Title IX Sexual Harassment**DEFINITIONS (CONTINUED)****TITLE IX SEXUAL HARASSMENT (CONTINUED)**

- 3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(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). For purposes of this definition, “sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting system. A sex offense is an act directed against another person, without the consent of the second person, including instances where the second person is incapable of giving consent.³

The term “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 and where the existence of such a relationship shall be based on the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by 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.

The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress.

Consent

“Consent” means a voluntary expression of willingness, permission, or agreement to engage in sexual activity throughout a sexual encounter. Consent cannot be granted by an individual: who is less than the statutory age of consent under Kentucky criminal law, has a mental or physical condition or incapacity that prevents the giving of consent; or from whom ostensible “consent” is extracted through threat, coercion, or forcible compulsion.

Complainant

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. This applies to such individual even if no formal complaint is filed. Only a complainant who is participating or attempting to participate in the District’s educational programs or activities may file a formal complaint.

Respondent

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. This applies to such individual even if no formal

complaint is filed. Only a person in his or her individual capacity is subject to a Title IX investigation.

PERSONNEL

03.2621
(CONTINUED)

Title IX Sexual Harassment

DEFINITIONS (CONTINUED)

Title IX Coordinator (TIXC)

The TIXC is the individual or individuals designated and authorized to coordinate District Title IX programs. The TIXC is expected to engage in activities intended to provide a fair and neutral process for all parties, including implementation of supportive measures and remedies where appropriate. The District may use co-coordinators and/or deputy coordinators.

Formal Complaint

“Formal complaint” means a document filed by a complainant or signed by the TIXC alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. A formal complaint may be filed with the TIXC in person, by mail, or by electronic mail, by using the contact information provided by the District. The complaint document may be physical or electronic, shall contain the complainant’s physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. Where the TIXC signs a formal complaint, the TIXC is not “the complainant” or otherwise considered a party, but is to comply with applicable procedures.

Supportive Measures

“Supportive measures” mean nondisciplinary, 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. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, unilateral restrictions on contact that are not unreasonably burdensome on a respondent, changes in work or housing locations, authorized leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures shall be confidential, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. The TIXC is responsible for coordinating the effective implementation of supportive measures.

Education Program or Activity

“Education program or activity” means District operations and includes locations, events, or circumstances over which the District exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

Preponderance of the Evidence

“Preponderance of evidence” means evidence that is of greater weight or more convincing that an asserted fact or facts occurred than evidence in opposition to such facts. It is evidence which as a whole shows that an assertion to be proven is more likely than not.

Title IX Sexual Harassment**REGULATION AND POLICY DOES NOT AFFECT PARENT RIGHTS**

Absent a court order or other legal requirement to the contrary, a parent or guardian is authorized to act on behalf of a minor student regarding decision-making and the exercise of rights under the Title IX Sexual Harassment policy and procedure, including the opportunity to accompany a minor student to meetings and interviews.

SEGREGATION OF FUNCTIONS / CONFLICT OF INTEREST

The TIXC, investigator, decisionmaker(s), and any informal resolution facilitator shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. These individuals are to serve impartially without prejudgment of the facts at issue. The investigative, initial decision-making, appellate decision-making, and resolution functions must be performed by different trained individuals, who may be District employees or contractors.

CONFIDENTIALITY

With respect to its administration of Title IX Sexual Harassment policies and corresponding procedures, the District must 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 under FERPA³, required by law, or to carry out Title IX purposes, including the conduct of any investigation, hearing or Title IX judicial proceedings.

