

TALBOT COUNTY
PUBLIC SCHOOLS
EASTON, MD 21601

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NONDISCRIMINATION ADMINISTRATIVE REGULATIONS - AR

The Board of Education believes that discrimination and harassment of any form has no place in our schools and workplace. The following are the procedures for reporting and investigating complaints of discrimination and harassment.

A. Non-Sex/Gender Based Discrimination and Harassment

The following section applies only to discrimination and/or harassment directed toward employees. Non-sex/gender-based discrimination and/or harassment directed toward students shall be handled pursuant to Board Policy 10.16 and Administrative Regulation 10.16 Bullying, Harassment, or Intimidation.

I. DEFINITIONS

A. Discrimination means: conduct prohibited by federal, state, and local laws that results in an individual being treated differently or less favorably. Unlawful discrimination may include, but is not limited to, conduct based on an individual's race, color, religion, national origin, age, marital status, genetic information, disability, or veteran status.

B. Harassment means: unwelcome conduct or behavior prohibited by federal, state, or local laws that is sufficiently severe or pervasive that it objectively creates a hostile or offensive work environment.

C. Retaliation means: an adverse employment action taken against an individual for filing a complaint of discrimination or harassment or for participating in an investigation or other related proceeding.

II. REPORTING DISCRIMINATION /HARASSMENT

A. All employees are required to report incidents of discrimination or harassment to the Director of Human Resources.

III. INVESTIGATING DISCRIMINATION/HARASSMENT

A. The Director of Human Resources or his/her designee will promptly investigate all complaints.

B. Employees shall fully cooperate with the investigation of discrimination and/or harassment complaints.

C. The Director of Human Resources or his/her designee will advise all parties in writing of the outcome of the investigation.

D. If the Director of Human Resources or his/her designee concludes that unlawful discrimination or harassment or other violation of Board policy has occurred, appropriate corrective and/or disciplinary action will be taken, up to and including termination of employment.

E. All complaints, investigations, and related records will be maintained so as to protect the privacy of those involved to the greatest extent possible.

IV. RETALIATION

A. Retaliation against an individual who has made a complaint or participates in an investigation or other proceedings is strictly prohibited.

B. All complaints of retaliation will be reported to and investigated by the Director of Human Resources or his/her designee.

C. If the Director of Human Resources or his/her designee concludes that retaliation has occurred, appropriate corrective and/or disciplinary action will be taken, up to and including termination of employment.

B. Sex/Gender-Based Discrimination and Harassment

I. DEFINITIONS

A. Complainant means:

(1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX of the Education Amendments of 1972 (“Title IX”) or its regulations; or

(2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the recipient’s education program or activity at the time of the alleged sex discrimination.

B. Complaint means: an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or its regulations.

C. Confidential employee means: (1) an employee whose communications are privileged or confidential under federal or state law; or (2) an employee whom TCPS has designated as confidential for purposes of providing services to persons related to sex discrimination.

D. Disciplinary sanctions means: consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on sex discrimination.

E. Party means: a complainant or respondent.

F. Relevant means: related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

G. Remedies means: measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

H. Respondent means: a person who is alleged to have violated the recipient's prohibition on sex discrimination.

I. Retaliation means: intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations.

J. Sex discrimination means: discrimination on the basis of sex, and includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

K. Sex-based harassment means: a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:

(1) Quid pro quo harassment. An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (*i.e.*, creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- i. The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- ii. The type, frequency, and duration of the conduct;
- iii. The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- iv. The location of the conduct and the context in which the conduct occurred; and
- v. Other sex-based harassment in the recipient's education program or activity; or

(3) Specific offenses.

- i. Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
- ii. Dating violence meaning violence committed by a person:
 - a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 1. The length of the relationship;
 2. The type of relationship; and
 3. The frequency of interaction between the persons involved in the relationship;
- iii. Domestic violence meaning felony or misdemeanor crimes committed by a person who:
 - a. Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
 - b. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
 - c. Shares a child in common with the victim; or

- d. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or
- iv. Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - a. Fear for the person’s safety or the safety of others; or
 - b. Suffer substantial emotional distress.

