EAST POINSETT COUNTY

SCHOOL DISTRICT

TITLE IX

SEXUAL HARASSMENT POLICY

INTRODUCTION

Title IX provides: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance."

This policy addresses sexual harassment by or against all individuals who participate in the school's activities, including students, employees and third parties. Finally, the policy applies to all complaints against the school students or employees who are alleged to have committed Sexual Harassment (as defined herein) in the provision of the school's education programs and activities.

Any school employee who has knowledge of sexual harassment is required to immediately report any allegations of Sexual Harassment to the Title IX Coordinator.

No one may retaliate against any individual for filing a reasonable complaint alleging Sexual Harassment, for assisting in a complaint investigation, or for refusing to assist in a complaint investigation. Any member of the school community who attempts to interfere with, restrain, coerce, discriminate against, or harass, whether overtly or covertly, any individual pursuing a complaint of Sexual Harassment or assisting in a complaint investigation will be subject to prompt and appropriate disciplinary action, up to and including dismissal of employment or suspension from the school. Any retaliatory conduct should be reported immediately to the Title IX Coordinator.

The school has a Title IX Coordinator who oversees the school's compliance with Title IX requirements. The Title IX Coordinator is an available resource to advise any individual, including a Complainant or Respondent, about the courses of action available, both informally and formally. Contact the Title IX Coordinator at:

Title IX Coordinator: Brandon Powell

Email: brpowell@epc.k12.ar.us

East Poinsett County School District

502 McClellan

Lepanto, AR 72354

Telephone: 870-475-2472 **DEFINITIONS**

"Complainant" is the individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

"Consent" means freely agreeing to engage in sexual activity. A person is not capable of giving consent in many circumstances, including, but not limited to, when the person is:

1. asleep or unconscious;

2. physically helpless;

3. under the influence of drugs or alcohol; or

4. unable to give consent due to an intellectual or other disability. Past consent to sexual activity does not imply future consent. Consent can be withdrawn at any time.

"Formal Complaint" is a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the school investigate the allegation of Sexual Harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in an education program or activity at the school. "Respondent" is an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

"Sexual Harassment" includes conduct on the basis of sex that satisfies one or more of the following categories:

1. Quid Pro Quo Sexual Harassment occurs when an employee conditions educational benefits on participation in unwelcome sexual conduct.

2. Hostile Environment involves unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education programs or activities.

3. Sexual Assault includes:

(a) any sexual act directed against another person, forcibly and/or against that person's will;

(b) any sexual act directed against another person where the person is incapable of giving consent;

(c) incest; or

(d) statutory rape.

4. Dating Violence is violence committed by a person who is or has been in a social or romantic relationship with the victim. The existence of such a relationship is determined based on:

(a) the length of the relationship;

(b) the type of relationship; and

(c) the frequency of interaction between the persons involved in the relationship.

5. Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or

intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Arkansas, 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 Arkansas.

6. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to either:

(a) fear for the person's safety or the safety of others; or

(b) suffer substantial emotional distress.

REPORTING A CLAIM

Title IX Coordinator Response

Upon receipt of notification of a potential violation, the Title IX Coordinator will promptly and confidentially contact the Complainant to discuss the availability of Supportive Measures (as described below) and the Complainant's wishes with respect to Supportive Measures. The Title IX Coordinator will notify the Complainant that Supportive Measures are available whether or not the Complainant elects to file a Formal Complaint. The Title IX Coordinator will also explain the process of filing a Formal Complaint to the Complainant, and that a Formal Complaint can be filed at any time. If a Complainant does not wish to file a Formal Complaint, the school will generally respect those wishes and no further investigation will occur. However, if the Title IX Coordinator makes a reasonable determination that, under the known circumstances, an investigation is necessary even in the absence of the Complainant's filing of a Formal Complaint, the Title IX Coordinator may submit a signed Formal Complaint to initiate the investigation.

