

BOARD OF EDUCATION OF HARFORD COUNTY

INFORMATIONAL REPORT

DECISION ON

PROPOSED REVISION TO

BOARD POLICY

**POLICY NO. 24-0002-000
NON-DISCRIMINATION**

NOVEMBER 16, 2020

Background Information:

The Board maintains a manual which sets forth the various policies of the Harford County Public Schools. The manual contains policies which are either required by federal and state law and regulation or which are, in the Board's judgment, necessary and appropriate for the school system to operate in a lawful, appropriate and effective manner. Included among such policies is:

24-0002-000 Non-Discrimination

Discussion:

On May 6, 2020, the Office of Civil Rights ("OCR") of the United States Department of Education, issued new regulations under the authority of Title IX of the Education Amendments of 1972, which prohibits discrimination in a program or activity conducted or sponsored by an entity or agency which receives federal funding. The Board of Education of Harford County ("Board") is such an agency. These new or revised regulations issued by the OCR found at 34 Code of Federal Regulations ("C.F.R."), Part 106, specifically address sexual harassment which is one form of discrimination on the basis of sex which violates Title IX.

These new or revised regulations which became effective August 14, 2020, made extensive and significant changes to the Title IX regulations as they pertained to sexual harassment. The changes include, but are not limited to, the inclusion of a specific definition of sexual harassment; a highly prescriptive process for addressing reports and complaints of sexual harassment; expanded duties of the Title IX Coordinator; and expanded requirements for the reporting of sexual harassment which affected agencies must follow.

An HCPS procedure entitled *Procedures Relating to Title IX of the Education Amendments of 1972 and Its Implementing Regulations*, was signed by the Superintendent on August 14, 2020, which implemented the new regulatory requirements described above. A change to the language in Board policy entitled 24-0002-000 Non-Discrimination is also required as a result of these new regulatory requirements. This change is as follows.

1. The words "sex, sexual orientation or gender identity" are proposed to be removed from Section II, C.1.

2. New sections 3(a) and 3(b) are proposed to be added under Section II, C., which sets forth the definition of sexual harassment under Title VII and the new Title IX regulations effective August 14, 2020.

The purpose of this change is to set forth both the definition of sexual harassment under Title VII and the new definition of sexual harassment now included in the new or revised Title IX Regulations as the latter definition differs from the definition of *sexual harassment* in the current policy.

At its meeting of October 12, 2020, the Board received a report from Patrick Spicer, Esquire, regarding this new, proposed revised policy. The proposed revised policy was posted on the HCPS website for review and comment by the public. No public comment has been received to date.

Attachments:

1. Current Board Policy 24-0002-000 entitled Non-Discrimination.
2. Proposed, revised Board Policy 24-0002-000 entitled Non-Discrimination.
3. Current Board Procedure entitled *Procedures Relating to Title IX of the Education Amendments of 1972 and Its Implementing Regulations* for reference.

Superintendent's Recommendation:

The Superintendent recommend that the Board approve the attached, revised Non-Discrimination policy.

- Proposed revision to policy entitled 24-0002-000 Non-Discrimination.

POLICY TITLE: NON-DISCRIMINATION		
ADOPTION/EFFECTIVE DATE: 12-12-1973	MOST RECENTLY AMENDED: 01-11-2016	MOST RECENTLY REAFFIRMED: 06-11-2007
POLICY/PROCEDURE MANUAL SUMMARY CATEGORY: EQUITY AND NON-DISCRIMINATION		

I. PURPOSE

The purpose of this policy is to set forth the following.

1. The Board's commitment to compliance with all federal and state anti-discrimination law and regulations applicable to Maryland public schools.
2. The Board's prohibition of conduct by members of the school community which violates federal and state anti-discrimination law or regulations applicable to Maryland public schools.

II. DEFINITIONS

A. **Discrimination** means conduct, including harassment, as defined below, committed by a member of the school community, which violates federal and state law which prohibit discrimination or harassment in public schools, and which results in the unlawful exclusion from participation in, denial of the benefits of or unlawful differential treatment with respect to:

1. Programs, activities, or services provided by Harford County Public Schools ("HCPS"); or,
2. Employment or conditions of employment with HCPS.

B. **Federal And State Law And Regulations** which prohibit discrimination, and, in most cases, harassment, in Maryland public schools include:

1. Americans with Disabilities Act and its implementing regulations (42 U.S.C., Sections 12101-12103; 12111-12117 and 12131-12134; Code of Federal Regulations (C.F.R.) Title 29 Section 1630.1 to 1630.16 and Title 28 Section 35.101 to 35.178, which set forth protections against discrimination on the basis of disability.

2. Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (29 U.S.C. Section 794 and 34 C.F.R. Section 104.1 to 104.39) which set forth protections against discrimination on the basis of disability.
3. Title VI of the Civil Rights Act of 1964 and its implementing regulations (42 U.S.C. Section 2000 d to 42 U.S.C. 2000 d 7, 34 C.F.R. 100.1 to 100.13 and 29 C.F.R. 1691.1 to 29 C.F.R. 1691.13) which set forth protections against discrimination on the basis of race, color or national origin.
4. Title VII of the Civil Rights Act of 1964 and its implementing regulations (42 U.S.C. Section 2000 to Section 2000 a-4 and 29 C.F.R. Part 1600 to Part 1690, *et seq.*) which set forth protections against discrimination in employment on the basis of race, color, national origin, sex and religion.
5. Title IX of the Education Amendment of 1972 and its implementing regulations (20 U.S.C. Section 1681 and 34 C.F.R. Section 106.1 to 106.71) which set forth protections against discrimination on the basis of sex, sexual orientation, or gender identity.
6. Age Discrimination Act of 1975 and its implementing regulations (42 U.S.C. Section 6101-6107 and 34 C.F.R. 110.0-110.39), which set forth protections against discrimination on the basis of age.
7. Age Discrimination in Employment Act and its implementing regulations (29 U.S.C. Section 621 to Section 623 and 29 C.F.R. Section 1625.1 to Section 1625.31), which set forth protections against discrimination on the basis of age.
8. Genetic Information Act of 2008 (29 U.S.C. 1001, *et seq.*, and 42 U.S.C. 300 gg, *et seq.*, and C.F.R. 1601, *et seq.*), which sets forth protections against discrimination on the basis of genetic information.
9. Title 20 of the State Government Article of Maryland Annotated Code which sets forth protections against discrimination in employment on the basis of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability.