Investigative evidence directly related to the allegations of a formal complaint gathered by the District is subject to inspection and review by the parties but is not to be disseminated to the public. The United States Department of Education rule commentary provides that under the applicable FERPA definition of “education records” a parent of a complainant or respondent (or eligible student) has a right to inspect and review any witness statement that is directly related to the student, even if that statement contains information that is also directly related to another student, if the information cannot be segregated or redacted without destroying its meaning.⁴

EMPLOYEES SHALL REPORT

Employees who believe or have been made aware that they or any other employee, student, or visitor has been subject to Title IX Sexual Harassment shall report it to the TIXC. Failure to make such a report shall be grounds for discipline up to and including termination. If the knowledge of the reporting party gives rise to reasonable cause to believe that the reported conduct constitutes child abuse Policy 09.227 or a reportable criminal offense Policy 09.2211, notification of state officials shall be made as required by law.⁶

FALSE REPORTS PROHIBITED

Employees or students who intentionally make false reports related to the District’s administration of this policy and the corresponding procedures, are subject to disciplinary

sanctions under applicable District policy, law, or the Code of Acceptable Behavior and Discipline, as applicable.

PERSONNEL

03.2621
(CONTINUED)

Title IX Sexual Harassment

RELATED EVIDENCE RULES SUMMARY

The following rules apply to the District investigation and grievance process under the Title IX Sexual Harassment regulation:

- a) The District shall not require, allow, rely upon, or otherwise use questions or evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.
- b) The District cannot access, consider, disclose, or otherwise use a party's records made or maintained in connection with provision of treatment to the party by medical or mental health professionals or paraprofessionals unless the District obtains written consent from the party.
- c) Questions and evidence about the complainant's sexual predisposition or prior behavior are not relevant unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct or, such questions or evidence are offered to prove consent.

RETALIATION PROHIBITED

No District or 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, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any Title IX investigation, proceeding, or hearing.

REFERENCES:

²34 C.F.R. § 106.45

³KRS 510.020

⁴85 Fed. Reg. 30433 (May 19, 2020)

Americans with Disabilities Act (42 U.S.C. §12101 et seq., as amended; 28 C.F.R. § 35.107)

Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 C.F.R. § 104.7)

Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.); 34 C.F.R. Part 106

Clery Act (20 U.S.C. §1092(f)(6)(A)(v))

Violence Against Women Act (34 U.S.C. § 1092(f)(6)(A)(v))

34 U.S.C. § 12291(a)(10)

34 U.S.C. §12291(a)(3)

34 U.S.C. §12291(a)(8)

RELATED POLICIES:

¹03.162; 03.262; 09.42811

⁵09.14

⁶**09.227; 09.2211**

03.1621; 09.428111

RELATED PROCEDURE:

09.428111 AP.11

- CERTIFIED PERSONNEL -

Title IX Sexual Harassment Grievance Procedures

Refer to Procedure **03.1621 and 09.428111** areas for Title IX Sexual Harassment Notices, Grievance Procedures, and Reporting Forms.

RELATED PROCEDURES:

03.2621 AP.2; 09.428111 (all procedures)

- CERTIFIED PERSONNEL -

Title IX Sexual Harassment Reporting Form

COMPLAINANT _____ <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <i>Last Name</i> <i>First Name</i> <i>Middle Initial</i> </div>
EMPLOYEE'S SCHOOL/BUILDING _____

INFORMATION CONCERNING SEXUAL HARASSMENT**DATE:** _____ **TIME:** _____ ☐ AM ☐ PM **LOCATION:** _____**INDIVIDUAL(S) WHO ALLEGEDLY ENGAGED IN TITLE IX SEXUAL HARASSMENT:**

DESCRIPTION OF ALLEGATION: _____

_____. This form may be supplemented with additional paper if needed.

NAME OF PERSON FILLING OUT THIS FORM (PLEASE PRINT): _____**SIGNATURE:** _____ **DATE:** _____**Phone:** _____ **Email:** _____

- CLASSIFIED PERSONNEL -

Title IX Sexual Harassment Grievance Procedures

Refer to Procedure **03.2621 and 09.428111** areas for Title IX Sexual Harassment Notices, Grievance Procedures, and Reporting Forms.

