

Title IX Sexual Harassment – Prohibited Conduct and Reporting Process

Policy Code: 1725/4035/7236

The board acknowledges the dignity and worth of all students and employees and strives to create a safe, orderly, caring, and inviting school environment to facilitate student learning and achievement. The board will not tolerate discrimination on the basis of sex, including any form of sexual harassment as that term is defined under Title IX, in any education program or activity of the school system. The board takes seriously all reports and formal complaints of sexual harassment. The school system does not discriminate on the basis of sex in its education programs or activities, including admission and employment, in accordance with Title IX of the Education Amendments Act of 1972 and federal regulations.

Sexual harassment, as that term is defined under Title IX, is prohibited. All incidents of conduct that could constitute sexual harassment under this policy are to be reported and treated in accordance with this policy, whether or not the incidents may also constitute violations of other board policies or standards of conduct.

Individuals who believe they have been subjected to sexual harassment prohibited by this policy or who have witnessed or have reliable information that another person has been subjected to sexual harassment prohibited by this policy should use the process provided in Policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process.

The board has also established grievance procedures for those who believe they have been victims of sexual harassment. Those grievance procedures are designed to achieve prompt and equitable resolution of formal complaints of sexual harassment through a formal investigation and adjudication of the allegations in the complaint or through informal resolution processes. The grievance process is provided in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process.

A. Inquiries About Title IX

The board has designated a Title IX Coordinator to coordinate its efforts to comply with its responsibilities under Title IX and its implementing regulations. Inquiries about the application of Title IX and its implementing federal regulations may be referred to the Title IX Coordinator and/or the Assistant Secretary for Civil Rights in the Office for Civil Rights at the U.S. Department of Education.

The contact information for the Martin County Schools Title IX Coordinator is:

Director of Student Services Central Administration
300 N. Watts St.
Williamston, NC 27892
Office: (252) 792-1575
Email: gmonroe@martin.k12.nc.us

The contact information for the Office for Civil Rights with jurisdiction over North Carolina is as follows:

4000 Maryland Ave, SW
Washington, DC 20202-1475
Telephone: 202-453-6020 TDD: 800-877-8339
Fax: 202-453-6021 Email: OCR.DC@ed.gov

B. Notice of the Board’s Policy of Nondiscrimination on the Basis of Sex and Sexual Harassment Reporting and Grievance Process

The superintendent is responsible for providing notice of the board’s nondiscrimination policy to students and their parents or legal guardians, employees, and applicants for admission or employment. The superintendent shall also ensure that each principal or site supervisor makes a copy of this policy and policy 1726/4036/7237 available to those persons. In addition, the following must be posted on the school system website and included in all student and employee handbooks: (1) a statement of the board’s policy of nondiscrimination on the basis of sex; (2) contact information for the Title IX Coordinator; and (3) a statement that Title IX inquiries may be referred to the Title IX Coordinator or to the Assistant Secretary for Civil Rights.

C. Prohibited Behavior

1. Scope

Students, school system employees, volunteers, and visitors are expected to behave in a civil and respectful manner. The board expressly prohibits sexual harassment by students, employees, board members, volunteers, or visitors. “Visitors” includes parents and other family members and individuals from the community, as well as vendors, contractors, and other persons doing business with or performing services for the school system.

2. Definition of Sexual Harassment

Sexual harassment prohibited under Title IX and by this policy is conduct *on the basis of sex* occurring in a school system education program or activity that satisfies one or more of the following:

- a. an employee of the school system conditioning the provision of an aid, benefit, or service of the school system 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 school system’s education program or activities. This determination requires consideration of all the facts and circumstances,

including, but not limited to, the ages and disability statuses of the harasser and the victim and the number of individuals involved and their authority;

- c. sexual assault including rape, statutory rape, fondling, and incest;
- d. dating violence;
- e. domestic violence; or stalking Sexual assault, dating violence, domestic violence, and stalking will be defined in accordance with applicable law and the definitions will be incorporated into an administrative regulation developed by the superintendent.