10. Section 7-424.1 and 7-424.3 of the Education Article of Maryland Annotated Code which set forth protections for students against bullying, harassment or intimidation.

C. **Harassment** means:

1. being subject to unwelcome conduct based on race, color, national origin, religion, age, disability, sex, sexual orientation, gender identity, or genetic information
 - a. which conduct is either made a condition of access to HCPS services, programs or activities or employment or terms of employment; or,
 - b. which is severe or pervasive and objectively offensive so that it deprives a student or other person from access to HCPS programs, services or activities or is hostile and abusive so as to alter the condition of employment of a reasonable person; or
2. being subject to cyberbullying, bullying, harassment or intimidation as defined in Board Policy Number 24-0006-000 entitled, "Cyberbullying, Bullying, Harassment and Intimidation of Students," which is incorporated herein by reference.

D. **Member Of School Community** means:

1. A Board of Education member.
2. An employee of HCPS.
3. An HCPS volunteer.
4. A student.
5. A person who participates in activities of HCPS or is present on HCPS grounds or premises and is under the authority or control of HCPS.

E. **Retaliation** means:

1. unfavorable differential treatment imposed by a member of the HCPS school community upon a person because that person has opposed any act or practice which is unlawful under federal or state law or regulations which prohibit discrimination, or has made a charge, testified, assisted or participated in an investigation, proceeding or other matter pursuant to federal or state law or regulations which prohibit discrimination; or
 2. being subject to coercion, intimidation or interference by a member of the school community because that person has opposed any act or practice which is unlawful under federal or state law or regulations which prohibit discrimination or has made a charge, testified, assisted or participated in an investigation, proceeding or other matter pursuant to federal or state law or regulations which prohibit discrimination.
- F. **Student** means any person enrolled in HCPS for the purpose of receiving education services.

III. Statement of Policy

- A. The Board is committed to providing an environment that is safe and optimal for academic achievement and productive work activity and free from any form of unlawful discrimination. Accordingly, the Board:
1. prohibits any conduct which constitutes discrimination or harassment in employment or in participation in or access to HCPS activities, programs or services.
 2. prohibits any conduct which constitutes retaliation.
- B. Any conduct by a member of the school community described in III. A. above is a violation of this policy. HCPS will investigate all complaints of harassment, discrimination, or retaliation and will take appropriate disciplinary or other action against any member of the school community who is found to have committed an act of discrimination, harassment or retaliation.
- C. The Superintendent shall establish procedures to implement this policy.

Board Approval Acknowledged By:



Barbara P. Canavan, Superintendent
Board of Education of Harford County

Policy Action Dates					
ACTION	DATE	ACTION	DATE	ACTION	DATE
Adopted	12/12/1973	Amended	10/27/2003		
Amended	1/21/1998	Reaffirmed	6/11/2007		
Amended	1/14/2002	Amended	11/9/2009		
Reaffirmed	5/6/2002	Amended	1/11/2016		

Responsibility for Policy Maintenance & References	
LAST EDITOR/DRAFTER NAME: Patrick P. Spicer	JOB POSITION OF LAST EDITOR/DRAFTER: General Counsel
PERSON RESPONSIBLE:	JOB POSITION OF PERSON RESPONSIBLE:
DESIGNEE NAME:	JOB POSITION OF DESIGNEE:
POLICY NUMBER PRIOR TO NOVEMBER 1, 2005:	

REFERENCES¹

References are set forth in the policy.

¹ All references are to specific federal or Maryland statutes or regulations. References are provided for convenience and informational purposes only and are not to be considered as exhaustive or as precluding Harford County Public Schools from relying upon any other statutes, regulations, or legal authority in support of a policy.

POLICY TITLE: NON-DISCRIMINATION		
ADOPTION/EFFECTIVE DATE: 12-12-1973	MOST RECENTLY AMENDED: 01-11-2016	MOST RECENTLY REAFFIRMED: 06-11-2007
POLICY/PROCEDURE MANUAL SUMMARY CATEGORY: EQUITY AND NON-DISCRIMINATION		

I. PURPOSE

The purpose of this policy is to set forth the following.

1. The Board's commitment to compliance with all federal and state anti-discrimination law and regulations applicable to Maryland public schools.
2. The Board's prohibition of conduct by members of the school community which violates federal and state anti-discrimination law or regulations applicable to Maryland public schools.

II. DEFINITIONS

- A. **Discrimination** means conduct, including harassment, as defined below, committed by a member of the school community, which violates federal and state law which prohibit discrimination or harassment in public schools, and which results in the unlawful

exclusion from participation in, denial of the benefits of or unlawful differential treatment with respect to:

1. Programs, activities, or services provided by Harford County Public Schools (“HCPS”); or,
2. Employment or conditions of employment with HCPS.

B. Federal And State Law And Regulations which prohibit discrimination, and, in most cases, harassment, in Maryland public schools include:

1. Title VII of the Civil Rights Act of 1964 and its implementing regulations (42 U.S.C. Section 2000 to Section 2000 a-4 and 29 C.F.R. Part 1600 to Part 1690, *et seq.*) which set forth protections against discrimination in employment on the basis of race, color, national origin, sex and religion. (Referred to herein as “Title VII.”)
2. Title IX of the Education Amendment of 1972 and its implementing regulations (20 U.S.C. Section 1681 and 34 C.F.R. Section 106.1 to 106.71) which set forth protections

against discrimination on the basis of sex, sexual orientation, or gender identity. (Referred to herein as “Title IX.”)

