

10.06 SEXUAL HARASSMENT / TITLE IX GRIEVANCE PROCEDURES

The Board does not discriminate on the basis of sex (including sexual orientation or gender identity) in its education program or activities and is required by Title IX and its regulations not to discriminate in such a manner. The prohibition on discrimination extends to admission and employment. The prohibition on sex discrimination includes sexual harassment.

Title IX Coordinator(s)

The Board designates and authorizes the Title IX Coordinator to coordinate the district's efforts to comply with Title IX. The district's Title IX Coordinator is:

Dustan Henderson, Director of Instruction
360 Cedar St., Duncan Falls, OH 43734-0428
dustan.henderson@franklinlocalschools.org
(740) 674-5203

The district prominently displays the name and contact information set forth above on its website and in any staff, student or parent handbooks or catalogs that it provides to such groups.

The district ensures that the Title IX Coordinators, investigator, decision makers, or any person designated to facilitate an informal resolution process do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

Definitions

1. *Actual knowledge* means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any employee of the district.
2. *Complainant* means an individual who is alleged to be the victim of conduct that would constitute sexual harassment.
3. *Education program or activity* includes locations, events, or circumstances over which the district has exercised substantial control over both the Respondent and the context in which the sexual harassment occurs.
4. *Formal Complaint* means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the district investigate the allegation of sexual harassment.
5. *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
6. *Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following:
 - a. An employee of the district conditioning the provision of an aid, benefit,

- or service of the district on an individual's participation in unwelcome sexual conduct;
- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or
 - c. Sexual assault (defined as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation); domestic violence (defined to include felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction); or stalking (defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to--(A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress).
7. *Supportive measures* means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus and other similar measures.

Reporting Sexual Harassment

Any person may report sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail using the contact information for the Title IX Coordinator set forth above, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such report may be made at any time (including during non-business hours) by using the contact information for the Title IX Coordinator set forth above. Complainants and witnesses are encouraged to report allegations of sexual harassment as soon as possible in order to maximize the district's ability to respond promptly and effectively.

A formal complaint may be filed by a Complainant, his or her parent/guardian, or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the district investigate the allegation of sexual harassment. A formal complaint may be filed with the Title IX Coordinator in person, by mail or by electronic mail. The complaint must contain the Complainant's physical or digital signature or otherwise indicate that the Complainant is the person filing the formal complaint.

All school district employees are required to report sexual harassment of which he or she becomes aware, as soon as practicable. Failure to report may result in disciplinary action, up to and including termination of employment.

Requests for Anonymity

Once a report has been shared with the Title IX Coordinator, a Complainant may request that their identity not be shared with the Respondent (request for anonymity), that no investigation occur, or that no disciplinary action be pursued. The district will carefully balance this request in the context of the district's obligation to provide a safe and non-discriminatory educational environment. Confidentiality will not always be possible.

Supportive Measures

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. The district must maintain as confidential any supportive measures provided to the Complainant or the Respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures. The district must treat Complainants and Respondents equitably by offering supportive measures to the Complainant and following its grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent. Supportive measures may be appropriate where the alleged conduct occurred outside of the district's program or activity, but the Complainant's access to the education program or activity is impacted by the alleged conduct.

Grievance Process

Upon receipt of a report or complaint, the Title IX Coordinator will initiate these grievance procedures in order to provide for the prompt and equitable resolution of student and employee complaints alleging sexual harassment.

When the district has actual knowledge of sexual harassment in an education program or activity, it must respond promptly in a manner that is not deliberately indifferent. The district is deliberately indifferent if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

Initial Assessment by the Title IX Coordinator

Upon receipt by the Title IX Coordinator of a report or a formal complaint of alleged conduct prohibited by this Policy, the Title IX Coordinator must promptly contact the Complainant. The Title IX Coordinator:

1. Discusses the availability of supportive measures and considers the Complainant's wishes

- with respect to supportive measures;
2. Informs the Complainant of the availability of supportive measures, with or without the filing of a formal complaint, and explains to the Complainant the process for filing a formal complaint.

