

A POLICY STATEMENT OF  
THE HANCOCK COUNTY BOARD OF EDUCATION  
New Cumberland, West Virginia 26047

**TITLE IX SEXUAL HARASSMENT COMPLAINTS & GRIEVANCE PROCESS**

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

Pursuant to its Title IX obligations, the Board is committed to eliminating sexual harassment and will take appropriate action when an individual is determined responsible for violating this policy. Members of the school community who commit Sexual Harassment are subject to the full range of disciplinary sanctions set forth in this policy. Third parties who engage in sexual harassment are also subject to the disciplinary sanctions listed in this policy. The Board will provide persons who have experienced Sexual Harassment ongoing supportive measures as reasonably necessary to restore or preserve access to the Board's education programs and activities.

The process provided herein is designed for those who believe that they have been sexually harassed and wish to file a formal complaint. School officials shall follow this grievance process when responding to all formal complaints of sexual harassment.

The Superintendent is responsible for notifying students and their parents or legal guardians, employees, and applicants for employment of these guidelines and ensuring that each principal or site supervisor provides a copy of these guidelines to these persons.

**DEFINITIONS**

1. Investigator. The investigator is the school official responsible for investigating and responding to a formal complaint. This may include the county "Compliance Officers" (hereinafter referred to as the "COs") or a designee/third party entity, as designated by the superintendent.
2. Decision-Maker. The decision-maker is the school official responsible for making a determination regarding responsibility in response to an investigation of sexual harassment triggered by a formal complaint; unless otherwise designated to a third-party entity, the decision-maker on all sexual harassment complaints will be the superintendent.
3. Investigative Report. The investigative report is a written account of the findings of the investigation conducted in response to a formal complaint.
4. Remedies. Remedies are 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.

5. Disciplinary Sanctions. Disciplinary sanctions are consequences imposed on a respondent when the respondent is found responsible for sexual harassment.

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

- A. A Board employee conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct (often called “*quid pro quo*” harassment);
- B. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the District’s education program or activity; or
- C. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)A(v), or “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).
  1. “Sexual assault” means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault includes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.
    - a. *Rape* is the carnal knowledge of a person (i.e., penetration, no matter how slight, of the genital or anal opening of a person), without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
    - b. *Sodomy* is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
    - c. *Sexual Assault with an Object* is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
    - d. *Fondling* is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
    - e. *Incest* is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by State law.
    - f. *Statutory Rape* is sexual intercourse with a person who is under the statutory age of consent as defined by WV Code §§ 2-2-10 and 61-8B-2, or whose status as a student prohibits such sexual contact per WV Code § 61-8D-1 et seq.
    - g. *Consent* refers to words or actions that a reasonable person would understand as agreement to engage in the sexual conduct at issue. Pursuant to WV Code 61-8B-2 lack of consent results from forcible compulsion, incapacity to consent, or if an offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor’s conduct. A person is deemed incapable

of consent when such person is: (1) less than sixteen years old; (2) mentally defective; (3) mentally incapacitated; (4) physically helpless; or (5) subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact pursuant to WV Code 61-8B-10(a)(b).

- h. *“Incapacitated”* refers to the state where a person does not understand and/or appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition, disability, or due to a state of unconsciousness or sleep.
- 2. *“Domestic violence”* includes felony or misdemeanor crimes of violence committed by:
    - a. A current or former spouse or intimate partner of the victim;
    - b. A person with whom the victim shares a child in common;
    - c. A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
    - d. A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime occurred; or
    - e. Any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime occurred.
  - 3. *“Dating violence”* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - 4. *“Stalking”* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to – (1) fear for the person’s safety or the safety of others; or (2) suffer substantial emotional distress.

### **Compliance Officers**

The Board designates the following individuals to serve as the District’s Compliance Officers. These individuals will be the COs for purposes of reporting/investigation of all types of discrimination and harassment complaints, including those addressed by Policy AC, Procedures for Reporting and Investigating Harassment, Discrimination, and/or Violence.

Sarah Parsons, Director of Personnel, Hancock County Board of Education Office, 130 Rockefeller Circle, New Cumberland, WV 26047, Phone 304-564-3411 ext. 8, [saparsons@k12.wv.us](mailto:saparsons@k12.wv.us); or Chris Enochs, Director of Supplemental Services, Hancock County Board of Education Office, 64 Rockyside Road, New Cumberland, WV 26047, 304-564-3156, [cenochs@k12.wv.us](mailto:cenochs@k12.wv.us); or Erica Sauer, Section 504 Coordinator, Hancock County Board of Education Office, 130 Rockefeller Circle, New Cumberland, WV 26047, Phone 304-564-3411 ext. 1, [esauer@k12.wv.us](mailto:esauer@k12.wv.us).