3. Age Discrimination Act of 1975 and its implementing regulations (42 U.S.C. Section 6101-6107 and 34 C.F.R. 110.0-110.39), which set forth protections against discrimination on the basis of age.
4. Age Discrimination in Employment Act and its implementing regulations (29 U.S.C. Section 621 to Section 623 and 29 C.F.R. Section 1625.1 to Section 1625.31), which set forth protections against discrimination on the basis of age.
5. Genetic Information Act of 2008 (29 U.S.C. 1001, *et seq.*, and 42 U.S.C. 300 gg, *et seq.*, and C.F.R. 1601, *et seq.*), which sets forth protections against discrimination on the basis of genetic information.
6. Title 20 of the State Government Article of Maryland Annotated Code which sets forth protections against discrimination in employment on the basis of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability.

7. Section 7-424.1 and 7-424.3 of the Education Article of Maryland Annotated Code which set forth protections for students against bullying, harassment or intimidation.

8. Americans with Disabilities Act and its implementing regulations (42 U.S.C., Sections 12101-12103; 12111-12117 and 12131-12134; Code of Federal Regulations (C.F.R.) Title 29 Section 1630.1 to 1630.16 and Title 28 Section 35.101 to 35.178, which set forth protections against discrimination on the basis of disability.

9. Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (29 U.S.C. Section 794 and 34 C.F.R. Section 104.1 to 104.39) which set forth protections against discrimination on the basis of disability.

10. Title VI of the Civil Rights Act of 1964 and its implementing regulations (42 U.S.C. Section 2000 d to 42 U.S.C. 2000 d 7, 34 C.F.R. 100.1 to 100.13 and 29 C.F.R. 1691.1 to 29 C.F.R. 1691.13) which set forth protections against discrimination on the basis of race, color or national origin.

C. **Harassment** means:

1. being subject to unwelcome conduct based on race, color, national origin, religion, age, disability, ~~sex, sexual orientation, gender~~
~~identity~~, or genetic information
 - a. which conduct is either made a condition of access to HCPS services, programs or activities or employment or terms of employment; or,
 - b. which is severe or pervasive and objectively offensive so that it deprives a student or other person from access to HCPS programs, services or activities or is hostile and abusive so as to alter the condition of employment of a reasonable person; or
2. being subject to cyberbullying, bullying, harassment or intimidation as defined in Board Policy Number 24-0006-000 entitled, "Cyberbullying, Bullying,

Harassment and Intimidation of Students,” which is incorporated herein by reference.

3. Sexual Harassment (Including Harassment on the Basis of Sexual Orientation and Gender Identity)

A. Sexual Harassment Under Title IX Means:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct (i.e., *quid pro quo* sexual harassment);

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 recipient’s education program or activity; or,

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).

B. Sexual Harassment Under Title XII means:

1. Being subject to unwelcome conduct on the basis of sex which is hostile or abusive so as to alter the condition of an individual’s employment with HCPS; or,

2. An individual’s employment or terms of employment with HCPS being conditioned upon the individual’s participation in unwelcome conduct (i.e. *quid pro quo* sexual harassment).

D. Member Of School Community means:

1. A Board of Education member.

2. An employee of HCPS.

3. An HCPS volunteer.
4. A student.
5. A person who participates in activities of HCPS or is present on HCPS grounds or premises and is under the authority or control of HCPS.

E. **Retaliation** means:

1. unfavorable differential treatment imposed by a member of the HCPS school community upon a person because that person has opposed any act or practice which is unlawful under federal or state law or regulations which prohibit discrimination, or has made a charge, testified, assisted or participated in an investigation, proceeding or other matter pursuant to federal or state law or regulations which prohibit discrimination; or
2. being subject to coercion, intimidation or interference by a member of the school community because that person has opposed any act or practice which is unlawful under federal or state law or regulations which prohibit discrimination or has made a

charge, testified, assisted or participated in an investigation, proceeding or other matter pursuant to federal or state law or regulations which prohibit discrimination.

- F. **Student** means any person enrolled in HCPS for the purpose of receiving education services.

III. Statement of Policy

- A. The Board is committed to providing an environment that is safe and optimal for academic achievement and productive work activity and free from any form of unlawful discrimination. Accordingly, the Board:
1. prohibits any conduct which constitutes discrimination or harassment in employment or in participation in or access to HCPS activities, programs or services.
 2. prohibits any conduct which constitutes retaliation.
- B. Any conduct by a member of the school community described in III. A. above is a violation of this policy. HCPS will investigate all complaints of harassment,

discrimination, or retaliation and will take appropriate disciplinary or other action against any member of the school community who is found to have committed an act of discrimination, harassment or retaliation.

- C. The Superintendent shall establish procedures to implement this policy.

Board Approval Acknowledged By:

Sean W. Bulson, Ed.D., Superintendent

Policy Action Dates					
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Adopted	12/12/1973	Amended	10/27/2003		
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DESIGNEE NAME:	JOB POSITION OF DESIGNEE:
POLICY NUMBER PRIOR TO NOVEMBER 1, 2005:	

REFERENCES¹

References are set forth in the policy.

¹ All references are to specific federal or Maryland statutes or regulations. References are provided for convenience and informational purposes only and are not to be considered as exhaustive or as precluding Harford County Public Schools from relying upon any other statutes, regulations, or legal authority in support of a policy.

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PROCEDURE TITLE: PROCEDURES RELATING TO TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 AND ITS IMPLEMENTING REGULATIONS		
ADOPTION/EFFECTIVE DATE: October 12, 2015	MOST RECENTLY AMENDED: August 14, 2020	MOST RECENTLY REAFFIRMED:
POLICY/PROCEDURE MANUAL SUMMARY CATEGORY: Equity and Non-Discrimination		

I. Purpose

The purposes of these procedures are as follows.

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

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

- A. Definitions For This Section II
 - 1. **Complainant** means any person who files a report under this Section II.
 - 2. **Complaint** means a written or verbal statement which sets forth an allegation that a member of the school community has been subject to conduct which is in violation Title IX or retaliation under this Section II.
 - 3. **Days** means calendar days.
 - 4. **Discrimination** means the following.

