

**P 9-23.1 COMPLIANCE WITH TITLE IX; PROHIBITION AGAINST DISCRIMINATION, HARASSMENT AND RETALIATION BASED ON SEX**

**A. Policy Statement**

The School Board, Administration, and Staff of the City of Chesapeake Public Schools (School or School Division) are strongly committed to maintaining an educational environment and workplace that is free from all forms of discrimination, harassment and retaliation. In accordance with law, the Board prohibits discrimination, harassment and retaliation against students, employees, or others on the basis of sex, sexual orientation, gender, gender identity, race, color, national origin, disability, religion, ancestry, age, marital status, pregnancy, childbirth or related medical conditions, status as a veteran, genetic information, or any other characteristic protected by law, hereinafter referred to as protected group status, at School or any School sponsored activity. Other School Division policies address protected group status not addressed in this policy.

Title IX of the Civil Rights Act prohibits discrimination and harassment in facilities receiving federal financial assistance on the basis of sex. It is a violation of this policy for any student or School personnel to discriminate against or harass a student or School personnel based on sex, sexual orientation, gender, or gender identity, at School or any School sponsored activity. Further, it is a violation of this policy for any School personnel to tolerate any of the foregoing behaviors based on a student's or employee's protected group status at School or any School sponsored activity, by students, School personnel or third parties on our premises or participating in School sponsored activities.

It is also a violation of this policy for any student or School personnel to retaliate against another student or staff member for seeking information about this policy, filing a complaint, assisting someone else in filing, pursuing or defending a complaint, or participating as a witness.

For the purpose of this policy, School personnel includes School Board members, School employees, agents, volunteers, contractors or other persons subject to the supervision and control of the School Division.

The School Division will:

- train School personnel to understand and administer this policy;
- make this policy readily available, including on our website;
- promptly investigate all complaints, written or verbal, of harassment based on protected group status at School or any School sponsored activity;
- provide needed resources for a student who has been or may have been harmed;
- provide a fair and unbiased procedure for resolution of complaints;
- make determinations promptly;
- take appropriate action to stop any harassment; and
- take any other action reasonably calculated to end and prevent further harassment of School personnel or students.

Any person may report sex discrimination or harassment prohibited by Title IX, (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 contact information listed for the Title IX Coordinator or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time of day, including non-business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

Complainants and Respondents will be treated equitably by offering supportive measures and by following this Formal Grievance Process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

The Title IX Coordinator promptly contacts the Complainant 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 the process for filing a Formal Complaint. If a Formal Complaint is filed, the process described below will take place. Supportive measures will also be discussed and offered as may be appropriate to a Respondent.

## **B. Definitions**

**“Actual knowledge”** means notice of sexual harassment prohibited by Title IX or allegations of sexual harassment prohibited by Title IX to the Title IX Coordinator or any official of the school division who has authority to institute corrective measures or to any employee of an elementary or secondary school.

**“Complainant”** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment prohibited by Title IX.

**“Compliance Officer”** is a person designated by the School Board who may receive Formal Complaints of harassment referred by the Title IX Coordinator and oversee investigation of those Formal Complaints as described below. The Compliance Officer will serve as an unbiased investigator and make factual findings based on evidence in support and defense of a Formal Complaint.

**“Consent”** is clear, unambiguous, and voluntary agreement between the participants to engage in specific sexual activity.

**“Formal Complaint”** means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment prohibited by Title IX against a Respondent and requesting that the allegation be investigated. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party. The allegations in a Formal Complaint must be investigated. In response to a Formal Complaint, the Title IX Formal Grievance Process below is followed.

**“Program or activity”** means locations, events or circumstances over which the School Board exercises substantial control over both the Complainant who is the alleged victim and the Respondent who is the alleged harasser and the context in which the sexual harassment allegedly occurred.

### **“Prohibited Conduct”**

#### Discrimination and Harassment Based on Sex

This policy prohibits discrimination and harassment based on sex as more particularly described above. Harassment is a form of discrimination and when based on sex consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication, which may include use of cell phones or the internet, of a sexual nature, when submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment or education; submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting that individual’s employment or education; or that conduct or communication substantially or unreasonably interferes with an individual’s employment or education, or creates an intimidating, hostile or offensive employment or educational environment (i.e. the conduct is sufficiently pervasive and/or severe as to seriously limit a student’s or employee’s ability to participate in or benefit from the educational program or work environment).