Conduct that satisfies this standard is not sexual harassment for purposes of this policy if the conduct occurred (1) outside the United States or (2) under circumstances in which the school system did not have substantial control over both the harasser and the context in which the harassment occurred. All references to “sexual harassment” in this policy mean sexual harassment that meets this definition.

Examples of conduct on the basis of sex that would be considered sexual harassment if the conduct satisfies the criteria above include, but are not limited to: unwelcome sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature, such as deliberate, unwelcome touching that has sexual connotations or is of a sexual nature; suggestions or demands for sexual involvement accompanied by implied or overt promises of preferential treatment or threats; pressure for sexual activity; continued or repeated offensive sexual flirtations, advances, or propositions; continued or repeated verbal remarks about an individual’s body; sexually degrading words used toward an individual or to describe an individual; sexual assault; sexual violence; the display of sexually suggestive drawings, objects, pictures, or written materials; posting sexually suggestive pictures of a person without the person’s consent; and forwarding pornographic material depicting a classmate or other member of the school community.

Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping but not involving conduct of a sexual nature may also constitute sexual harassment.

Conduct that is determined not to meet the definition above may violate other board policies or established standards of conduct and will be treated accordingly. For example, conduct that does not meet the definition of Title IX sexual harassment above may nevertheless violate other board policies, including: policy 1710/4021/7230, Prohibition Against Discrimination, Harassment, and Bullying or policy 4040/7310, Staff-Student Relations.

3. Definition of Consent

(a) Consent voluntarily given with sufficient knowledge and comprehension of the subject matter to enable the person giving consent to make a knowing decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(b) Voluntary expression of willingness, permission, or agreement to engage in sexual activity throughout a sexual encounter. Consent cannot be granted by an individual: who is less than the statutory age of consent under state criminal law, has a mental or physical condition or incapacity that prevents the giving of consent; or from whom ostensible "consent" is extracted through threat, coercion, or forcible compulsion.

(c) Consent is informed, freely and affirmatively given through mutually understandable words or actions that indicate a willingness to participate in the sexual activity. Consent can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Consent to one type of sexual activity does not amount to consent to another type of activity. Prior consent or sexual relations with the same person do not imply future consent. The fact that both people are in a relationship does not, by itself, establish consent. A person cannot consent if they are unconscious, asleep, or impaired to the extent that they do not understand what is going on. Minors under the age of 16 are incapable of giving consent to sexual activity with a person more than four years older than the minor. Consent may never be given by mentally disabled persons if their disability was reasonably knowable to a sexual partner who is not mentally disabled. Consent between parties engaging in sexual activity does not prevent the school system from taking disciplinary action against the parties for violation of any other board policy.

Nothing in this policy is intended to limit discipline for violation of other board policies when appropriate and consistent with law.

D. Additional Definitions

The following additional definitions apply in this policy and policy 1726/4036/7237, Title IX Sexual Discrimination and Harassment Reporting and Complaint Procedures.

1. Report

A report is an oral or written notification that an individual is an alleged or suspected perpetrator or victim of sexual harassment.

Making a report initiates the interactive process with the complainant described in Section E.1, below. No disciplinary action will be taken against a respondent for sexual harassment based on a report alone.

2. Formal Complaint

A formal complaint is a document signed and filed with the Title IX Coordinator by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that school officials investigate the allegation(s). Filing a formal complaint initiates the grievance process set forth in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activities of the school system.

3. Complainant

The complainant is the individual(s) who is alleged to be the victim of conduct that could constitute sexual harassment, regardless of whether a formal complaint is filed.

4. Respondent

The respondent is the individual(s) who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

5. Grievance Process

Grievance process means the process for investigating and reaching a final determination of responsibility for a formal complaint of sexual harassment. The sexual harassment grievance process is set out in policy 1726/4036/7237.

6. Title IX Coordinator

The Title IX Coordinator is a school official who is designated to coordinate the school system's response to sexual harassment and allegations of sexual harassment. Contact information for the Title IX Coordinator is posted on the school system's website and listed in policy 1725/4035/7236, Title IX Sexual Harassment– Prohibited Conduct and Reporting Process.