Supportive Measures

Supportive Measures are intended to restore or preserve access to the school's education program and activities in a manner that does not provide an unreasonable burden to any party. Supportive Measures may include counseling, deadline extensions, leaves of absence, mutual restrictions on contact between individuals, and academic and work accommodations. The provision of Supportive Measures will be kept confidential to the extent that maintaining confidentiality does not impact the school's ability to provide them. Supportive Measures will be non-disciplinary, non-punitive, individualized, and narrowly tailored. No fee will be charged to any party for the provision of the Supportive Measures. Upon notification of a potential report, the Title IX Coordinator will work with all parties involved to implement appropriate Supportive Measures or accommodations that are reasonably available to protect the safety and well-being of the Complainant and the Respondent.

Process of Filing a Report [Reporting Process]

Students, faculty, and staff who become aware of or are the victims of Sexual Harassment should notify the Title IX Coordinator in person, by mail, by phone, by email, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. The person reporting does not need to be the alleged victim of the conduct that could constitute Sexual Harassment. The report may be made at any time, including non-business hours, by using the telephone number, mailing address, or electronic mailing address of the Title IX Coordinator.

Filing of Formal Complaint

If a Formal Complaint is filed by the Complainant or Title IX Coordinator, the school will conduct an investigation as set out below. However, if the allegations in a Formal Complaint do not meet the definition of Sexual Harassment, or did not occur in the school's education program or activities, the Title IX Coordinator may dismiss the Formal Complaint.

The school will maintain the confidentiality of the Complainant, Respondent, and witnesses except as permitted by the Federal Educational Rights Privacy Act ("FERPA"), as required by law, or as necessary to conduct the investigation of the allegations raised by the Formal Complaint.

Mandatory Dismissal of Formal Complaint

If at any point prior to entry of a final determination on the Formal Complaint, the school determines that the conduct alleged in the Formal Complaint, if assumed true:

1. Does not constitute Sexual Harassment;

2. Did not occur in the school's education program or activity; or

3. Did not occur against a person in the United States, then the school must dismiss the complaint for purposes of this Title IX procedure.

Optional Dismissal of Formal Complaint

The school may dismiss a Formal Complaint prior to final determination in its discretion if: 1. The Complainant would like to withdraw the Formal Complaint;

2. The Respondent is no longer enrolled or employed by the school; or

3. Specific circumstances prevent the school from gathering evidence sufficient to make a final determination.

Conduct

If the Respondent is an employee, the school may impose a paid administrative leave on the Respondent if the Title IX Coordinator determines there is an immediate threat to the health or safety of the school's students, faculty or staff.

Protection Order

The school will work to implement orders of protection issued by courts as those orders impact education programs and activities on the school property. If any member of the school community obtains an order of protection or restraining order, that individual should promptly provide the Title IX Coordinator with a copy of that order so that the school can implement it as it relates to the school property, education programs, and activities.

INVESTIGATION OF A FORMAL COMPLAINT Notice of Investigation

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the Complainant and Respondent with a written copy of this Title IX Policy. The Title IX Coordinator will also, in writing, fully disclose to both the Complainant and Respondent:

1. The allegations of wrongdoing, including, if known, the specific school policies that were violated, the conduct allegedly constituting Sexual Harassment, and the date and the location of the alleged incident(s);

2. The rights and responsibilities of all parties, including the fact that Respondent shall be presumed not responsible at the commencement of the investigation and that the ultimate determination will be made at the conclusion of the grievance process;

3. That each party has the right to request and inspect the evidence;

4. The formal and informal resolution process;

5. The prohibition against retaliation;

6. The need to preserve any relevant evidence or documentation in the case for use in other proceedings, including criminal matters, civil proceedings, and protection order proceedings;

7. The availability of supportive measures and accommodations;

8. The need to prove the allegations by a preponderance of the evidence; and 9. Possible

remedies and outcomes.

The notice will also inform all parties that they may request to inspect and review evidence, and that knowingly making false statements or submitting false information during the process is prohibited. This notice will be provided to the Complainant and the Respondent with sufficient time for each to prepare a response before any initial interview.

Overview of the Investigation

The Title IX Coordinator will appoint one or more trained investigators to conduct a prompt, impartial, and fair investigation of the Formal Complaint. The investigator may be a school employee or an external investigator engaged to assist the school in conducting an investigation. The investigation begins with the presumption that the Respondent is not responsible for the alleged conduct, and that presumption remains until a final determination is made regarding the formal complaint. All parties involved, including witnesses, will be treated with respect and with sensitivity.