Examples of conduct which may constitute harassment based on sex if it meets the immediately preceding definition include:

- unwelcome physical contact of a sexual nature
- unwelcome ongoing or repeated sexual flirtation, propositions, or remarks
- sexual slurs, leering, epithets, threats, verbal abuse, derogatory comments or sexually degrading descriptions
- graphic comments about an individual’s body
- sexual jokes, notes, stories, drawings, gestures or pictures
- spreading sexual rumors
- touching an individual’s body or clothes in a sexual way
- displaying sexual objects, pictures, cartoons or posters
- impeding or blocking movement in a sexually intimidating manner
- sexual violence
- display of written materials, pictures, or electronic images
- unwelcome acts of verbal, nonverbal, written, graphic, or physical conduct based on sex or sex stereotyping
- offering some opportunity or benefit on performing a sexual act

#### Sexual Harassment Prohibited by Title IX

Sexual harassment prohibited by Title IX means conduct on the basis of sex that satisfies one or more of the following:

- an employee of the School Board conditioning the provision of an aid, benefit, or service of the School Board on an individual's participation in unwelcome sexual conduct;
- unwelcome conduct determined by a reasonable person to be so severe or pervasive and objectively offensive that it effectively denies a person equal access to the School Board's education program or activity; or
- "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).

#### Discrimination and Harassment Based on Race, National Origin, Disability or Religion

Discrimination and Harassment based on factors other than sex is also prohibited and, for clarity, is mentioned herein. Harassment based on race, national origin, disability or religion consists of physical or verbal conduct, which may include the use of cell phones or the internet, relating to an individual's race, national origin, disability or religion when the conduct:

- creates an intimidating, hostile or offensive working or educational environment;
- substantially or unreasonably interferes with an individual's work or education; or
- otherwise is sufficiently serious as to limit an individual's employment opportunities or to limit a student's ability to participate in or benefit from the education program.

Examples of conduct which may constitute harassment based on race, national origin, disability or religion if it meets the immediately preceding definition include:

- graffiti containing racially offensive language;
- name calling, jokes or rumors;
- physical acts of aggression against a person or his property because of that person's race, national origin, disability or religion;
- hostile acts which are based on another's race, national origin, religion or disability; or
- written or graphic material which is posted or circulated and which intimidates or threatens individuals based on their race, national origin, disability or religion.

#### Additional Prohibited Behavior

Behavior that is not unlawful may nevertheless be unacceptable for the educational environment or the workplace and is thus prohibited by the School Board. Demeaning, insensitive or otherwise harmful actions are prohibited, particularly if directed at personal characteristics including socioeconomic level, appearance, sexual preference, and sexual identity regardless of whether the personal characteristic is protected by law. Such conduct may be handled outside the Title IX process described below if it does not fall within the definition above.

**"Respondent"** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment prohibited by Title IX.

**“Supportive measures”** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the School Board’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the 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, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security or monitoring of parts of campus, and other similar measures. Any supportive measures provided to the Complainant or Respondent are maintained as confidential, to the extent that maintaining such confidentiality does not impair the ability to provide supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

**“Title IX”** means 20 U.S.C. §§ 1681-1688 and the implementing regulations.

**“Title IX Coordinator”** means the person designated by the School Board to coordinate its efforts to comply with its responsibilities under this policy and Title IX. The Title IX Coordinator for the School Division is Wayne Martin who may be contacted by electronic mail at [wayne.martin@cpschools.com](mailto:wayne.martin@cpschools.com). Mr. Martin’s work phone number is (757) 5470585. The School Board prominently displays the contact information for the Title IX Coordinator and this policy on its website and in each handbook or catalog it makes available to persons who are entitled to notifications.

## C. Formal Complaint Procedures

### Reporting

Any student or staff member who believes he or she has been the victim of discrimination or harassment prohibited by law or by this policy by a student, by School personnel or a third party should report the alleged harassment to the Title IX Coordinator or to any School Division supervisory personnel. If reported by a student to a classroom teacher or teaching assistant, that person shall promptly report the alleged harassment to a building principal or assistant principal.

Any School staff member who believes he or she has been the victim of discrimination or harassment prohibited by law or by this policy by a student, by School personnel or a third party should report the alleged conduct to the Title IX Coordinator or to any School Division supervisory personnel.

The alleged discrimination or harassment should be reported as soon as possible and generally within ten school days of the occurrence. Provided, however, that a report which is made more than ten school days after a situation allegedly occurred must still be investigated. Further, any student or School personnel who have knowledge of conduct which may constitute prohibited discrimination or harassment should report such conduct to the Title IX Coordinator or to any School Supervisory personnel.