If the Complainant does not respond or declines to file a formal complaint, the Title IX Coordinator must consider the Complainant's wishes, district safety, and the district's obligation to maintain an environment free from harassment and discrimination, and determine whether to initiate a formal complaint. The district's response must be reasonable in light of the known circumstances. If the report alleges conduct by a staff member against a student, the Title IX Coordinator shall complete a formal complaint and initiate an investigation.

Upon receipt of a formal complaint, the Title IX Coordinator initially assesses the complaint to ensure jurisdiction. The Title IX Coordinator must dismiss a complaint or any allegations of a complaint if:

1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved;
2. The conduct alleged did not occur in the district's education program or activity;
3. The conduct did not occur against a person in the United States; or
4. The Complainant was not participating in or attempting to participate in the education program or activity of the district at the time the alleged sexual harassment occurred.

The Title IX Coordinator may dismiss a complaint or any allegations within a complaint at any time if:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations within it;
2. The Respondent is no longer enrolled or employed by the district; or
3. Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations within it.

If the Title IX Coordinator dismisses the formal complaint or allegations within the complaint for these reasons, the Title IX Coordinator must promptly send written notice of the dismissal and the reasons for the dismissal to the parties. Dismissal for purposes of this Title IX Policy does not preclude action under the district's other codes of conduct or other policies.

The district may consolidate formal complaints as to allegations of sexual harassment against more than one Respondent or by more than one Complainant against one or more Respondents, or by one party against the other party where the allegations of sexual harassment arise out of the same facts or circumstances.

Where a Complainant files a formal complaint and the district has jurisdiction under this Policy, the Title IX Coordinator will initiate an investigation.

Notice of Formal Complaint

Upon receipt of a formal complaint, the Title IX Coordinator shall provide a copy of this Policy and notice to the Respondent of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. The notice must include:

1. The identities of the parties involved in the incident, if known;
2. The conduct allegedly constituting sexual harassment;
3. The date and location of the alleged incident, if known;
4. 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 grievance process.
5. A statement informing 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;
6. Notice of any provision of the district's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If during the course of the investigation, the district decides to investigate allegations about the Complainant or Respondent that are not included in this notice, the district must provide notice of the additional allegations to the parties whose identities are known.

Informal Resolution

Informal intervention, remedies, mediation and resolution that does not involve a full investigation and adjudication are available to resolve the complaint. As part of the initial assessment of a complaint, the Title IX Coordinator will determine the whether an informal resolution process is appropriate, consulting with the Complainant, considering district safety, and evaluating the district's obligation to maintain an environment free from harassment and discrimination.

Informal resolution of a sexual harassment formal complaint is available, subject to the following conditions:

1. The district may not offer an informal resolution process to resolve a report of sexual harassment unless a formal complaint is filed.
2. At any time prior to reaching a determination of responsibility, the district may facilitate an informal resolution process. The district must provide the parties a written notice containing the following:
 - a. a written notice disclosing the allegations;
 - b. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
 - c. notice that any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to resume the formal complaint grievance process with respect to the formal complaint, and

- d. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
3. The district obtains the parties' voluntary, written consent to the informal resolution process. Participation in the informal resolution process is not required by either party. The district may not require as a condition of enrollment or continuing enrollment or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment under the formal complaint grievance process.
4. Informal resolution is never available to resolve allegations that an employee sexually harassed a student.

Investigation

The Title IX Coordinator initiates an investigation of the allegations as set forth in the formal complaint. The Title IX Coordinator may designate another individual to investigate or assist in the investigation of the allegations. The burden of proof and the burden to gather evidence sufficient to reach a determination regarding responsibility rests on the district, not the parties.