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- a. Being, on the basis of sex, including sexual orientation and gender identity, unlawfully subject to: exclusion from participation in, denial of the benefits of, or, unfavorable differential treatment with respect to, any academic, extra-curricular, research, occupational training, or other education program or activity provided by HCPS.
 - b. Being, on the basis of sex, including sexual orientation and gender identity, unlawfully subject to: exclusion from, participation in, denial of the benefits of, or being subject to unfavorable differential treatment with respect to employment, recruitment, consideration or selection for employment by HCPS.
5. **HCPS** means Harford County Public Schools.
6. **Member Of School Community** means:
- a. Board of Education member.
 - b. Any employee of Harford County Public Schools (“HCPS”)
 - c. Any HCPS volunteer.
 - d. A student.
 - e. Any other person who participates in activities of HCPS or is present on HCPS grounds or premises and is under the authority or control of HCPS.
7. **Retaliation** means
- a. Unfavorable differential treatment of a person because that person has opposed any act or practice which is unlawful under Title IX or has made a charge, testified, assisted or participated in an investigation, proceeding or other matter pursuant to Title IX; or
 - b. Threatening, coercing, intimidating or interfering with any person because that person has opposed any act or practice which is unlawful under the Title IX or has made a charge, testified, assisted or participated in an investigation, proceeding or other matter pursuant to the Title IX.

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8. **Title IX** means Title IX of the Education Amendments of 1972, codified at 20 U.S. Code Section 1681, *et seq.* and its implementing regulations codified at 34 Code of Federal Regulations (CFR) Part 106.1, *et seq.* which, in pertinent part, prohibit discrimination on the basis of sex in employment with respect to access to facilities, program or activities and prohibit sexual harassment.
9. **Title IX Coordinator** means the Manager of Equity and Cultural Proficiency, 102 S. Hickory Avenue, Bel Air, Maryland 21014, telephone 410-809-6064. Paula.Stanton@hcps.org

B. Complaint Procedure

Complaints alleging discrimination on the basis of sex, sexual orientation or gender identity or retaliation which do not involve sexual harassment or allegations of sexual harassment shall be submitted orally or in writing to the Title IX Coordinator, 102 South Hickory Avenue, Bel Air, Maryland, 21014, at 410-809-6064 or Paula.Stanton@hcps.org.

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

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

A. Definitions

1. **Complainant** means a person who is alleged to be the victim of conduct which constitutes sexual harassment and includes, if the victim is under the age of 18, the parent or guardian of the victim.
2. **Days** means calendar days unless specified otherwise.
3. **Decision-Maker** means the school official responsible for making a determination regarding responsibility in response to an investigation of sexual harassment triggered by a formal complaint.
4. **Disciplinary Sanctions** mean consequences imposed on a respondent when the respondent is found responsible for sexual harassment.
5. **Eligible Complainant** means a complainant who is participating in an HCPS education program or activity at the time of the filing of a formal complaint.
6. **Formal Complaint** means a document filed and signed by a Complainant or signed by the Title I Coordinator, alleging sexual harassment against a respondent and which requests that HCPS investigate the allegations of sexual harassment.
7. **Investigative Report** means a written account of the findings of the investigation conducted in response to a formal complaint.
8. **Investigator** means the school official responsible for investigating and responding to a formal complaint.
9. **Member Of School Community** means:
 - a. Board of Education member.
 - b. Any employee of Harford County Public Schools (“HCPS”)
 - c. Any HCPS volunteer.
 - d. A student.

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- e. Any other person who participates in activities of HCPS or is present on HCPS grounds or premises and is under the authority or control of HCPS.
10. **Remedies** means individualized measures provided to a complainant designed to restore or preserve the complainant's equal access to the education program and activities of the school system when a respondent is found responsible for sexual harassment.

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

11. **Removal** means requiring a respondent to discontinue his or her attendance or participation in an HCPS education program or activity on an emergency basis.
12. **Report** means a communication whether verbal or written, in which any person notifies the Title IX Coordinator of sexual harassment.
13. **Reporter** means a person who submits a report.
14. **Respondent** means a person who is alleged in a report or formal complaint to have committed sexual harassment.
15. **Sexual Harassment** means
- a. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo sexual harassment);

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

c. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

16. **Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the school system’s education program and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school system’s educational environment, or deter sexual harassment.

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

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

B. General Rules

1. Prohibition of Sexual Harassment

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

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2. Conduct that is not sexual harassment for purposes of this policy if the conduct occurred (1) outside the United States or (2) under circumstances in which the school system did not have substantial control over both the harasser and the context in which the harassment occurred.
 3. Examples of conduct on the basis of sex that would be considered sexual harassment if the conduct satisfies the criteria above include, but are not limited to: unwelcome sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature, such as deliberate, unwelcome touching that has sexual connotations or is of a sexual nature; suggestions or demands for sexual involvement accompanied by implied or overt promises of preferential treatment or threats; pressure for sexual activity; continued or repeated offensive sexual flirtations, advances, or propositions; continued or repeated verbal remarks about an individual's body; sexually degrading words used toward an individual or to describe an individual; sexual assault; sexual violence; the display of sexually suggestive drawings, objects, pictures, or written materials; posting sexually suggestive pictures of a person without the person's consent; and forwarding pornographic material depicting a classmate or other member of the school community. Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping but not involving conduct of a sexual nature may also constitute sexual harassment.
 4. Conduct that is determined not to meet the definition above may violate other board policies or established standards of conduct and will be treated accordingly. For example, conduct that does not meet the definition of Title IX sexual harassment above may nevertheless violate other board policies. Nothing in this procedure is intended to limit discipline for violation of other board policies/procedures when appropriate and consistent with law.
- C. Reporting Relating to Sexual Harassment or Allegations of Sexual Harassment
1. Student Reports

Any student who believes he or she is a victim of sexual harassment occurring in the school system's education programs or activities is encouraged to report the matter to the student's principal or to the Title IX Coordinator. Reports may also be made to a teacher, counselor, assistant principal, teacher assistant, or any other school

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employee. Middle and high school students may also report sexual harassment through the anonymous tip line, but school officials may be limited in their ability to respond if the report does not identify the victim.