RELATED PROCEDURES:

03.1621 AP.2; 09.428111 (all procedures)

PERSONNEL

03.2621 AP.21

- CLASSIFIED PERSONNEL -

Title IX Sexual Harassment Reporting Form

COMPLAINANT _____
<i>Last Name</i> _____ <i>First Name</i> _____ <i>Middle Initial</i> _____
EMPLOYEE'S SCHOOL/BUILDING _____

INFORMATION CONCERNING SEXUAL HARASSMENT

DATE: _____ **TIME:** _____ ☐ AM ☐ PM **LOCATION:** _____

INDIVIDUAL(S) WHO ALLEGEDLY ENGAGED IN TITLE IX SEXUAL HARASSMENT:

DESCRIPTION OF ALLEGATION: _____

_____. This form may be supplemented with additional paper if needed.

NAME OF PERSON FILLING OUT THIS FORM (PLEASE PRINT): _____

SIGNATURE: _____ **DATE:** _____

Phone: _____ **Email:** _____

Title IX Sexual Harassment Grievance Procedures

THIS PROCEDURE APPLIES TO “TITLE IX SEXUAL HARASSMENT”
UNDER POLICIES 03.1621, 03.2621, AND 09.428111.

REPORTING

1. School employees who have reason to believe that a student has been subjected to Title IX Sexual Harassment are required to promptly make a report to the Title IX Coordinator (TIXC).
2. Students, parents/legal guardians or other individuals who believe a student has been sexually harassed may make a report to the TIXC.
3. School employees shall make a report (procedure 03.1261 AP.21 and 03.2621 AP.21) to the TIXC if the employee believes they, another employee, or visitor have been subjected to Title IX sexual harassment (see policies 03.1621 and 03.2621).
4. If the individual making the report is the alleged victim (“Complainant” as defined in the Title IX Sexual Harassment regulation), or if the Complainant is identified by the individual making the report, the TIXC will meet with the Complainant to discuss supportive measures that may be appropriate in the particular circumstances and explain the process for filing a formal complaint.
5. The District cannot provide an informal resolution process for resolving a report unless a formal complaint is filed.
6. The Superintendent/designee shall be informed of all reports and formal complaints of sexual harassment.

FORMAL COMPLAINT

1. A Complainant and/or their parent/legal guardian may file a formal written complaint requesting investigation of alleged Title IX Sexual Harassment. The written complaint must include basic information concerning the allegation of sexual harassment (i.e., date, time, location, individual(s) who allegedly engaged in sexual harassment, description of allegation).
Students who need assistance in preparing a formal written complaint, may consult with the TIXC.
2. In accordance with the Title IX regulations, the TIXC must dismiss a formal complaint under this Title IX procedure if:
 - a) the conduct alleged in the formal complaint does not constitute sexual harassment as defined under the Title IX regulations and the Title IX Sexual Harassment policy; or
 - b) the conduct alleged did not occur within the scope of the District’s education programs and activities, or
 - c) did not occur in the United States.
3. In accordance with the Title IX regulations, the TIXC may dismiss a formal complaint if:
 - a) a Complainant withdraws the formal complaint, or withdraws particular allegations within the complaint;

- b) the Respondent is no longer employed by or enrolled in the District;
or

STUDENTS

09.428111 AP.11
(CONTINUED)

Title IX Sexual Harassment Grievance Procedures

FORMAL COMPLAINT (CONTINUED)

- c) there are specific circumstances that prevent the District from gathering evidence sufficient to reach a determination regarding the formal complaint. However, if the conduct potentially violates other policies or laws, it may be addressed through other applicable Board policy/procedure.
4. If a formal complaint is dismissed under this Title IX procedure, the TIXC will promptly and simultaneously send written notices to the parties explaining the reasons. The parties have the opportunity to appeal dismissals as outlined below.
 5. In certain circumstances, the TIXC may file a formal complaint even when the alleged victim chooses not to. Examples could include instances where the Respondent (person alleged to have engaged in sexual harassment) has been found responsible for previous sexual harassment; a safety threat within the District, or other alleged serious violations where pursuit of a complaint is warranted.
 6. If the conduct alleged in a formal complaint potentially violates other laws or Board policies, the District may address the conduct under another applicable Board policy/procedure.