Any School personnel member who has received notice that a student or other School personnel may have been a victim of prohibited discrimination or harassment shall immediately report the alleged conduct to the Title IX Coordinator. Any Formal Complaint that involves the Title IX Coordinator should be reported to the Superintendent.

The reporting party should present the relevant information in writing. However, oral reports will also be accepted.

The Formal Complaint, and identity of the person alleging misconduct and of the alleged wrongdoer, will be disclosed only to the extent necessary to fully investigate the Formal Complaint and only when such disclosure is required or permitted by law. Additionally, a person allegedly harassed who wishes to remain anonymous shall be advised that such confidentiality may limit the School Division's ability to fully respond to the Formal Complaint.

#### Notification of Parents/Guardian

Notification shall be provided promptly to the parents/guardian of any student who has allegedly been harassed and also to the parents/guardian of a student has been alleged to have been a harasser. This notice shall advise the parents/guardian that no finding has yet been made, that an investigation will be performed, of an interim supportive measures that have or will be taken and that they will be advised of the result. The name of the other student or any School Personnel involved shall not be disclosed to the parents/guardian.

#### Emergency Action

Nothing herein precludes a Respondent from being removed from the School Board's education program or activity on an emergency basis, provided that an individualized risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and that the Respondent is provided with notice and an opportunity to challenge the decision immediately following the removal.

Nothing herein precludes an employee Respondent from being placed on administrative leave during the pendency of a Formal Grievance Process.

### **D. The Formal Complaint Resolution Process**

#### Initial Determination By Title IX Coordinator

After receiving a Formal Complaint, the Title IX Coordinator makes an initial determination whether the allegations, if substantiated, may constitute sexual harassment prohibited by Title IX. If the allegations may demonstrate sexual harassment, the Title IX Formal Grievance Process below is followed. If they do not meet the definition of sexual harassment prohibited by Title IX, then the Formal Complaint, which may alleged sex discrimination which does not constitute sexual harassment, is referred for action outside the Title IX Formal Grievance Process as may be appropriate.

The Title IX Coordinator also determines whether the alleged harassment may also constitute criminal conduct and ensures that law enforcement officials are notified if necessary. If the alleged harassment may also constitute child abuse, then it must be reported to the Department of Social Services.

#### Notice to Those Involved

On receipt of a Formal Complaint, the Title IX Coordinator gives the following written notice to the parties who are known:

- notice of the Formal Grievance Process, including any informal resolution process; and
- notice of the allegations of sexual harassment potentially constituting sexual harassment prohibited by Title IX, 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 prohibited by Title IX, and the date and location of the alleged incident, if known.

The written notice:

- includes a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Formal Grievance Process; and
- informs 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.

If, in the course of an investigation, the investigator decides to investigate allegations about the Complainant or Respondent that are not included in the notice previously provided, notice of the additional allegations is provided to the parties whose identities are known.

#### Dismissal of a Formal Complaint

A Formal Complaint or any allegations therein must be dismissed if the conduct alleged in the Formal Complaint:

- would not constitute sexual harassment prohibited by Title IX even if proven;
- did not occur in the School Board's education program or activity; or
- did not occur against a person in the United States.

Either party may appeal from a determination regarding responsibility or from a dismissal of a Formal Complaint or any allegations therein, on the following bases:

- procedural irregularity that affected the outcome of the matter;
- 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, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

Such a dismissal does not preclude action under another provision of School Board Policy.

A Formal Complaint or any allegations therein may be dismissed if at any time during the investigation:

- 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 or employed by the School Board; or
- specific circumstances prevent the School Board from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

#### Investigation by Compliance Officer

The Compliance Officer:

- receives Formal Complaints of harassment referred by the Title IX Coordinator;
- conducts or oversees the investigation of any alleged harassment referred by the Title IX Coordinator;
- may assess the training needs of the School Division in connection with Formal Complaints referred by the Title IX Coordinator;
- may arrange necessary training; and
- ensures that any harassment investigation is conducted personally, or by other School personnel, or by a third party, any of whom will act as an impartial investigator who is trained in the requirements of equal employment/education opportunity and has the authority to protect the alleged victim and others during the investigation.