The investigation and grievance process must:

1. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
2. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
3. Provide the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of an advisor for either the Complainant or Respondent in any meeting or proceeding. The district may restrict the extent of the advisor to participate in the proceedings, as long as the restrictions apply equally to both parties.
4. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
5. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the district does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.
6. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information placed under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
7. Presume that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

During the investigation and grievance process, the district cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, which are made and maintained in connection with the provision of treatment to the party, unless the district receives the party's (or the party's parent/guardian if not 18) voluntary, written consent to do so for a grievance process.

Investigation Report

Prior to the completion of the investigative report, the investigator must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or hard copy, and the parties must have at least 10 days to submit a written response, which the investigator shall consider prior to completion of the investigation report.

After considering the written responses, the investigator creates an investigative report that fairly summarizes relevant evidence and provides it to each party and the party's advisor, if any in electronic format or a hard copy, for their review and written response. This report must be provided at least 10 days prior to the determination of responsibility.

At the conclusion of the investigation, the investigator produces a final report that evaluates all relevant evidence objectively, including both inculpatory and exculpatory evidence, and provides credibility determinations that may not be based on a person's status as a Complainant, Respondent, or Witness. The investigator submits the final report to the decision maker for a determination of responsibility.

Determination of Responsibility

The grievance process does not include live hearings. The Board designates the Superintendent as the decision maker for determining responsibility. Before reaching a determination regarding responsibility, the decision maker shall afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. The decision maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

When determining responsibility, the district uses the preponderance of evidence standard. The Decision-maker issues a written determination regarding responsibility. The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment;
2. 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;
3. Findings of fact supporting the determination;
 4. Conclusions regarding the application of the district's code(s) of conduct to the facts;
 5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the district imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided by the district to the Complainant; and
 6. The Recipient's procedures and permissible bases for the Complainant and Respondent to appeal.

The decision maker must provide the written determination to the parties simultaneously. The written determination becomes final either on the date that the district provides the parties with the written determination of the result of an appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Remedies

In the event the Respondent is determined to be responsible for sexual harassment, the district will provide remedies to the Complainant that are designed to restore or preserve equal access to the education program or activity. Such remedies may include supportive measures, but need not be non-disciplinary, non-punitive or avoid burdening the Respondent. The Title IX Coordinator is responsible for effective implementation of any remedies.

Disciplinary Sanctions

Staff members who engage in conduct that violates Title IX as set forth in this Policy are subject to disciplinary action, up to and including termination of employment, consistent with any applicable collective bargaining agreement.

Students who engage in conduct that violates Title IX as set forth in this Policy are subject to disciplinary action, up to and including suspension and expulsion.

Timeline for Grievance Process

The district will seek to complete the appropriate resolution process and appeals as promptly as possible, consistent with the need to conduct sensitive and informed fact-gathering to ensure an equitable resolution. The process ordinarily shall be completed within 60 days, but the district may extend any timeframe in this Policy for good cause. A delay or limited extension may occur due to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or other good cause to ensure the integrity and thoroughness of the investigation. Reasonable requests for delays by the parties may serve to extend the time period for resolution. In the event of a delay or extension, the district will notify the Complainant and Respondent of the delay or extension and the reasons.

Emergency Removal of Students

The district may remove a Respondent from its education program or activity on an emergency basis, provided that the district undertakes an individualized safety and risk analysis and

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 provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal. Such an emergency removal must be conducted consistent with student due process rights regarding emergency removal, suspension and expulsion, and consistent with any applicable obligations under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

Administrative Leave of Staff

The district may place a non-student employee on administrative leave during the pendency of a grievance process.

Appeals

Either the Complainant or the Respondent may appeal a determination regarding responsibility or the dismissal of a formal complaint or any allegations within a complaint on the following bases:

- (1) Procedural irregularity that affected the outcome of the matter;
- (2) 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
- (3) The Title IX Coordinator, investigator(s), or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- (4) Any other circumstances that affected the outcome of the matter.

The Appeal must be made in writing within 5 days to the Board, delivered to the Title IX Coordinator's address or email address. The Title IX Coordinator will notify both parties of the appeal. Both parties shall have the opportunity to provide a written statement in support of or challenging the outcome, which shall be submitted to the Title IX Coordinator within 2 business days of the notice of the appeal.