EMERGENCY REMOVAL/SUSPENSION

The Superintendent may direct the removal of a student from education programs and activities on an emergency basis during the complaint procedure:

1. If there is a determination, following an individualized safety and risk analysis which may be performed as provided in District Policy 09.429 (Threat Assessment), that there is an immediate threat to the physical health or safety of an individual arising from the allegations of sexual harassment. Examples of such circumstances might include, but are not limited to, a continued threat of violence against a Complainant by a Respondent, or a Respondent's threat of self-harm due to the allegations.¹
2. The Respondent and parent/legal guardian will be provided notice of the emergency removal, and will be provided an opportunity to challenge the decision either before or following the removal (this is an opportunity to be heard, not a hearing) utilizing the procedure applicable to student suspensions per Policy 09.434 Suspension.
3. Any such decision shall be made in compliance with any applicable disability laws, including the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.
- 4.

Title IX Sexual Harassment Grievance Procedures

EMPLOYEE SUSPENSION WITH PAY

An employee may be suspended with pay during the complaint procedure as provided in Board policies.²

NOTICE TO PARTIES FOLLOWING A FORMAL COMPLAINT

- 1. The TIXC will provide to the parties written notice of the formal complaint and allegations of sexual harassment potentially constituting Title IX Sexual Harassment. The notice shall include:**
 - **Notice regarding the complaint procedure and the availability of an informal resolution process;**
 - **Sufficient details known at the time (including identities of parties, if known; the conduct alleged; and the date and location of the alleged incident[s], if known), allowing sufficient time to prepare before any initial interview (not less than ten [10] calendar days);**
 - **A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination of responsibility will be made at the conclusion of the grievance process;**
 - **The parties may inspect and review evidence directly related to the allegations of Title IX Sexual Harassment;**
 - **Notice that the parties may each have an advisor of their choice (who may be an attorney);**
 - **Notice that knowingly making false statements or submitting false information in bad faith during the complaint process is prohibited and may result in disciplinary action;**
 - **Notice of the name of the investigator, with sufficient time (no less than three [3] calendar days) to raise concerns of conflict of interest or bias.**
- 2. If additional allegations become known at a later time, notice of the additional allegations will be provided to the parties.**
- 3. The TIXC will discuss supportive measures with each party and oversee implementation of such measures as appropriate.**

INFORMAL RESOLUTION PROCESS

After a formal complaint has been filed, and if the TIXC believes the circumstances are appropriate, the TIXC may offer the parties the opportunity to participate in an informal resolution process to resolve the complaint without completing the investigation and determination process.

-Informal resolutions cannot be used to resolve a formal complaint where a student is the Complainant and the Respondent is an employee. Further, even if both parties are employees and agree to informal resolution process, the TIXC may institute formal process if the allegations are severe or if true, would put students and employees in danger.

Title IX Sexual Harassment Grievance Procedures

INFORMAL RESOLUTION PROCESS (CONTINUED)

Informal resolutions can take many forms, depending on the particular case. Examples include, but are not limited to, facilitated discussions between the parties; restorative justice; acknowledgment of responsibility by a Respondent; apologies; disciplinary actions against a Respondent or a requirement to engage in specific services; or supportive measures. Both parties must voluntarily agree in writing to participate in an informal resolution process, and either party can withdraw from the process at any time. The Superintendent/designee must agree to the terms of any informal resolution reached between the parties. If an informal resolution agreement is reached, it must be signed by both parties and the District. Any such signed agreement is final and binding according to its terms.

If an informal resolution process does not resolve the formal complaint, nothing from the informal resolution process may be considered as evidence in the subsequent investigation or determination. The parties will be advised that engagement in the informal resolution process is grounds for extension of the investigation timeline.