7. Supportive Measures

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

Supportive measures available to the parties include, but are not limited to, counseling,

mental health services referral, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring, and other similar measures determined by school officials to be necessary to protect the safety or educational or employment activities of a party.

8. Days

Days are calendar days unless specified otherwise.

9. Student(s)

“Student(s)” means the student and/or the student’s parent or legal guardian unless the context clearly indicates otherwise. When the complainant or respondent is a student, references to those terms also include the student’s parent or legal guardian unless the context clearly indicates otherwise.

10. Actual Knowledge

“Actual knowledge” means a school employee has notice of sexual harassment or allegations of sexual harassment.

E. Reporting Sexual Harassment

1. Student Reports

Any student who believes he or she is a victim of sexual harassment occurring in the school system’s education programs or activities is encouraged to report the matter to the student’s principal or to the Title IX Coordinator. Reports may also be made to a teacher, counselor, assistant principal, teacher assistant, or any other school employee. Middle and high school students may also report sexual harassment through the anonymous tip line, but school officials may be limited in their ability to respond if the report does not identify the complainant.

2. Mandatory Reporting by School Employees and Board Members

Any employee or member of the board of education who has actual knowledge of sexual harassment or allegations of sexual harassment occurring in the education program or any activity of the school system must report that information immediately to the Title IX Coordinator.

Any of the following confers “actual knowledge” and must be reported immediately:

- a. a report of sexual harassment from a student or other person;

- b. the employee or board member witnesses conduct that is or reasonably could be sexual harassment; or
- c. the employee or board member discovers evidence of sexual harassment, such as sexualized graffiti on school property, or otherwise has reliable information or reason to believe that a student, employee, or other individual may have been sexually harassed in violation of this policy, even if no one has reported the sexual harassment.

Employees who observe an incident of harassment are expected to intervene to stop the conduct in situations in which they have supervisory control over the perpetrator, and it is safe to do so. An employee with actual knowledge of possible sexual harassment in violation of this policy who does not promptly report the conduct and/or take proper action as required by this subsection, or who knowingly provides false information about the incident, will be subject to disciplinary action, up to and including dismissal.

Any doubt about whether particular conduct is possible sexual harassment must be resolved in favor of reporting the conduct.

The mandatory reporting required by this section is in addition to required reporting under policies 4040/7310, Student-Staff Relations, and 4240/7312, Child Abuse and Related Threats to Child Safety, where the conduct at issue requires a report under either of those policies.

3. Reporting by Others

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

4. Content of the Report

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

5. Time Period for Making a Report

Reports by students and third parties can be made at any time. During non-business hours, reports can be made by using the contact information for the Title IX Coordinator provided on the school system's website, in this policy, and in policy 1710/4021/7230, Prohibition Against Discrimination, Harassment, and Bullying. A

report should be made as soon as possible after disclosure or discovery of the facts giving rise to the report. Delays in reporting may impair the ability of school officials to investigate and respond to any subsequent formal complaint.

School employees and board members with actual knowledge of sexual harassment must report that information immediately, as provided in subsection C.2 above.

F. School Officials' Response to Actual Knowledge of Sexual Harassment

As required to meet the school system's obligations under Title IX, school officials shall respond promptly and impartially to actual knowledge of alleged sexual harassment in a manner that is not deliberately indifferent. A response that is not deliberately indifferent is one that is not clearly unreasonable in light of the known circumstances and includes, at a minimum, the provision of supportive measures to the complainant, as described in this section.

Consistent with this duty, school officials shall respond to all reports of conduct that could constitute sexual harassment in accordance with this section. However, a report alleging conduct that is not sexual harassment as defined in this policy is not subject to this policy but may be referred to appropriate school officials as a possible violation of other board policies.