The names, titles, and contact information of these individuals will be published annually on Hancock County Schools website ([boe.hancock.k12.wv.us](http://boe.hancock.k12.wv.us)) and Hancock County’s School Calendar.

A CO will be available during regular school/work hours to discuss concerns related to student harassment and discrimination in educational opportunities under this policy.

## **FILING A FORMAL COMPLAINT TO INITIATE THE GRIEVANCE PROCESS**

A formal complaint initiates the grievance process.

### **1. Individuals Who May File a Formal Complaint**

a. Eligible Complainants. Eligible individuals who believe that they have been sexually harassed in violation of Policy, may initiate the grievance process for alleged sexual harassment by filing a formal written complaint with a CO. To be eligible to file a formal written complaint, the complainant must be participating in or attempting to participate in the education program or activities of the school system at the time of filing.

b. The Title IX Coordinator/County COs. 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 CO may initiate the grievance process by signing a formal complaint. In accordance with law, only the complainant and the CO may initiate the grievance process; no other individuals or school officials shall have authority to do so.

2. Time Period for Filing a Formal Complaint. A complaint should be filed as soon as possible after the conduct occurs, preferably within 30 days after the complainant becomes aware of the alleged sexual harassment, unless the conduct forming the basis for the complaint is ongoing. School officials will initiate the grievance process regardless of when the formal complaint is submitted, but delays in reporting may significantly impair the ability of school officials to investigate and respond to the allegations. In addition, in some circumstances it may be necessary for the CO to sign a formal complaint to initiate the grievance process in order to meet the school system's legal obligations when the ~~coordinator~~ CO is aware of sexual harassment or alleged sexual harassment and the complainant has not yet filed a formal complaint. The CO can do so at any time.

3. Contents of the Formal Complaint. The complaint should (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.

4. How to File the Formal Complaint. The complaint may be filed with the CO in person, by mail, or by email.

### **5. School System's Response to Receipt of the Formal Complaint**

a. Upon receipt of a formal complaint of sexual harassment, the CO 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, unless the CO has already done so in response to an initial report of the same allegation of sexual harassment.

b. School officials reserve the right to 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 CO shall advise the complainant if the formal complaint will be consolidated with others.

c. The formal complaint initiates the grievance process as described below.

## **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.

### **1. Equitable Treatment**

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

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 proceeding must be applied equally to both parties.

The complainant and respondent will both be provided a description of the range of supportive measures available to them.

### **2. Adequate Training**

The COs, and any other persons serving as Title IX investigators 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 prejudgment of the facts at issue, conflicts of interest, and bias. In the event that a third party is designed to investigate and serve as the coordinator for any complaint, the superintendent shall ensure that the entity has provided adequate training as required.

Materials used to train coordinators 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.

### **3. 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.

### **4. 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 and a preponderance of the evidence standard shall apply.

5. 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.

6. Confidentiality and Privacy

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 or required by law or as necessary to carry out a Title IX proceeding. A violation of this provision may constitute retaliation. All meetings, hearings, or proceedings conducted pursuant to these guidelines will be private except to the extent that the parties may be accompanied by others.

7. 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 privilege is properly waived.

8. Timeliness of Process.

School officials shall make a good faith 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. The Board 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. The CO 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.

**THE GRIEVANCE PROCESS FOR FORMAL COMPLAINTS: PART I – INVESTIGATION**

1. Step 1 – Notice of Allegations

a. Upon the filing of a formal complaint, the CO shall, **within five (5) school business days**, provide the known parties written notice of the allegations that includes:

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

- a) the identities of the parties involved, if known;
- b) the conduct allegedly constituting sexual harassment; and
- c) the date and location of the alleged incident, if known;

- ii. a copy of this policy to give notice of the grievance process, including the investigative and adjudication procedures, and any informal resolution process available;
- iii. notice that the parties may have an advisor of their choice and that either party may inspect and review any evidence;
- iv. notice that students and employees are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process; and
- v. 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.

b. 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.

## 2. Step 2 – Review Grounds for Dismissal of the Formal Complaint

The CO 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. The complaint will not be dismissed at this stage on the basis that the allegations are frivolous, without merit, or otherwise unfounded. 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 below.

The CO shall refer the matter that was the subject of the dismissed complaint to the principal for further action as warranted.