2. Mandatory Reporting by School Employees and Board Members
 - a. Any HCPS employee or member of the Board of Education who has knowledge of or is on notice of conduct that may constitute sexual harassment or allegations of sexual harassment occurring in the education program or any activity of the school system must report that information immediately to the Title IX Coordinator.
 - b. Any HCPS employee or Board member must report any of the following immediately:
 - i. a report of sexual harassment received from a student or other person;
 - ii. the conduct witnessed by the employee or Board member that is or reasonably could be sexual harassment; or
 - iii. the employee or board member discovers evidence of sexual harassment, such as sexualized graffiti on school property, or otherwise has reliable information or reason to believe that a student, employee, or other individual may have been sexually harassed in violation of this policy, even if no other person has reported the sexual harassment.
 - iv. Any doubt about whether particular conduct is sexual harassment must be resolved in favor of reporting the conduct.
 - v. Employees who observe an incident of sexual harassment are expected to intervene to stop the conduct in situations in which they have supervisory control over the perpetrator, and it is safe to do so.

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- v i . Any employee who fails to comply with any of the reporting requirements of this Section, or who knowingly provides false information in a report will be subject to disciplinary action up to and including dismissal.

3. Reporting by Others

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

4. Content of Report

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

5. Time Period for Making a Report

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

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6. HCPS Response to Reports of Sexual Harassment

- a. The Title IX Coordinator shall respond promptly and impartially to reports of sexual harassment or alleged sexual harassment.
- b. The Title IX Coordinator shall respond to all reports of sexual harassment or alleged sexual harassment in accordance with this section. However, a report alleging conduct that is not sexual harassment as defined in this policy is not subject to this policy but may be referred to appropriate school officials as a possible violation of other board policies.
- c. Title IX Coordinator Initiates Interactive Process with Complainant

Upon receiving a report of alleged sexual harassment, the Title IX Coordinator shall promptly contact the victim and if the victim is under age 18, the victim's parent or guardian confidentially. This contact must occur within three days, excluding weekends, absent extenuating circumstances. The Title IX Coordinator shall also notify the principal of any school involved in the report and, if an employee is the complainant or respondent, the senior human resources official or designee.

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

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grievance process Title IX Sexual Harassment Grievance Process;

- b) that a formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail;
- c) the major steps in the grievance process, including:
 - (1) a notice of the allegations that will be provided to the respondent that includes identification of the complainant and the allegations made;
 - (2) an investigation of the allegations of sexual harassment in which both parties will have opportunity to have an advisor, present witnesses, review evidence, pose written questions of the other party, and receive a copy of the investigative report;
 - (3) a decision on responsibility in which a decision-maker objectively evaluates all relevant evidence and determines whether the respondent engaged in the alleged sexual harassment in violation of this policy; and
 - (4) the opportunity for either party to appeal the decision;
 - (i) the approximate time frame for concluding the grievance process;
 - (ii) that school officials will treat both parties equitably by (1) providing remedies to the complainant if the respondent is found responsible, and (2) by not imposing disciplinary sanctions on the

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respondent without first following the grievance process;

(iii) the circumstances under which a formal complaint might be consolidated with other formal complaints or dismissed; and

(iv) that the Title IX Coordinator may have an obligation to initiate the grievance process in the absence of a formal complaint filed by the victim and the time frame in which that decision will be made.

7. Title IX Coordinator Arranges Implementation of Supportive Measures

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

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

8. Title IX Coordinator Determines Whether to Sign a Formal Complaint

a. If the victim declines to file a formal complaint within the designated time period following the interactive process described above, the Title IX Coordinator shall determine on a case-by-case basis whether to sign, i.e., file, a formal complaint to initiate the grievance process.

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- b. Notwithstanding Subsection 8 a. above, the Title IX Coordinator shall file a formal complaint (1) if the respondent is a school employee and the complainant is a student; and (2) in other cases where, in the Title IX Coordinator's discretion, and in consultation with the school attorney as appropriate, the coordinator determines that a grievance process is necessary to comply with the obligation not to be deliberately indifferent to known allegations of sexual harassment. Credibility or merit of the report shall not be considered in making this determination.
 - c. A decision by the Title IX Coordinator to sign a formal complaint is not to be construed as supportive of the victim or in opposition to the respondent or as an indication of whether the allegations are credible or have merit, or whether there is evidence sufficient to determine responsibility. Signing a formal complaint does not make the Title IX Coordinator a complainant or party to the complaint nor relieve the Title IX Coordinator from any responsibilities under this policy.
 - d. The Title IX Coordinator shall document the decision of whether to sign a complaint and the reasons for that decision.
9. **Presumption of Non-responsibility of Respondent and Bar on Disciplinary Sanctions without Due Process**
- a. The respondent identified in any report alleging sexual harassment under this policy will be presumed not responsible for the alleged conduct until the respondent's responsibility is conclusively established through the grievance process.
 - b. No disciplinary sanction or other action that is not a supportive measure, including but not limited to (1) short or long-term suspension, expulsion, or transfer to an alternative school or program for student-respondents and (2) suspension, demotion, or dismissal for employee-respondents, may be imposed for a violation of this policy unless the respondent agrees to a specific disciplinary sanction in an informal resolution or has been determined to be responsible for the sexual harassment at the conclusion of a grievance process.
 - c. An employee-respondent, however, may be placed on administrative leave during the pendency of the grievance

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process if consistent with applicable state and federal laws.

- d. Notwithstanding the limitation just described, respondents are subject to emergency removal as described in the next paragraph.

10. Emergency Removal of Respondent from School or Employment

- a. Any respondent is subject to removal from the school system's education program and activities, or any part of the program or activities, on an emergency basis if a school-based threat assessment team conducts an individualized safety and risk analysis and determines that removal is justified because the person poses an immediate health or safety threat to any person arising from the allegations of sexual harassment.
- b. Removing a student from an extracurricular activity is also considered a removal under this subsection where such action would not otherwise constitute a supportive measure.
- c. The emergency removal may take place regardless of whether a formal complaint has been filed.
 - i. Any such removal shall not violate the rights of any person under the Section 504 and the Individuals With Disabilities Education Act ("IDEA").
 - ii. The respondent shall receive notice of the removal and an opportunity to challenge the decision in an informal hearing with the superintendent or designee immediately following the removal.
- d. An employee may be placed on administrative leave with or without pay during the pendency of the grievance process. Any such action may not violate the rights of the person placed on leave under Section 504 or the Americans with Disabilities Act of 1990 ("ADA").
- e. The superintendent or designee shall document all emergency removal decisions under this subsection, including the immediate threat to health or safety that justified the removal.