#### Compliance Officer Formal Procedure

Upon receiving a referral of a Formal Complaint of prohibited harassment from the Title IX Coordinator, the Compliance Officer shall promptly authorize or undertake an investigation. The investigation may be conducted by the Compliance Officer, School personnel or a third party designated by the School Division. Upon receiving the Formal Complaint, the Compliance Officer shall acknowledge receipt of the Formal Complaint by giving written notice that the Formal Complaint has been received to both the person complaining of harassment and the person accused of harassment. Also upon receiving the Formal Complaint, the Compliance Officer shall determine whether interim supportive measures should be taken pending the outcome of the investigation. Such interim supportive measures may include, but are not limited to, separating the alleged harasser and the person allegedly harassed. Other needed resources may be provided to either party.

The investigation may consist of personal interviews with the person allegedly harassed, the alleged harasser and any others who may have knowledge of the alleged harassment or the circumstances giving rise to the Formal Complaint. The investigation will consider witnesses and evidence from both the alleged harasser and the person allegedly harassed. The investigation may also consist of the inspection of any other documents or information deemed relevant by the investigator. The School Division shall take necessary steps to protect the person allegedly harassed and others pending the completion of the investigation.

In determining whether alleged conduct constitutes a violation of this policy, the Division shall consider, at a minimum: (1) the surrounding circumstances; (2) the nature and severity of the behavior; (3) past incidents or past or continuing patterns of behavior; (4) the prior relationship, if any, between the parties; (5) how often the conduct occurred; (6) the role of the alleged perpetrator in relation to the alleged victim (i.e. whether the alleged perpetrator was in a position of power over the alleged victim); (7) the location of the alleged harassment; (8) the ages of the parties; and (9) the context of the events that allegedly occurred.

The Compliance Officer will create a draft Investigative Report that fairly summarizes relevant evidence. At least ten calendar days prior to the time a determination regarding responsibility is made, the Compliance Officer will send to each party and the party's advisor, if any, the draft Investigative Report in an electronic format or a hard copy, for their review and written response. Along with the draft Investigative Report to the parties, and before reaching a determination regarding responsibility, the decision-maker must advise each party that he or she has ten calendar days to submit written, relevant questions that the party wants asked of any party or witness. If permissible and relevant questions are submitted, the Compliance Officer will require answers and provide each party with those answers. The parties will be allowed a brief time in the Compliance Officer's discretion for limited follow-up questions directed to the other party with answers shared by the Compliance Officer. Such answers will be considered by the Compliance Officer prior to preparation of the Investigative Report.

Upon the passage of ten calendar days and following any questions submitted by the parties, the Compliance Officer will consider the totality of both party's submissions. Whether a particular action or incident constitutes a violation of this policy requires a case by case determination. The Compliance Officer's recommendation will be based on all of the facts and circumstances revealed after a complete and thorough investigation.

The Compliance Officer shall issue a final written Investigative Report to the Superintendent upon completion of the investigation. If the Formal Complaint involves the Superintendent, then the Investigative Report shall be sent to the Clerk of the School Board who shall promptly transmit the Report to the Chair of the School Board. The Investigative Report shall include a determination of whether the allegations are substantiated, whether this policy was violated, and recommendations for corrective action, if any.

All School employees and students shall be urged to cooperate with any investigation of alleged harassment conducted under this policy or by an appropriate state or federal agency. A failure to cooperate may be considered in making a recommendation and/or in a decision on the merits.

#### Action by Superintendent or Designee

Within five school days of receiving the Compliance Officer's report, the Superintendent or Superintendent's designee shall issue a decision regarding whether this policy was violated. This decision must be provided in writing to the person allegedly harassed and the alleged harasser.

If the Superintendent or Superintendent's designee determines that a preponderance of the evidence, meaning that it is more likely than not that prohibited harassment occurred, the School Division shall take prompt, appropriate action to address and remedy the violation as well as prevent any recurrence. Such action may include discipline up to and including expulsion of a student or discharge of an employee. Whether or not the Superintendent or Superintendent's designee determines that prohibited harassment occurred, the Superintendent or Superintendent's designee may determine that remedial actions be taken such as School-wide or School Division-wide training be conducted or that the persons involved receive counseling.

If the Superintendent or Superintendent's designee determines that prohibited harassment occurred and discipline is imposed, the disciplined person may appeal the disciplinary sanction through the School Division's regular Grievance Procedure; provided, however, that since the Superintendent imposed the disciplinary decision, the Grievance, if grievable, will begin the third (Superintendent's) level.

The Superintendent or his Designee, who cannot be the same person as the Title IX Coordinator or the investigator, must issue a written determination regarding responsibility.