1. Title IX Coordinator Initiates Interactive Process with Complainant

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

When contacting the complainant and parent or guardian, the Title IX Coordinator shall do all of the following during the contact and shall document the same:

- a. offer supportive measures;
- b. consider the complainant's wishes with respect to supportive measures;
- c. explain that supportive measures are available with or without the filing of a formal complaint; and
- d. explain the process for filing a formal complaint with the Title IX Coordinator and the response required of the school system when a complaint is filed, including all the following:
 - i. that a formal complaint will initiate the grievance process described in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process;

- ii. that a formal complaint may be filed with the Title IX coordinator in person, by mail, or by electronic mail;
- iii. the major steps in the grievance process, including (1) a notice of the allegations that will be provided to the respondent that includes identification of the complainant and the allegations made; (2) an investigation of the allegations of sexual harassment in which both parties will have opportunity to have an advisor, present witnesses, review evidence, pose written questions of the other party, and receive a copy of the investigative report; (3) a decision on responsibility in which a decision-maker objectively evaluates all relevant evidence and determines whether the respondent engaged in the alleged sexual harassment in violation of this policy; and (4) the opportunity for either party to appeal the decision;
- iv. the approximate time frame for concluding the grievance process;
- v. that school officials will treat both parties equitably by (1) providing remedies to the complainant if the respondent is found responsible, and (2) by not imposing disciplinary sanctions on the respondent without first following the grievance process set forth in policy 1726/4036/7237;
- vi. the circumstances under which a formal complaint might be consolidated with other formal complaints or dismissed; and
- vii. that the Title IX coordinator may have an obligation to initiate the grievance process in the absence of a formal complaint filed by the complainant and the time frame in which that decision will be made.

2. Title IX Coordinator Arranges Implementation of Supportive Measures

After considering the complainant's wishes, the Title IX Coordinator shall arrange the effective implementation of appropriate supportive measures unless, in the exercise of good judgment, the Title IX Coordinator determines that supportive measures should not be provided. If supportive measures are not provided to the complainant, the Title IX Coordinator shall document why supportive measures were not provided and why not providing supportive measures is not deliberately indifferent to known sexual harassment.

The supportive measures available to the complainant and the respondent are set forth in Regulation 1725/4035/7236-R, Title IX Sexual Harassment – Prohibited Conduct and Reporting Process.

If the complainant is a student with a disability, the Title IX Coordinator may need to consult with appropriate school personnel to determine whether adjustments to the student's IEP or Section 504 plan are needed to implement any supportive measures to

be provided and/or whether the student's plan necessitates any adjustment to the proposed supportive measures.

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

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

The Title IX Coordinator should file a formal complaint where, in the exercise of good judgment and in consultation with the school attorney as appropriate, the Title IX Coordinator determines that a grievance process is necessary to comply with the obligation not to be deliberately indifferent to known allegations of sexual harassment. Credibility or merit of the complaint shall not be considered in making the determination.

A decision by the Title IX Coordinator to sign a formal complaint is not to be construed as supportive of the complainant or in opposition to the respondent or as an indication of whether the allegations are credible or have merit, or whether there is evidence sufficient to determine responsibility. Signing a formal complaint does not make the Title IX Coordinator a complainant or party to the complaint nor relieve the Title IX Coordinator from any responsibilities under this policy.

The Title IX Coordinator shall document the decision of whether to sign a complaint and the reasons for that decision.

4. Presumption of Non-responsibility of Respondent and Bar on Disciplinary Sanctions without Due Process

The respondent identified in any report alleging sexual harassment under this policy will be presumed not responsible for the alleged conduct until the respondent's responsibility is conclusively established through the grievance process outlined in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process.

No disciplinary sanction or other action that is not a supportive measure, including but not limited to (1) short or long-term suspension, expulsion, or transfer to an alternative school or program for student-respondents and (2) suspension, demotion, or dismissal for employee-respondents, may be imposed for a violation of this policy unless the respondent agrees to a specific disciplinary sanction or action in an informal resolution or has been determined to be responsible for the sexual harassment at the conclusion of a grievance process that complies with the process in policy 1726/4036/7237. An employee-respondent, however, may be placed on administrative leave during the pendency of the grievance process if consistent with applicable state and federal laws.