Informal resolutions will be led by the Informal Resolution Facilitator. The TIXC may serve as the Informal Resolution Facilitator with written consent of the Complainant and Respondent. Otherwise, the Superintendent shall designate an Informal Resolution Facilitator who may or may not be a District employee.

INVESTIGATION

1. The complaint will be investigated by **the TIXC or other designated** a trained internal or external individual designated by the Superintendent, who should consult with District legal counsel concerning the handling and investigation of the complaint.
2. **If the TIXC is not serving as the Investigator,** ~~the~~ The Investigator may consult with the TIXC **and Board counsel as agreed** during the investigation process.
3. If the complaint is against an employee of the District, rights conferred under an applicable collective bargaining agreement shall be applied, to the extent they do not conflict with the Title IX regulatory requirements.
4. The Investigator will:
 - a. Meet with each party after they have received appropriate notice of any meeting and its purpose, with sufficient time to prepare.
 - b. Allow parties to have their advisor at all meetings related to the complaint, although advisors may not speak on behalf of a party or interfere with the process.
 - c. Allow parties a reasonable opportunity to identify witnesses and submit favorable and unfavorable evidence.
 - d. Interview witnesses and conduct such other activities that will assist in ascertaining facts (site visits, review of documents, etc.).
 - e. Consider evidence that is relevant and directly related to the allegations in the formal complaint.

Title IX Sexual Harassment Grievance Procedures**INVESTIGATION (CONTINUED)**

- f. During the course of the investigation, provide both parties with an equal opportunity to inspect and review any evidence that is obtained in the investigation that is directly related to the allegations in the formal complaint (including evidence which the District does not intend to rely upon in reaching a determination of responsibility), and favorable and unfavorable evidence.
 - g. Prior to completion of the investigation report, provide each party and advisor (if any) the evidence subject to inspection and review, and provide the parties with ten (10) calendar days to submit a written response. Access to such evidence may be provided via file sharing software that does not permit copying or downloading. The Investigator shall advise the parties that evidence is not to be publicly disseminated.
 - h. Consider the parties' written responses to the evidence prior to completing the investigation report.
 - i. Create an investigative report that fairly summarizes relevant evidence including the Investigator's recommendation on whether or not the evidence supports a finding that the Respondent engaged in conduct constituting Title IX Sexual Harassment. The Investigator shall send the report to the parties and advisors (if any) for their review and written responses which must be filed with the Investigator within ten (10) calendar days of their receipt of the report.
 - j. After receipt of the parties' written responses (if any), forward the investigation report and party responses to the assigned Decision Maker. The Decision Maker shall immediately inform the parties of the date of his or her receipt of the report and of the deadline for submission of questions as provided below.
 - k. The Investigator's report shall be non-binding on the Decision Maker.
5. The investigation shall be concluded within forty (40) calendar days from the date of the TIXC Notice to the Parties Following a Formal Complaint as referenced above, but reasonable extension of time for good cause shall be allowed.

DETERMINATION OF RESPONSIBILITY

The Superintendent (or his/her designee) shall serve as the assign a trained Decision Maker to arrive at a determination of responsibility. The Decision Maker cannot be the Investigator, Informal Resolution Facilitator, or the TIXC.

1. The Decision Maker shall have authority to preside over the pre-decision process in a manner that allows the Complainant and Respondent an equal opportunity to participate, including setting reasonable equally applicable limits on the number of questions and excluding questions on relevancy grounds or that seek privileged or confidential medical treatment information. The Decision Maker shall provide the parties with the opportunity to submit written, relevant questions that the party

wants asked of another party or witness within five (5) calendar days of when the Decision Maker received the investigation report and party responses.

STUDENTS

09.428111 AP.11

(CONTINUED)

Title IX Sexual Harassment Grievance Procedures

DETERMINATION OF RESPONSIBILITY (CONTINUED)

Each party shall be provided the opportunity to review the responses of another party and/or witness, and to ask limited written follow-up questions within five (5) calendar days of receiving the answers.