Appeals regarding dismissal of a complaint shall be decided by the Superintendent. For appeals regarding the determination of responsibility, the Board may designate a person to issue a decision on its behalf who is not the same person as the decision maker regarding responsibility, the investigator or the Title IX Coordinator. Both parties shall be notified of the designee. The Superintendent or Board/designee shall provide a written decision of the result of the appeal and the rationale for the result within 10 business days. Such written decision shall be provided simultaneously to both parties.

Notice of Nondiscrimination

The district provides the following notice to the list of persons below:

The Board does not discriminate on the basis of sex in its education programs or activities and the Board is required by Title IX and its regulations not to discriminate in such a manner. The requirement not to discriminate extends to admission and employment. Inquiries about the application of Title IX may be referred to the Title IX

Coordinator, Dustan Henderson, Director of Instruction, 360 Cedar St., Duncan Falls, OH 43734-0428, dustan.henderson@franklinlocalschools.org, (740) 674-5203. or to the Assistant Secretary of the U.S. Department of Education, Office for Civil Rights.

The Board has adopted grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX. Anyone may report or file a complaint of sex discrimination or sexual harassment with the Title IX Coordinator at the address, email address or telephone number above. The district will investigate and respond consistent with its grievance procedures.

Persons to be notified: Applicants for admission and employment, students, parents or legal guardians, employees, and unions.

Training

The district ensures that Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process receives training on the definition of sexual harassment, the scope of the district's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The district ensures that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. The district ensures that 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. Materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment. The district makes publicly available all Title IX training materials on its website.

Record-keeping

The district maintains the following records for a period of seven years:

1. Documentation of the district's response to a report or formal complaint of sexual harassment. Such documentation must include:
 - a. Any actions, including supportive measures, taken and designed to restore or preserve equal access to the district's education program or activity.
 - b. If supportive measures were not provided, documentation of the reasons why such a response was not clearly unreasonable in light of the known circumstances.
 - c. Documentation for the basis that its conclusion that its response to the report or complaint was not deliberately indifferent.
2. Documentation of each sexual harassment investigation, 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 the

district's education program or activity.

3. Any appeal and the appeal outcome.
4. Any informal resolution and the outcome.
5. All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

Off-campus Misconduct

Depending on the relationship of the Respondent to the district, the district may not have the authority to impose disciplinary action. Where the district does not have disciplinary authority, the district will still seek to meet its Title IX obligations by evaluating the reported conduct, providing reasonably available supportive measures, assisting the Complainant in identifying external reporting options, and taking reasonably available steps to end the sexual harassment.

Misconduct of a sexual nature that does not constitute sexual harassment

Not all conduct of a sexual nature will constitute sexual harassment in violation of Title IX. Misconduct of sexual nature that is not covered by this Policy may be referred for investigation and disposition under the Student Code of Conduct or other policies, rules and handbooks applicable to employees, including the *Licensure Code of Professional Conduct for Educators*, as appropriate.

Duty to report suspected child abuse or neglect

School employees acting in an official or professional capacity who know, or have reasonable cause to suspect, that a child less than 18 years of age or a person under 21 years of age with a developmental disability or physical impairment, has suffered or faces a threat of suffering an physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child or person must immediately report that knowledge or suspicion to a municipal or county law enforcement officer or the public children services agency in the county. Nothing in this Policy shall negate the obligation to report or delay the timeline to make a mandatory report.

Retaliation

Neither the district nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under this Policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. The exercise of rights protected under the First Amendment does not constitute retaliation. Discipline for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially

false statement in bad faith. Complaints regarding retaliation may be filed pursuant to Policy 10.05 addressing sex discrimination.

Confidentiality

The district must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Adoption Date: 07/16/20

Legal References: 20 U.S.C. 1681 *et seq.*
34 C.F.R. Chapter 106