The investigation will be completed within 30 days following the filing of the Formal Complaint unless the Title IX Coordinator determines that good cause exists to extend this time period. Good cause includes, but is not limited to, concurrent law enforcement activity, school closure for holidays and breaks, and witness availability. The Title IX Coordinator will notify the parties in writing if good cause is found to extend the deadlines. The Title IX Coordinator will provide the parties with periodic updates regarding the status of the process and will provide notice to the Complainant and Respondent of any additional allegations of Title IX violations discovered in the course of the investigation.

During the investigation, the investigator will:

1. Be objective, and will consider all relevant evidence, both inculpatory and exculpatory. The investigator will not make credibility determinations based on a person's status as Complainant, Respondent, or witness;

2. Treat all parties involved, including witnesses, with respect and sensitivity;

3. Allow both the Complainant and Respondent the opportunity to discuss the allegations and to gather evidence in support of the claim or defense;

4. Interview both the Complainant and Respondent, as well as any witnesses. The Title IX Coordinator or the investigator will notify the Complainant and Respondent (and their advisors, if any "Advisor(s)") of the date, time, place, and purpose of all interviews, or other meetings to which the Complaint or Respondent is expected to attend with sufficient time for the party to prepare to participate;

5. Allow the Advisor for the Complainant and the Advisor for the Respondent to attend any interviews or other meetings in which the investigator requests the presence of the party. However, the Advisor will attend these interviews or meetings in an advisory capacity only and the investigator may limit the Advisor's participation in the meetings or interviews as long as the investigator does so equally for both the Advisor to the Complainant and the Advisor to the Respondent;

6. Give both the Complainant and Respondent full opportunity to prevent evidence and witnesses (both factual and expert) in support of or in opposition to the allegations contained in the Formal Complaint; and

7. Ensure that all interviews are properly documented and that the investigation is conducted in a thorough, objective manner that is considerate of all parties involved.

Review of the Evidence

Within 20 days of the beginning of the investigation, the Title IX Coordinator will give both the Complainant and Respondent equal opportunity to review and inspect any evidence gathered during the investigation that is directly related to the allegations raised in the Formal Complaint, including inculpatory and exculpatory evidence as well as evidence that the school does not intend to rely on during the decision process. Each party will then have 10 days to submit a written response to the investigator. If a party needs additional time to respond, the party should make that request in writing to the Title IX Coordinator who may, in the Title IX Coordinator's discretion, grant an extension. If an extension is granted to one party, it shall also be granted to the other party. The investigator will consider the written response from each party prior to finalizing the investigation.

Investigator's Report

Upon conclusion of the investigation, within 10 days the investigator will provide the Title IX Coordinator with a report that fairly summarizes and analyzes the relevant facts and any supporting documentation (which may include statements by the parties, third-party witnesses, or others with information and any physical, written, or electronic or other evidence). The Title IX Coordinator shall provide a copy to both the Complainant and the Respondent and either party may provide a written response within 10 days.

Informal Process

Except in cases involving allegations that a school employee has sexually harassed a student, at any time prior to the final determination of responsibility, the Complainant and Respondent may agree to utilize an informal resolution process such as mediation to resolve the Formal Complaint. If either the Complainant or Respondent is unwilling to participate, no informal process can occur. Prior to implementing an informal process, in addition to the information noted above, the Title IX Coordinator will provide the parties a written notice of the terms of the proposed informal resolution process, and any consequences resulting from an informal resolution, including the records maintained. The Title IX Coordinator will obtain the parties' voluntary, written consent to informal resolution.

The parties to the informal process will not be required to deal directly with one another unless both parties agree. Instead, either the Title IX Coordinator or a neutral third party appointed by the Title IX Coordinator will act as a facilitator who will share the results of the investigation with the parties, meet with the parties either jointly or separately, and make recommendations for resolution of the Formal Complaint. The Complainant and the Respondent may each have an Advisor present at all meetings in which they participate. The facilitator does not have the authority to impose a resolution on the parties but will attempt to reach a satisfactory resolution of the Formal Complaint.