## 3. Step 3 – Initiating the Investigation

If the complaint may proceed, the CO shall either begin the investigation, or if designating a third party investigator, shall notify the appropriate investigator, who shall investigate the formal complaint.

- a. In order to provide a neutral and objective investigation, the investigator or CO shall not be a party to the complaint under investigation. However, the superintendent may determine that conflict of interest, bias, or other individual circumstances warrant the assignment of a different investigator or CO to investigate the complaint.
- b. The CO shall 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.
- c. The CO or investigator shall explain the process of the investigation to the complainant and respondent.

## 4. Step 4 – Conducting the Investigation

The CO or 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.

- a. The CO/investigator shall interview all individuals who may have relevant information, including (1) the complainant; (2) the respondent; (3) individuals identified as witnesses by the complainant or respondent; and (4) 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. 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.
- b. The CO/investigator shall ensure that the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the school system and not on the complainant or respondent.
- c. The CO/investigator shall not restrict the ability of either party to gather and present relevant evidence or to discuss the allegations under investigation.
- d. The formal complaint and the investigation will be 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 within the context of the legal responsibilities of the school system.

The formal complaint or any allegations therein may be dismissed if at any time during the investigation or decision-making process: (1) the complainant notifies the Title IX coordinator in writing that he or she would like to withdraw the formal complaint or any allegations therein; (2) the respondent is no longer enrolled or employed by the school system; or (3) specific circumstances prevent school officials from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Upon dismissal, the CO shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. The parties have the right to appeal the decision. The matter that was the subject of the dismissed complaint may be considered for action in accordance with Board policy for violation of other expected standards for students or employees.

#### 5. Step 5 – Investigative Report and Opportunity to Review Evidence

- a. The CO/investigator shall prepare an investigative report that fairly summarizes the relevant evidence.
- b. Before completing the final report, the CO/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 CO/investigator shall finalize the written investigative report, including a recommendation on the question of responsibility and any recommended discipline sanction.
- d. The CO/investigator shall provide a copy of the report to each party and the party's advisor, if any, for their review and written response. The CO/investigator shall also notify the parties of the opportunity to submit written questions to the other party and witnesses. 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.

e. The CO/investigator shall provide to the decision-maker (superintendent) a copy of the investigative report, the relevant evidence, and the parties' written responses to the report and initial sets of written questions.

## **THE GRIEVANCE PROCESS FOR FORMAL COMPLAINTS: PART II – ADJUDICATION**

The Superintendent or designee shall serve as the decision-maker. In his or her role as decision-maker, the Superintendent, or designee, 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.

### **1. Exchange of Questions and Answers**

Regardless of whether the respondent is a student, after the parties are sent the investigative report, the Superintendent, or designee, 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, or designee. The parties shall submit their initial set of written questions at the time they submit their response to the investigative report.

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 sexual behavior with respect to the respondent and is offered to prove consent. The Superintendent, or designee, must explain to the party proposing the questions any decision to exclude questions as not relevant.

### **2. Decision on the Question Regarding Responsibility**

Following the exchange of questions as described above, the Superintendent, or designee, shall decide the question regarding responsibility, any disciplinary action, and any other measures the Superintendent deems appropriate. The Superintendent, or designee, shall consider all the relevant evidence objectively, including evidence in the investigative report, witness statements, and any additional information provided by the parties through the exchange of questions and responses. Based on an objective evaluation of the evidence, the Superintendent, or designee, shall determine whether the preponderance of the evidence supports a finding that the respondent is responsible for sexual harassment in violation of Policy, and if so, what disciplinary sanction will be imposed. Remedies will be provided to the complainant if the respondent is found responsible.

### **3. Written Determination Regarding Responsibility**

The Superintendent, or designee, shall issue a written determination regarding responsibility simultaneously to both parties that includes:

- a. identification of the allegations potentially constituting sexual harassment under Board policy;
- b. a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
- c. findings of fact supporting the determination;

- d. conclusions regarding the application of Policy or expected standards of employee behavior to the facts including whether the respondent engaged in prohibited sexual harassment or other proscribed conduct;
- e. 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;
- f. the procedures and permissible bases for the complainant and respondent to appeal; and
- g. any other notices that are required to accompany the decision under state law, such as when the Superintendent imposes suspension or recommends dismissal of an employee.