2. Each party will receive a copy of the responses to any follow-up questions.
3. The Decision Maker shall review the investigation report, **recorded statements**, the parties' responses and other relevant materials, applying the preponderance of the evidence standard ("more likely than not").
4. **As any time before issuing a determination of responsibility, the Decision Maker may direct the Investigator to conduct a follow-up interview with any party or witness so that the Decision Maker may better understand the allegations and evidence.**
5. The Decision Maker shall issue a written determination, which shall include the following:
 - a) Identification of all the allegations potentially constituting Title IX Sexual Harassment;
 - b) A description of the procedural steps taken from receipt of the formal complaint through the determination;
 - c) A determination regarding responsibility as to each allegation and findings of fact supporting the determinations;
 - d) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the District's programs and activities will be provided to the Complainant. In order to preserve confidentiality, remedies provided to the Complainant are not to be described in the determination report;
 - e) If applicable, a statement that disciplinary sanctions may require additional hearings or proceedings under separate law and policy: e.g. student expulsion; classified or certified employee public reprimand, suspension without pay, termination; or student alternative education program placement proceedings;
 - f) The District's appeal procedure and permissible bases for the parties to appeal the determination.
6. The written determination shall be provided to the parties simultaneously. The determination concerning responsibility becomes final either on the date that the District provides the parties with the written determination of the results of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.
7. The implementation of measures or sanctions shall be made subject to and in compliance with applicable disability laws included the Individuals with

Disabilities Education Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

8. The determination shall be issued with thirty (30) calendar days of the Decision Maker's receipt of the Investigator's report and recommendation, but reasonable extension of time for good cause shall be allowed.

STUDENTS

09.428111 AP.11

(CONTINUED)

Title IX Sexual Harassment Grievance Procedures

REMEDIES, DISCIPLINE AND OTHER ACTIONS

Range of Remedies to Allow Equal Access to Complainant

1. Remedies are measures used to ensure that the Complainant has equal access to the District's education programs and activities following the Decision Maker's determination. Such remedies may include supportive measures, and may include other appropriate measures, depending upon the determination and the needs of the Complainant. The TIXC is responsible for implementing remedies and providing needed assistance to the Complainant.

2. Range of Disciplinary Sanctions (Students)

The following is a non-exhaustive range of disciplinary sanctions that may be imposed when there is a determination that students are responsible for one or more violations involving sexual harassment: In or out of school suspension; expulsion; assignment to alternative education programs; requirement to engage in education or counseling program; disqualification or modification of privileges to participate in sports or extracurricular programs; unilateral no-contact orders, school assignment alteration, or schedule changes; prohibitions or limitations on presence on school property or at school-related events; and other disciplinary sanctions and interventions set forth in the Code of Acceptable Behavior and Discipline.

3. Range of Disciplinary Sanctions (Employees)

The following is a non-exhaustive range of disciplinary sanctions that may be imposed when there is a determination that employees are responsible for one or more violations involving sexual harassment: Requirement to engage in education or counseling program; unilateral no-contact orders, school assignment alteration; prohibitions or limitations on presence on school property or at school-related events; private reprimand; public reprimand; suspension without pay; termination.

APPEALS

The Superintendent ~~may serve as the Appellate Decision Maker and shall assign or~~ arrange for the services of a trained Appellate Decision Maker if s/he does not serve in that role. The Appellate Decision Maker cannot be the Initial Decision Maker, Informal Resolution Facilitator, Investigator, or TIXC. **The Superintendent shall not appoint an Appellate Decision Maker who is an employee of the District but may utilize a former or retired administrator of the District, who is not otherwise providing contractual services to the District, as long as the administrator has not been employed by the District for at least five (5) years. The Appellate Decision Maker assigned may be a licensed attorney or retired judge; however, the Superintendent is not required to appoint someone with legal training.**

The Appellate Decision Maker shall have authority to preside over the appeal process in a manner that allows Complainant and Respondent an equal opportunity to participate, including setting reasonable page limits, enforcing timelines, and limiting review on the record to allowable grounds.