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11. Supportive Measures

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

D. Grievance Procedures For Formal Complaints

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

The Title IX Coordinator may also initiate the grievance process, as needed.

1. Filing A Formal Complaint To Initiate The Grievance Process

A formal complaint initiates the grievance process.

a. Individuals Who May File a Formal Complaint

Any eligible Complainant may file a formal complaint.

b. The Title IX Coordinator

If the complainant does not wish to file a formal complaint and the matter has not been adequately resolved through the provision of supportive measures, the Title IX Coordinator may initiate the grievance process by signing a formal complaint. In accordance with law, only the complainant and the Title IX Coordinator may initiate the grievance process. No other individuals or school officials shall have authority to do so.

c. Time Period for Filing a Formal Complaint

i. There is no deadline for filing a complaint. School officials shall initiate the grievance process regardless of when the formal complaint is submitted, but delays in reporting may impair the ability of school officials to investigate and respond to the allegations.

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- ii. In some circumstances it may be necessary for the Title IX Coordinator to sign a formal complaint to initiate the grievance process in order to meet the school system's legal obligations when the coordinator is aware of sexual harassment or alleged sexual harassment and the complainant has not yet filed a formal complaint. The Title IX Coordinator can do so at any time.

- d. Contents of the Formal Complaint

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

- e. How to File the Formal Complaint

The complaint may be filed with the Title IX Coordinator in person, by mail, or by email. Complaint forms may be obtained from the Title IX Coordinator or on the HCPS website.

- f. HCPS' Response to Receipt of the Formal Complaint

- i. Upon receipt of a formal complaint of sexual harassment, the Title IX Coordinator shall engage in an interactive process with the complainant, consider the provision of supportive measures in light of the complainant's wishes, provide supportive measures as appropriate, and otherwise fulfill the requirements of Section III. B., entitled HCPS Response to Report of Sexual Harassment, unless the Title IX Coordinator has already done so in response to an initial report of the same allegation of sexual harassment.

- ii. The Title IX Coordinator may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. The Title IX

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Coordinator shall advise the complainant if the formal complaint will be consolidated with others.

- iii. The formal complaint initiates the grievance process as described below.

2. General Principles Of The Grievance Process For Formal Complaints

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

a. Equitable Treatment

- i. Complainants and respondents must be treated equitably throughout the grievance process.
- ii. Relevant evidence collected in the investigation of a formal complaint must be evaluated objectively.
- iii. No individual designated as a Title IX Coordinator, investigator, decision-maker, or appeal decision-maker shall have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- iv. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

- b. The complainant and respondent shall be provided an equal opportunity to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be an attorney. If a party elects to be represented by an attorney, the party should notify school officials in advance so that an attorney for the school system may also be present. Any restrictions on advisor participation in any

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proceeding must be applied equally to both parties.

- c. The complainant and respondent will both be provided a description of the range of supportive measures available to them.
- d. Adequate Training
 - i. The Title IX Coordinator, and all persons serving as Title IX investigators, decision-makers, or appeal decision-makers shall receive training on what constitutes sexual harassment, the scope of the school system's education program and activities, how to conduct an investigation and grievance process, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias.
 - ii. Decision-makers will be trained on any technology to be used at a live hearing and on issues of relevance of questions and evidence.
 - iii. Materials used to train coordinators, investigators, decision-makers, and appeal decision-makers will not rely on sex stereotypes and shall promote impartial investigations and adjudications of sexual harassment. Copyright restrictions will be taken into consideration in selecting training materials in order to comply with the school system's legal obligation to make all training materials available on the school system's website.
- e. Presumption of Non-Responsibility/Innocence

At all times prior to a determination regarding responsibility by the decision-maker, there will be a presumption that the respondent is not responsible for the alleged conduct.
- f. Burden of Proof and Production of Evidence

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility will at all times rest on the school system and not on the complainant or respondent. Formal rules of evidence shall not apply in the grievance process.

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g. Written Notice of Meetings and Other Proceedings

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

h. Confidentiality and Privacy

- i. The school system will keep confidential the identity of any individual who has made a report or formal complaint of sexual harassment, any complainant, any respondent, and any witness, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. A violation of this provision may constitute retaliation.
- ii. All meetings, hearings, or other proceeding conducted pursuant to this policy will be private except to the extent that the parties are permitted to be accompanied by others as provided in subsection III. D.2.b.
- iii. School officials shall not access, consider, disclose, or otherwise use a party's medical, mental health, or other records that are made or maintained by a professional or paraprofessional in connection with the provision of treatment to the party without the party's voluntary written consent.

i. No Disclosure of Privileged Information

No person acting on behalf of the school system shall require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

j. Timeliness of Process

- i. School officials shall make a good faith

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effort to conduct a fair, impartial grievance process in a timely manner designed to provide all parties with a prompt and equitable resolution. It is expected that in most cases, the grievance process will be concluded through the adjudication phase within 90 days after filing the formal complaint. HCPS reserves the right to extend this time frame or any deadline contained in this policy for good cause with written notice to the parties of the delay and the reason for the delay. Good cause may include but is not limited to the absence of the parties or witnesses, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.

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

3. The Grievance Process For Formal Complaints: Investigation

a. Step 1 – Notice of Allegations

- i. Upon the filing of a formal complaint, the Title IX Coordinator shall, within five school business days, provide the parties written notice of the allegations that includes:

- a) notice of the allegations of sexual harassment in sufficient detail to permit the parties to prepare a response before any initial interview, including:

- (1) the identities of the parties involved, if known;
- (2) the conduct allegedly constituting sexual harassment; and

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- (3) the date and location of the alleged incident, if known;
 - b) a copy of this policy to give notice of the school system’s grievance process, including the investigative and adjudication procedures, and any informal resolution process available;
 - c) notice that the parties may have an advisor of their choice and that either party may inspect and review any evidence;
 - d) a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process.
 - e) If during the investigation, the investigator decides to investigate allegations of sexual harassment not included in the initial notice provided above, notice of the additional allegations will be provided to the parties.
- 4. Step 2 – Review Grounds for Dismissal of the Formal Complaint
 - a. The Title IX Coordinator shall review the allegations and determine whether the formal complaint must be dismissed without further investigation because the conduct alleged in the formal complaint, even if assumed true, would not constitute sexual harassment as defined in this policy, did not occur in the school system’s education program or activities, or did not occur against a person in the United States. Such a dismissal does not preclude action under another provision of the Code of Student Conduct or Student Discipline Procedure, board policy, or expected standards of employee behavior. The complaint will not be dismissed at this stage on the basis that the allegations are

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frivolous, without merit, or otherwise unfounded.