L. Supportive measures means: individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- (1) Restore or preserve that party’s access to the recipient’s education program or activity, including measures that are designed to protect the safety of the parties or the recipient’s educational environment; or
- (2) Provide support during the recipient’s grievance procedures or during an informal resolution process.

Examples of supportive measures include, but are not limited to, counseling, extensions of deadlines, campus escort services, increase security and monitoring, restrictions on contact, leaves of absence, and changes in classes.

M. Title IX Coordinator means: the individual whom the Board of Education has designated and authorized to coordinate its efforts to comply with the Board of Education’s responsibilities under Title IX. **The Board of Education’s Title IX Coordinator is the Director of Student Services, 12 Magnolia Street, Easton, Maryland 21601, Title9Coordinator@talbotschools.org, (410) 822-0330.** Reports of alleged sex discrimination, including sex-based harassment, may be made to the Title IX Coordinator at any time, including during non-business hours. The Title IX Coordinator may delegate specific duties to one or more designees, as appropriate, so long as the designee has received the appropriate training required under the Title IX regulations or receives such training prior to taking any action in the relevant matter.

II. GENERALLY

A. Reporting requirement. All Talbot County Public Schools (“TCPS”) employees who are not confidential employees must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination, including sex-based harassment.

All TCPS employees who are confidential employees who receive information about conduct that reasonably may constitute sex discrimination, including sex-based

harassment, must explain to the person from whom the information is received: (1) the employee's status as confidential, including the circumstances in which the employee is not required to notify the Title IX Coordinator about the conduct that reasonably may constitute sex discrimination; (2) how to contact TCPS's Title IX Coordinator and how to make a complaint of sex discrimination; and (3) that the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.

B. Who Can File Complaint. The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that TCPS investigate and make a determination about alleged discrimination under Title IX:

- (1) A "complainant," which includes:
 - i. a student or employee of TCPS who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
 - ii. a person other than a student or employee of TCPS who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in TCPS's education program or activity;
 - iii. A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
 - iv. Under certain circumstances, TCPS's Title IX Coordinator.

- (2) Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

- (3) With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:
 - i. Any student or employee TCPS; or
 - ii. Any person other than a student or employee who was participating or attempting to participate in TCPS's education program or activity at the time of the alleged sex discrimination.

- (4) In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence of termination of an informal resolution process, the Title IX Coordinator must determine whether to initiate a complaint of sex discrimination. In making such determination, the Title IX Coordinator must consider, at a minimum, the following factors:

- i. The complainant's request not to proceed with initiation of a complaint;
- ii. The complainant's reasonable safety concerns regarding initiation of a complaint;
- iii. The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
- iv. The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- v. The age and relationship of the parties, including whether the respondent is an employee of TCPS;
- vi. The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- vii. The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
- viii. Whether TCPS could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures discussed below.

(5) If, after considering the factors in B.II(B)(3) and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or another person, or that the conduct as alleged prevents TCPS from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.

(6) If the Title IX Coordinator decides to initiate a complaint, the Title IX Coordinator must notify the complainant before doing so and appropriately address reasonable concerns about complainant's safety or the safety of others, including by providing supportive measures.

(7) Regardless of whether the Title IX Coordinator initiates a complaint, the Title IX Coordinator must take appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within TCPS's education program or activity.

(8) The Title IX Coordinator is not required to consider the relevant factors discussed in B.II(B)(3) regarding self- initiation of a complaint if the Title IX Coordinator reasonably determines that the conduct as alleged could not constitute sex discrimination.

C. Equitable treatment. The Board of Education will treat complainants and respondents equitably by offering supportive measures to complainants and by adhering to the following grievance process before imposing any disciplinary sanctions or other sanctions that are not supportive measures against respondents.