Steps taken by the facilitator to help the parties achieve informal resolution, and the results of the informal resolution process will be documented and provided to the Title IX Coordinator. The Title IX Coordinator will contact the Complainant and Respondent to determine whether the informal resolution has adequately resolved the Formal Complaint. Any party may request that the informal resolution process stop at any time.

Decision

Within 10 days of receiving the investigator's report from the Title IX Coordinator, the Superintendent will make a final written determination explaining for each allegation whether the Respondent is responsible or not responsible by a preponderance of the evidence, including the facts and evidence upon which the conclusion is based. Credibility determinations are for the Superintendent to make. The Superintendent's written report will include the following:

1. Identification of the section(s) of the school policies alleged to have been violated by the Respondent;

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 facts to the policy language;

5. A statement of rationale for each allegation, including a determination regarding responsibility, sanctions, if any, on Respondent, and any remedies to be provided by the school to the Complainant designed to restore or preserve access to the Complainant's education program or activity; and

6. The school's procedures and grounds for appeal. The Superintendent should also inform the parties that the decision is not final until any appeal process is exhausted.

a. An appeal may be made to the Board of Directors after the dismissal of the complaint before the decision process or at the end of the decision process. Grounds for appeal may be based on the following:

1) A procedural irregularity affected the outcome of the matter;

2) New evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal;

3) A conflict of interest on the part of the Title IX Coordinator, an investigator who compiled evidence, or a decision-maker, and the conflict of interest affected the outcome; and

4) When the result of the process is a suspension or expulsion of a student or in the event of a suspension or termination of an employee.

RECORDS & RIGHTS

Record Retention

The Title IX Coordinator will maintain, for a period of seven years, records of any actions, including any Supportive Measures, taken in response to a report of alleged Sexual Harassment or a Formal Complaint. With respect to allegations that do not result in the filing of a Formal Complaint, the school will retain records of any actions, including Supportive Measures, taken in response to those allegations. Additionally, for Formal Complaints, the school will maintain, for a period of seven years, all records of:

1. The investigation, including determination, sanction, and remedies;

2. Any appeal and the results of that appeal;

3. The results of informal resolution attempts, if any; and

4. All materials used to train investigators, coordinators, and adjudicators with regard to Sexual Harassment. Upon request of either the Complainant or Respondent involved in the Formal Complaint, the school will make the records concerning that Formal Complaint available to one or both parties.

Other Reporting Options

Members of the school community who believe they have been subject to Sexual Harassment are encouraged to use this policy. In addition, individuals also have the right to file a complaint with outside enforcement agencies, including the United States Department of Education Office of Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), the Arkansas Department of Labor, and state or local law enforcement authorities.

Whether or not an individual chooses to contact law enforcement and initiate criminal charges, the individual retains the right to file a Formal Complaint. Individuals may also file a civil lawsuit against the offending party. If criminal or civil proceedings are commenced, the school reserves the right to conduct its investigation and take disciplinary actions despite the ongoing legal proceedings and regardless of the outcome or disposition of any legal proceeding.

Privacy and Confidentiality

The school recognizes the sensitive nature of Sexual Harassment allegations. The school will do its utmost to protect the privacy of the parties involved to the extent that it is consistent with the law and the school's need to protect the safety of its community. Any information concerning a complaint will be shared only on a need-to-know basis. Information that is private and information that is confidential are not the same. "Private" information means information that will only be shared with a limited circle of individuals on a "need to know" basis to allow active review, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process. Confidential information is information that will not be shared by the receiving party with any other party. The school will also abide by the provisions of the Family Educational Rights and Privacy Act and the Freedom of Information Act. The school may call appropriate law enforcement authorities at any time to confidentially discuss sexual assault and other situations.

Misuse of Policy

A person who brings a reasonable charge of Sexual Harassment in good faith, even if it may be erroneous, will not be subject to discipline. However, the use of this policy for false, malicious, or frivolous purposes is strictly prohibited. Any student, faculty, or staff member who brings a false or malicious charge of Sexual Harassment may be subject to disciplinary action.