- b. Upon a dismissal, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. The parties have the right to appeal the decision as provided in Section F.
- c. The Title IX Coordinator shall refer the matter that was the subject of the dismissed complaint to appropriate HCPS officials for further action as warranted.

5. Step 3 – Initiating the Investigation

- a. If the complaint proceeds, the Title IX Coordinator shall notify the appropriate investigator, who shall investigate the formal complaint.
 - i. In order to provide a neutral and objective investigation, the investigator shall not be a party to the complaint under investigation.
 - ii. The investigator of a formal complaint is ordinarily determined as described below; however, the Title IX Coordinator, in consultation with the superintendent, may determine that conflict of interest, bias, or other individual circumstances warrant the assignment of a different investigator.
 - a) If the respondent is a student, the investigator is the principal or designee of the school with jurisdiction over the incident.
 - b) If the respondent is an employee or applicant for employment, the investigator is the Assistant Superintendent of Human Resources or designee.
 - c) If the respondent is neither a student nor an employee/applicant for employment, the principal of the school/site supervisor at which the complainant is enrolled or employed shall be the investigator.
 - d) Notwithstanding the above designations, (a)

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if the respondent is the Assistant Superintendent of Human Resources, the superintendent shall investigate the complaint; (b) if the respondent is the superintendent or a member of the board, the Title IX Coordinator shall immediately notify the board chair who shall direct the board attorney to investigate, unless the board chair determines that outside counsel should be engaged to investigate.

- e) The investigator may request assistance from the Title IX Coordinator to conduct the investigation.
- f) The Title IX Coordinator and the investigator shall jointly assess the need for supportive measures for either party, including assessing the effectiveness of any supportive measures currently being provided to the complainant, and, as necessary, will implement appropriate measures in a timely manner and monitor the effectiveness of the measures during the pendency of the investigation and prior to a final determination regarding responsibility. Supportive measures provided to the complainant or respondent will be maintained as confidential to the extent that maintaining such confidentiality does not impair the ability to provide the supportive measures.
- g) The investigator shall explain the process of the investigation to the complainant and respondent.

6. Step 4 – Conducting the Investigation

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- a. The investigator is responsible for gathering evidence sufficient to reach a determination of whether the allegations in the formal complaint are true and whether the facts as determined by the investigator establish that sexual harassment as defined in this policy occurred. In so doing, the investigator shall impartially, promptly, and thoroughly investigate the complaint.
 - i. The investigator shall interview all individuals who may have relevant information, including
 - a) the complainant;
 - b) the respondent;
 - c) individuals identified as witnesses by the complainant or respondent; and
 - d) any other individuals who are thought possibly to have relevant information. Prior written notice shall be provided to a party whose participation is invited or expected for any investigative interview or meeting in accordance with subsection III.D.2.g. above. The investigator shall provide the complainant and respondent an equal opportunity to present fact and expert witnesses and other evidence tending to prove or disprove the allegations.
 - ii. The investigator shall ensure that the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on H C P S and not on the complainant or respondent.
 - iii. The investigator shall not restrict the ability of either party to gather and present relevant evidence or to discuss the allegations under investigation.
 - iv. The formal complaint and the investigation will be

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kept confidential to the extent possible. Information may be shared only with individuals who need the information in order to investigate and address the complaint appropriately and those with a legal right to access the information. Any requests by the complainant or respondent for further confidentiality will be evaluated based on the legal responsibilities of HCPS.

- v. The investigator may, with approval of the Title IX Coordinator, dismiss the formal complaint or any allegations therein if at any time during the investigation or decision-making process:
 - a) the complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the formal complaint or any allegations therein;
 - b) the respondent is no longer enrolled or employed by the school system; or
 - c) specific circumstances prevent school officials from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- vi. Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- vii. The parties have the right to appeal the decision as provided in Section III.D.9.
- viii. The investigator may refer to other school officials the matter that was the subject of the dismissed complaint for action in accordance with board policy/procedure for further action if he or she believes that the conduct referenced in the complaint may constitute violation of

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other required standards of student or employee conduct.

7. Step 5 – Investigative Report and Opportunity to Review Evidence
 - a. The investigator shall prepare an investigative report that fairly summarizes the relevant evidence.
 - b. Before completing the final report, the investigator shall send to each party and the party’s advisor, if any, in hard copy or electronically, all the evidence collected which is directly related to the allegations raised in the formal complaint. The parties shall have 10 days to submit a written response for the investigator’s consideration before the investigator finalizes the investigative report.
 - c. Following the parties’ opportunity to respond to the written evidence, the investigator shall finalize the written investigative report, including a recommendation on the question of responsibility and any recommended discipline sanction.
 - d. The investigator shall provide a copy of the report to each party and the party’s advisor, if any, for their review and written response.
 - e. The investigator shall also notify the parties of the opportunity to submit written questions to the other party and witnesses as provided in Section III.D.8.a. below.
 - f. The parties shall have 10 days to provide a written response to the investigative report, along with the party’s initial set of written questions.
 - g. The investigator shall provide to the decision-maker a copy of the investigative report, the relevant evidence, and the parties’ written responses to the report and initial sets of written questions.
 - h. The investigator shall also provide a description of the procedural steps taken, starting with the receipt of the

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

8. The Grievance Process For Formal Complaints: Adjudication

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

a. Step 1 – Exchange of Questions and Answers

- i. After the parties are sent the investigative report, the superintendent shall provide the parties an opportunity to submit written, relevant questions that the party wants asked of any other party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party in accordance with a reasonably prompt time frame established by the superintendent. The parties shall submit their initial set of written questions at the time they submit their response to the investigative report as described in Section III.D.7.f. above.
- ii. Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior will be considered not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s

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sexual behavior with respect to the respondent and is offered to prove consent.