D. Emergency removal. Nothing in this administrative regulation shall preclude the Board of Education from removing a respondent from an education program or activity on an emergency basis, provided the Board of Education: (1) undertakes an individualized safety and risk analysis, (2) determines that an imminent threat to the physical health or safety of any student or other individual arising from the allegations of sex discrimination justifies removal, and (3) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. All such removals must be made in accordance with other applicable laws, including but not limited to the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

E. Administrative Leave. Nothing in this administrative regulation shall preclude the Board of Education from placing a non-student employee respondent on administrative leave during the pendency of the grievance process described below. Placement of any employee on such administrative leave must be made in accordance with other applicable laws, including but not limited to Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

F. Supportive Measures. TCPS will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to TCPS's education program or activity or provide support during TCPS's Title IX grievance procedures or during the informal resolution process, and TCPS may continue them beyond that point. Complainants and respondents have the right to seek review of any decision regarding provision or denial of supportive measures by an impartial employee other than the person who granted/denied the request. Complainants and respondents also have the right to seek modification or termination of a supportive measure applicable to them if circumstances change materially. If the complainant or respondent is a student with a disability, the Title IX Coordinator must coordinate with one or more members, as appropriate, of the student's Individualized Education (IEP) team of Section 504 team to determine how to comply with the requirements of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 in the implementation of supportive measures.

III. GRIEVANCE PROCESS

A. Generally. Upon receiving a complaint, the Title IX Coordinator shall initiate the following grievance process, which shall at all times be guided by the following basic principles:

- (1) TCPS will treat complainants and respondents equitably. TCPS requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decisionmaker may be the same person

as the Title IX Coordinator or investigator. The Title IX Coordinator may serve as both investigator and decisionmaker.

(2) TCPS presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

(3) TCPS will investigate and make determinations in as prompt a fashion as possible, but will grant reasonable requests for extensions of timeframes on a case-by-case basis for good cause and with notice to the parties that includes the reason for the delay.

(4) TCPS will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to: obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

(5) TCPS will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person’s status as a complainant, respondent, or witness.

B. The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by TCPS to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

(1) Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(2) A party’s or witness’s records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless TCPS obtains that party’s or witness’s voluntary, written consent for use in its grievance procedures; and

(3) Evidence that relates to the complainant’s sexual interests or prior sexual conduct, unless evidence about the complainant’s prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant’s prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and

respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

C. Written Notice of Allegations. Upon receiving a complaint, the Title IX Coordinator shall promptly provide written notice to all known parties which shall contain:

- (1) TCPS's Title IX grievance procedures and informal resolution process;
- (2) Notice of the allegations, including sufficient details known at the time (i.e., names of known parties, the conduct alleged, the date and location of the conduct, if known);
- (3) Notice that retaliation is prohibited; and
- (4) Notice of the parties' right to inspect and review relevant and not otherwise impermissible evidence.
- (5) If in the course of the investigation the Board of Education decides to investigate allegations about the complainant or respondent that are not included in the original written notice, notice of the additional allegations must also be provided in writing to the known parties.

D. Consolidation of Complaints. The Board of Education may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sex discrimination, including sex-based harassment, arise out of the same facts or circumstances.

E. Dismissal of Complaint. TCPS may dismiss a complaint of sex discrimination if:

- (1) TCPS is unable to identify the respondent after taking reasonable steps to do so;
- (2) The respondent is not participating in TCPS's education program or activity and is not employed by TCPS;
- (3) The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and TCPS determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- (4) TCPS determines the conduct alleged in the complaint, even if proven,

would not constitute sex discrimination under Title IX. Before dismissing the complaint, TCPS will make reasonable efforts to clarify the allegations with the complainant

(5) Upon dismissal, TCPS will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then TCPS will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

(6) TCPS will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then TCPS will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- i. Procedural irregularity that would change the outcome;
- ii. New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- iii. The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

(7) If the dismissal is appealed, TCPS will:

- i. Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- ii. Implement appeal procedures equally for the parties;
- iii. Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- iv. Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- v. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- vi. Notify the parties of the result of the appeal and the rationale for the result.