### **GRIEVANCE PROCESS FOR FORMAL COMPLAINTS: PART III – APPEAL**

The parties shall have the right to appeal to the Board 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.<sup>1</sup>

#### **1. Deadline and Grounds for Appeal**

Either party may appeal by submitting a request in writing to the Superintendent, or designee, within **three (3) school business days** of receiving the determination regarding responsibility, unless the party is entitled to a longer appeal period under state law or Board policy. Any longer appeal period applicable to one party shall apply equally to the other party. The grounds for appeal may be any of the following:

- a. procedural irregularity that affected the outcome of the matter;
- b. new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- c. the CO, 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;
- d. the disciplinary sanction is inappropriate or unreasonable; or
- e. any other basis provided by law or policy governing appeals to the Board.

#### **2. Notice of the Appeal**

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<sup>1</sup> If a formal disciplinary proceeding has occurred, including hearing before the Board regarding either student or employee discipline as provided by state law, this appeal procedure shall not apply. Applicable state law shall be applied to any decision made by the Board in such proceedings.

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

3. Appeal Procedures

- a. The Board will hear the appeal in a properly convened and noticed meeting of the Board.
- b. Appeal procedures will be implemented equally, modified as necessary to allow equal participation of the parties.
- c. After the notice of appeal is provided, both parties will be given **10 days** to submit a written statement in support of, or challenging, the outcome. If the basis of the appeal is newly available evidence affecting the outcome, the party shall submit such evidence or a summary of such evidence along with the party's written statement.
- d. The Board will review the record and the written argument of the parties submitted on appeal, determine whether additional information is needed from any party, and take any other steps that the Board determines to be appropriate in order to respond to the appeal.

4. Decision on Appeal

- a. After considering the record and written statements of the parties, the Board will determine whether the grounds for the appeal have been substantiated.
- b. If substantiated, the Board will determine the appropriate response, which may include a remand for a new investigation, a new decision, or both, or such other action as the Board determines is needed to correct the error in the original proceedings.
- c. The Board will provide a written decision describing the results of the appeal and rationale for the result **within thirty days** after receiving the appeal unless the decision is delayed for good cause. The written decision will be provided simultaneously to both parties.

5. When the Decision Becomes Final

If an appeal is timely filed, the determination regarding responsibility becomes final at the conclusion of the appeal process. However, if the decision on appeal is remand, the determination regarding responsibility does not become final until that process, including any appeal of the proceedings on remand, is concluded. If an appeal is not filed, the determination regarding responsibility becomes final after the three-day appeal period.

The Superintendent shall ensure that a copy of the final decision is provided to the CO and shall confer with the CO regarding any remedies to be provided to the complainant.

## **DISCIPLINARY CONSEQUENCES, REMEDIES, AND OTHER RESPONSES FOR SUBSTANTIATED SEXUAL HARASSMENT**

1. Disciplinary Consequences for Students

Disciplinary consequences for substantiated sexual harassment will be assigned in accordance with the Code of Student Conduct and WV Board of Education Policy 4373. In addition, the conduct also may be reported to law enforcement, as appropriate.

Nothing in these guidelines prevent disciplinary action when the evidence does not establish sexual harassment but violates other policy and/or the Code of Student Conduct.

## 2. Disciplinary Consequences for Employees

Substantiated sexual harassment by employees is subject to discipline up to and including dismissal. In addition, the conduct may also be reported to law enforcement, as appropriate. An employee recommended for suspension, demotion, or dismissal shall have all applicable rights accorded by Board policy and state law.

Nothing will prevent disciplinary action against an employee when the evidence does not establish sexual harassment, but the conduct violates other policy or expected standards of employee behavior.

## 3. Consequences for Other Perpetrators

Volunteers and visitors who engage in sexual harassment will be directed to leave school property and/or be reported to law enforcement, as appropriate.

A third party under the supervision and control of the school system will be subject to termination of contracts/agreements, restricted from access to school property, and/or subject to other consequences, as appropriate. 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.

## 4. Remedies

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

## **INFORMAL RESOLUTION**

The Board provides informal resolution processes to resolve some formal complaints of sexual harassment without a full investigation and adjudication. Informal resolution is not available unless a formal complaint is filed and will not be used to resolve formal complaints alleging that an employee sexually harassed a student. Further, school officials shall never condition an individual's enrollment, employment, or other rights on an agreement to waive the individual's right to a formal investigation and adjudication of a formal complaint.

The CO, or other school official in consultation with the CO, 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 CO, investigator, or decision-maker shall:

1. 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
2. obtain the parties' voluntary, written consent to the informal resolution process.

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.

Any informal process should be completed within a reasonable period of time, not to exceed **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.

Date Adopted: 04/11/22  
Date Amended:  
Date Reviewed:

*The above Policy Statement is an integral part of the Official Policy Manual of this Board of Education as of the date shown adopted.*