- iii. The superintendent shall explain to the party proposing the questions any decision to exclude questions as not relevant.

b. **Step 2 – Decision on the Question Regarding Responsibility**

- i. Following the exchange of questions as described above, the superintendent shall decide the question regarding responsibility, any disciplinary action, and any other measures the superintendent deems appropriate. The superintendent shall consider all the relevant evidence objectively, including evidence in the investigative report, and any additional information provided by the parties through the exchange of questions and responses as provided in Section III.D.8.a.
- ii. Based on an objective evaluation of the evidence, the superintendent shall determine whether the preponderance of the evidence supports a finding that the respondent is responsible for sexual harassment in violation of board policy, and if so, what disciplinary sanction will be imposed.
- iii. The Superintendent shall be provided remedies to the complainant if the respondent is found responsible.

c. **Step 3 – Written Determination Regarding Responsibility**

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

- i. identification of the allegations potentially constituting sexual harassment under this procedure;
- ii. a description of the procedural steps taken from the receipt of the formal complaint through the determination,

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including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

- iii. findings of fact supporting the determination;
- iv. conclusions regarding the application of board policy and/or the Code of Student Conduct/Student Discipline Procedure or required standards of employee conduct to the facts including whether, the respondent engaged in prohibited sexual harassment or other proscribed conduct;
- v. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent (which may be a recommendation to the board for discipline that is beyond the authority of the superintendent or other decision-maker), and whether remedies designed to restore or preserve equal access to the school system's education program and activities will be provided to the complainant;
- vi. the procedures and permissible bases for the complainant and respondent to appeal; and
- vii. any other notices that are required to accompany the decision under state law, such as when the superintendent imposes a long-term suspension or recommends dismissal of an employee.

9. Grievance Process For Formal Complaints: Appeal

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

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a. Deadline and Grounds for Appeal

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

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

b. Notice of the Appeal

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

c. Appeal Procedures

- i. The board will hear the appeal. Unless otherwise required by law, the board may designate a panel of two or more board members to hear and act on behalf of the board.

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

d. Decision on Appeal

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

e. Finality of Board's Decision

Any Appeal of the Board's decision stays the ruling or effect of the decision.

- f. The superintendent shall ensure that a copy of the final decision is provided to the Title IX Coordinator and shall confer with the Title IX Coordinator regarding any remedies to be provided to the complainant, as described in Section III.D.10.d. below.

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10. Disciplinary Consequences, Remedies, And Other Responses For Substantiated Sexual Harassment

a. Disciplinary Consequences for Students

Students found responsible for sexual harassment will be assigned consequences in accordance with the Code of Student Conduct or Student Discipline procedure. Based on the nature and severity of the offense and the circumstances surrounding the incident, the student will be subject to appropriate consequences and remedial actions ranging from positive behavioral interventions up to, and including, expulsion. In addition, the conduct also may be reported to law enforcement, as appropriate.

i. Any disciplinary sanction imposed, pursuant to this procedure, upon a student, including any student with a disability, shall be subject to and shall not violate the student's rights under federal law.

ii. Nothing in this policy will preclude the school system from taking disciplinary action against a student when the evidence does not establish sexual harassment as defined in this policy but the conduct violates other board policy and/or the Code of Student Conduct.

b. Disciplinary Consequences for Employees

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

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

c. Consequences for Other Perpetrators

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

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

d. Remedies

At the conclusion of the grievance process, the superintendent or other decision-maker shall confer with the Title IX Coordinator to determine the remedies to be provided to the complainant when the respondent is found responsible for sexual harassment. The Title IX Coordinator shall consult with the complainant in determining appropriate remedies.

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

e. Consideration of Need for More Extensive Response

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

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11. Informal Resolution

- a. HCPS provides informal resolution processes to resolve certain formal complaints of sexual harassment without a full investigation and adjudication.
- b. Informal resolution is not available unless a formal complaint is filed and shall not be used to resolve formal complaints alleging that an employee sexually harassed a student.
- c. School officials shall not condition an individual's enrollment, employment, or other rights on an agreement by the individual to waive his/her right to a formal investigation and adjudication of a formal complaint.
- d. The Title IX Coordinator, or other school official in consultation with the Title IX Coordinator, may offer the parties an informal process to resolve a formal complaint at any time prior to reaching a final determination regarding responsibility. Before using an informal resolution process, school officials must ensure that both parties have given voluntary, informed, written consent to attempt informal resolution. Accordingly, the Title IX Coordinator, investigator, or decision-maker shall:
 - i. provide the parties (including the parent of a minor) a written notice disclosing:
 - a) the allegations;
 - b) the nature and requirements of the informal resolution process, including that if the parties agree to a resolution of the matter, the agreement precludes either party from resuming a formal complaint process arising from the same allegations; and
 - c) any consequences that could result from participating in the informal resolution process, including whether records will be maintained and could be shared; and

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

12. Retaliation Prohibited

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

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

13. Records

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

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

Approved By:



Sean W. Bulson, Ed.D.
Superintendent of Schools

August 14, 2020
Date

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Procedure Action Dates					
ACTION	DATE	ACTION	DATE	ACTION	DATE
Adopted	10/12/2015				
Amended	08/14/2020				

Responsibility for Procedure Maintenance & References	
LAST EDITOR/DRAFTER NAME: Patrick P. Spicer, Esquire	JOB POSITION OF LAST EDITOR/DRAFTER: General Counsel
PERSON RESPONSIBLE:	JOB POSITION OF PERSON RESPONSIBLE:
DESIGNEE NAME:	DESIGNEE POSITION:
PROCEDURE NUMBER PRIOR TO NOVEMBER 1, 2005:	

REFERENCES¹

References are set forth in the procedure.

¹ All references are to specific federal or Maryland statutes or regulations. References are provided for convenience and informational purposes only and are not to be considered as exhaustive or as precluding Harford County Public Schools from relying upon any other statutes or regulations in support of a policy.