The written determination must include:

- identification of the allegations potentially constituting sexual harassment prohibited by Title IX;
- 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;
- findings of fact supporting the determination;
- conclusions regarding the application of the School Board's policies to the facts;
- 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 School Board's education program or activity will be provided to the Complainant; and
- the procedures and permissible bases for the Complainant and Respondent to appeal.

The decision-maker must provide the written determination regarding responsibility to the parties simultaneously. If no appeal is filed (see below), the determination regarding responsibility becomes final on the date on which an appeal would no longer be considered timely.

The decision of the Superintendent shall be shared only with the Complainant, the alleged harasser, those persons who have a need to know to implement any action to be taken by the School Division, and to the parents/guardian of the student or students involved.

The Title IX Coordinator is responsible for effective implementation of any remedies for a student. The Human Resources Department will implement any disciplinary action toward an employee.

### Appeal

If either party wishes to appeal the Superintendent's or Superintendent Designee's decision, the aggrieved employee or student may appeal the decision to the School Board within five school days of receiving the Superintendent's decision. A written Notice of Appeal, which may be transmitted in paper form or by electronic mail, must be delivered to the Superintendent who shall then cause a written Record of the proceedings to be prepared.

The Record shall be forwarded to the Clerk of the School Board within five school days of the Superintendent's receipt of the Notice of Appeal.

The School Board shall acknowledge the appeal by letter to both parties and place the matter on its Agenda for a regular meeting, notifying the parties of the meeting date during which the matter will be considered. Such meeting will be scheduled within 30 calendar days of the Clerk of the School Board's receipt of the Record.

Either party may submit a written summary of his or her position at his or her own discretion, but no new evidence or exhibits, which could, in the exercise of due diligence, have been offered to the Superintendent, will be considered. Any submission must be delivered in paper form or by electronic mail to the Clerk of the School Board at least seven calendar days before the School Board meeting at which the appeal will be considered.

There shall be no appearance before the School Board for oral argument unless requested by the School Board, which may ask for oral argument from the Appellant, the other party to the Formal Complaint, and/or the Superintendent. If oral argument is requested of either party, it shall be permitted to both parties and the Superintendent. If oral argument is requested by the School Board, a student may be represented by the parents/guardian or by a licensed attorney, and an employee may appear personally or by a licensed attorney. Any person hiring an attorney to appear before the School Board shall notify the Clerk of the School Board of such attorney's representation and be responsible for his or her own attorney's fees.

Written notice of the School Board's decision will be given to both the alleged harasser, to the person allegedly harassed, to the parents/guardian of any student party and to the Superintendent. The School Board's decision shall be the final action of the School Division.

### Informal Resolution Procedure

If the person allegedly harassed and the person accused of harassment agree, the Title IX Coordinator may arrange for a principal or principal's designee or another trained person to attempt resolution of the Formal Complaint informally. A student's parents/guardian must also consent to informal resolution.

If the parties agree to seek resolution of the Formal Complaint informally, they shall each be informed that they have the right to abandon the informal procedure at any time in favor of the initiation of the more formal procedures set forth herein.

The principal or principal's designee or other trained person shall notify the parties in writing if the Formal Complaint has been resolved. The written notice shall state whether it was determined that prohibited harassment occurred. The parents/guardian shall also be notified of the result. If the Formal Complaint cannot be informally resolved, the matter will then be referred to the Formal Grievance Process.

The informal resolution process may be facilitated by a trained educational professional, consultant, or other individual selected by the Title IX Coordinator under the following conditions:

- the parties are provided 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; provided, however that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process, resume the Formal Grievance Process, and be informed of any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- the parties, voluntarily and in writing, consent to the informal resolution process; and
- the informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.

If the matter is resolved to the satisfaction of the parties, the facilitator shall document the nature of the Formal Complaint and the resolution, have both parties sign the documentation and receive a copy, and forward it to the Title IX Coordinator. If the matter is not resolved, the Formal Grievance Process is resumed.

#### **E. Timelines**

The Investigative Report will be provided to the parties within 35 calendar days from the date the Formal Complaint is filed.

A decision will be issued within five school days from the date the Investigative Report is submitted to the Superintendent or Designee.

Either party may appeal the Superintendent's determination regarding responsibility within five school days of receipt by the parties. Any appeal to the School Board must be delivered to the Clerk of the School Board in writing, either in a paper copy or by electronic mail.

The School Board shall provide a decision on appeal within 30 calendar days of receipt of the appeal by its Clerk.