The parties (Complainant and Respondent) have the opportunity to appeal a responsibility determination and dismissals of formal complaints. Appeals will be considered only on the following grounds:

STUDENTS

09.428111 AP.11

(CONTINUED)

Title IX Sexual Harassment Grievance Procedures

APPEALS (CONTINUED)

1. A procedural irregularity that affected the outcome;
2. New evidence that was not reasonably available as of the date of the determination regarding responsibility or dismissal of the formal complaint, that could affect the outcome; or
3. TIXC, Investigator, or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent that affected the outcome.

APPEAL STEPS

1. An appeal must be filed in writing within five (5) calendar days of the receipt of the determination decision. Appeals after that deadline will not be considered. The written appeal must state the grounds and arguments for reversal or modification of the determination.
2. Appeals must be filed with the Superintendent, who will submit the appeal to the Appellate Decision Maker or engage in further appellate steps if the Superintendent is the Appellate Decision Maker. Parties initiating an appeal or seeking reversal or modification of a responsibility determination must explain the impact of any asserted error on the outcome and, in the case of new evidence, are to explain why such evidence was not available, summarize the evidence and explain how the party contends such evidence would have affected the outcome.
3. The Appellate Decision Maker shall notify the other party in writing of the appeal and include copies of the document setting forth the grounds and arguments in support of the appeal. The other party shall have the option to file with the Appellate Decision Maker written arguments in response to the opposing party's appeal within five (5) calendar days of receipt of the appeal document. An untimely response will not be considered.
4. The Appellate Decision Maker shall conduct an impartial review of the appeal including consideration of arguments of the parties and the written record and may consult with District legal counsel in the decision-making process.
5. The Appellate Decision Maker shall issue a written decision describing the result of the appeal and rationale for the result and provide notice of the written decision simultaneously to the parties. The Decision may: affirm the determination, reverse the determination, or modify the determination in whole or in part.

6. The Title IX grievance determination of responsibility is final when there is no timely appeal or on the date when the Appellate Decision Maker sends his or her decision to the parties. A determination that conduct is not Title IX Sexual Harassment does not prevent the imposition of sanctions consistent with other law or policy where the conduct is determined to be in violation of such other law or policy.

STUDENTS

09.428111 AP.11

(CONTINUED)

Title IX Sexual Harassment Grievance Procedures

RECORDS

Records in connection with sexual harassment reports and the complaint process shall be maintained for a minimum of seven (7) years.

REFERENCES:

¹**KRS 158.4410; KRS 158.150; KRS 158.153
704 KAR 19:002
Individuals with Disabilities Education Act
Section 504 of the Rehabilitation Act
The Americans with Disabilities Act**

RELATED POLICIES:

²**03.173; 03.27
09.429; 09.434**

RELATED PROCEDURES:

**03.1621 AP.2; 03.2621 AP.2; 03.1621 AP.21; 03.2621 AP.21
09.428111 (all procedures)**

Title IX Sexual Harassment Reporting Form

COMPLAINANT _____			
	<i>Last Name</i>	<i>First Name</i>	<i>Middle Initial</i>
STUDENT'S SCHOOL _____	GRADE _____	HOMEROOM/CLASSROOM _____	
STUDENT'S PARENT/GUARDIAN _____			
EMPLOYEE'S WORK SITE _____			

INFORMATION CONCERNING SEXUAL HARASSMENTDATE: _____ TIME: _____ ☐ AM ☐ PM LOCATION: _____**INDIVIDUAL(S) WHO ALLEGEDLY ENGAGED IN TITLE IX SEXUAL HARASSMENT:**

DESCRIPTION OF ALLEGATION: _____

_____. This form may be supplemented with additional paper if needed.

NAME OF PERSON FILLING OUT THIS FORM (PLEASE PRINT): _____**SIGNATURE:** _____ **DATE:** _____**Phone:** _____ **Email:** _____