Notwithstanding the limitation just described, respondents are subject to emergency

removal as described in the next paragraph.

5. Emergency Removal of Respondent from School or Employment

Any respondent is subject to removal from the school system's education program and activities, or any part of the program or activities, on an emergency basis if a school-based threat assessment team conducts an individualized safety and risk analysis and determines that removal is justified because the person poses an immediate health or safety threat to any person arising from the allegations of sexual harassment. A removal under this subsection includes a transfer of a student to an alternative education program consistent with policy 3470/4305, Alternative Learning Programs/Schools. A schedule change, and/or removing a student from an extracurricular activity is also considered a removal under this subsection where such action would not otherwise constitute a supportive measure.

The emergency removal may take place regardless of whether a formal complaint has been filed. However, any such removal must be consistent with federal and state law, including any applicable law protecting the rights of individuals with disabilities. The respondent shall receive notice of the removal and an opportunity to challenge the decision in an informal hearing with the superintendent or designee immediately following the removal.

An employee may be placed on administrative leave with or without pay during the pendency of the grievance process set out in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process, if consistent with state law and in accordance with any applicable requirements of state law.

The superintendent or designee shall document all emergency removal decisions under this subsection, including the immediate threat to health or safety that justified the removal.

6. Supportive Measures

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

G. Retaliation Prohibited

Retaliation against any person for the exercise of rights under Title IX or to interfere with those rights in any way, including making a report of Title IX sexual harassment, is strictly prohibited and will subject the perpetrator to disciplinary action. The identity of any person who has made a report or complaint of sex discrimination or sexual harassment or who is the alleged

perpetrator of sexual discrimination or sexual harassment will be confidential unless otherwise required or permitted by law. Complaints alleging retaliation may be filed according to the grievance processes established in policies 1740/4010 and 1750/7220. Acts of retaliation may also be subject to policy 1760/7280, Prohibition Against Retaliation.

H. Grievance Process for Formal Complaints

The grievance process for formal complaints of sexual harassment under this policy is set out in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process. The policy also provides an informal resolution process for complainants who seek an alternate means of resolution to their complaint.

As described in subsection F.3 above, the Title IX Coordinator may also initiate the grievance process, as needed.

I. Records

The Title IX Coordinator shall create and maintain for a period of seven years records of all reports and formal complaints of sexual harassment. For each report or formal complaint, the Coordinator shall document the following:

1. any actions, including any supportive measures, taken in response to the report or formal complaint;
2. that school officials have taken measures that are designed to restore or preserve equal access to the school system's education program and activities;
3. why school officials believe their response to the report or complaint was not deliberately indifferent; and
4. if supportive measures were not provided to the complainant, why that was not clearly unreasonable in light of the known circumstances.

In conjunction with the superintendent, the Title IX Coordinator shall also maintain for seven years all materials used to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process. These materials will be made publicly available on the school system's website.

Legal References: Title IX of the Education Amendments Act of 1972, [20 U.S.C. 1681et seq.](#), [34 C.F.R. pt. 106](#); [Gebser v. Lago Vista Independent School District](#), 524 U.S. 274 (1998); [G.S. 115C-335.5](#); [Davis v. Monroe County Board of Education](#), 526 U.S. 629 (1999); [Questions and Answers Regarding the Department's Final Title IX Rule](#), U.S. Department of Education, Office for Civil Rights (2020), available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-20200904.pdf>

Cross References: Prohibition Against Discrimination, Harassment, and Bullying (policy 1710/4021/7230), Discrimination, Harassment, and Bullying Complaint Procedure (policy

1720/4015/7235), Title IX Sexual Harassment Grievance Process (policy 1726/4036/7237), Prohibition Against Retaliation (policy 1760/7280), Grievance Procedure for Employees (policy 1750/7220), Alternative Learning Programs/Schools (policy 3470/4305), Staff-Student Relations (policy 4040/7310), Child Abuse – Reports and Investigations (policy 4240)

Adopted: October 4, 2021

Martin County Schools