If the parties agree to an informal resolution process, these deadlines may be tolled (placed on hold by agreement) from the time the parties so agree until the matter is resolved or until either party withdraws from the informal resolution process.

Temporary delays of the resolution process or the limited extension of time frames for good cause are permitted in the discretion of the School Division. Good cause may include, but are not limited to, considerations such as the illness or unavoidable absence of a party or a party's witness; concurrent law enforcement activity; disciplinary processes required by law or School Board policy; or the need for language assistance or accommodation of disabilities.

#### **F. Recordkeeping**

The School Board will maintain for a period of seven years records of:

- each investigation of allegations of sexual harassment prohibited by Title IX, including any determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to School Board'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, decision-makers, and any person who facilitates an informal resolution process. These materials will also be made available on the School Board's website.

For each response required under 34 C.F.R. § 106.44, the School Board must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment prohibited by Title IX. In each instance, the School Board will 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 its education program or activity. If the School Board does not provide a Complainant with supportive measures, then it will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

#### **G. Retaliation**

Retaliation against students or School personnel who report harassment or participate in any related proceedings is prohibited. The School Division shall take appropriate disciplinary action against students or School personnel who retaliate against any student or School personnel who reports alleged harassment or participates in related proceedings. The Title IX Coordinator will inform persons who make complaints, who are the subject of complaints, and who participate in investigations of how to report any subsequent problems.

#### **H. Miscellaneous Provisions**

This resolution process treats Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for sexual harassment has been made against the Respondent, and by following this process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent. Remedies are designed to restore or preserve equal access to the School Board's education program or activity.

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

All relevant evidence is evaluated objectively, including both inculpatory and exculpatory evidence. Credibility determinations are not based on a person's status as a Complainant, Respondent, or witness. The ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence is not unreasonably restricted.

The Title IX Coordinator, investigator, decision-maker, or any person who facilitates an informal resolution process may not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process receives training on the definition of sexual harassment prohibited by Title IX, the scope of the School Board's education program or activity, how to conduct an investigation and grievance process including appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators receive training on issues of relevance in order to create Investigative Reports that fairly summarize relevant evidence.

A finding of responsibility may result in disciplinary action up to and including expulsion for students or dismissal of employees.

The standard of evidence used to determine responsibility is **preponderance of the evidence**.

This Formal Grievance Process does not 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.

When investigating a Formal Complaint and throughout the Formal Grievance Process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the School Board and not on the parties.

A party's records that are made or maintained by a physician, 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 will not be accessed, considered, disclosed or otherwise used for resolution of a Formal Complaint without the voluntary, written consent of the party's parent, or the party if the party is an adult student or an employee.

Any party whose participation is invited or expected is provided written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings with sufficient time for the party to prepare to participate.

The investigator creates a draft Investigative Report that fairly summarizes relevant evidence and, at least ten calendar days prior to the time a determination regarding responsibility is made, sends to each party and the party's advisor, if any, the draft Investigative Report in an electronic format or a hard copy, for their review and written response. An opportunity to address questions to the other party will be provided by the Compliance Officer (detail above).

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 School Division provides the Superintendent's written decision simultaneously to both parties and the Title IX Coordinator.

Training to prevent harassment prohibited by law or by this policy is included in employee and age appropriate student orientations.

This policy will be accessible to students, parents and School personnel. A summary will be sent to parents and included in student and employee handbooks. The full policy will be posted on the School Division's website. Further, all students and their parents/guardians and employees are notified annually of the names and contact information of the Division's Title IX Coordinator.

Nothing in this policy shall deny the right of any individual to pursue other avenues of recourse to address concerns relating to prohibited harassment including initiating a civil action, filing a complaint with outside agencies or seeking redress under state or federal law.

Students or School personnel who knowingly make false charges of harassment shall be subject to disciplinary action as well as any civil or criminal legal proceedings.

#### References

1. 20 U.S.C. §§ 1681-1688.  
29 U.S.C. § 794.  
42 U.S.C. §§ 2000d-2000d-7.  
42 U.S.C. §§ 2000e-2000e-17.  
42 U.S.C. § 2000ff-1.  
34 C.F.R. 106.2, 106.8, 106.9, 106.30, 106.44, 106.45, 106.71.
2. Code of Virginia, 1950 as amended,  
§§ 2.2-3900  
§§ 2.2-3901  
§§ 2.2.3902  
§§ 22.1-295.2.

Adopted: \_\_\_\_\_