(8) When a complaint is dismissed, TCPS will, at a minimum:

- i. Offer supportive measures to the complainant as appropriate;
- ii. If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- iii. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within TCPS's education program or activity

F. Informal Resolution. After the filing of a complaint but before a determination regarding responsibility has been issued, the Board of Education may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that all parties freely consent to the informal resolution process the Board of Education:

- (1) Provides the parties written notice disclosing:
 - i. The allegations;
 - ii. The requirements of the informal resolution process, and
 - iii. That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume TPCS's grievance procedures;
 - iv. That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;
 - v. The potential terms that may be requested or offered in an informal resolution agreement, including restrictions on contact and restrictions on the respondent's participation in one or more of TCPS's education programs and activities, including notice that an informal resolution agreement is binding only on the parties; and
 - vi. What information TCPS will maintain and whether and how TCPS could disclose such information for use in grievance procedures if grievance procedures are initiated or resumed.
- (2) Obtains the parties' voluntary, written consent to the informal resolution process; and
- (3) Does not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in sex-based harassment a student.
- (4) The informal resolution process facilitator: must not be the same person as the investigator or decisionmaker in TCPS's grievance procedures; must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent; and must receive the training required by the Title IX regulations.
- (5) The Title IX Coordinator must take appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within TCPS's education program or activity.

G. Investigation of Complaint.

- (1) TCPS will provide for adequate, reliable, and impartial investigation of complaints.
- (2) The burden is on TCPS—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.
- (3) TCPS will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.
- (4) TCPS will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
- (5) TCPS will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- i. TCPS will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. (If TCPS provides a description of the evidence, TCPS will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party);
- ii. TCPS will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- iii. TCPS will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

H. Determination Regarding Responsibility.

- (1) Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, TCPS will:
 - ii. Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness, including consideration of the credibility of the parties and witnesses. Where the decisionmaker was not the investigator, the decisionmaker may question the parties or witnesses to assess credibility. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred,

- whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- iii. Notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal;
 - iv. Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
 - v. If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
 - 1. Coordinate the provision and implementation of remedies to a complainant and other people TCPS identifies as having had equal access to TCPS education program or activity limited or denied by sex discrimination;
 - 2. Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
 - 3. Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within TCPS's education program or activity.
 - vi. Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
 - vii. Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

I. Range of Disciplinary Sanctions and Remedies. Sanctions and remedies may only be implemented following issuance of a determination regarding responsibility and should be implemented in a measured way based upon the totality of the circumstances. The following are examples of possible sanctions and remedies:

- (1) As to students, change of student educational placement, suspension, and expulsion; and
- (2) As to employees, suspension without pay and termination of employment.
- (3) If the respondent is a student and the disciplinary sanction is a suspension for more than ten days or expulsion, the decision-maker shall follow the procedure set forth in Board Policy 10.23 and AR 10.23.
- (4) If the respondent is a tenured certificated employee and the disciplinary sanction is suspension without pay or termination of employment, the decision-maker shall follow the procedure set forth in Board Policy 2.4.

(5) The Title IX Coordinator is responsible for effective implementation of any remedies.

(6) If the final determination is that the alleged conduct occurred but did not meet the definition of sex discrimination, including sex-based harassment, as defined above, the Title IX Coordinator shall refer the matter to: (a) the Director of Human Resources if the alleged perpetrator is an employee; or (b) the school principal of the school the alleged perpetrator attends if the alleged perpetrator is a student.

J. Appeals. Either party may appeal a determination pursuant to Talbot County Public Schools Policy and Administrative Regulations 10.13 (Complaint Procedures Regarding State or Federal Statutes or Regulations)

K. Recordkeeping. The Board of Education shall maintain for a period of at least seven (7) years records of:

(1) For each complaint of sex discrimination, records documenting the informal resolution process or the grievance process and the resulting outcome;

(2) For each notification the Title IX receives of information about conduct that reasonably may constitute sex discrimination, records documenting the actions TCPS took to meet its obligations under this procedure; and

(3) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The Board of Education shall make these training materials available upon request for inspection by members of the public.

IV. RETALIATION

A. Retaliation Prohibited. The Board of Education shall not, and shall not permit any of its employees, agents, or students, to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX and its regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding.

The Board of Education shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted or required by law.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination described above.

B. Conduct Not Constituting Retaliation. The exercise of rights protected under the First Amendment does not constitute retaliation under this Administrative Regulation.

V. CONDUCT NOT RISING TO THE LEVEL OF SEX-BASED HARASSMENT.

A. In general. The Board of Education acknowledges that there may be instances when a student or employee exhibits harassing behavior of a sexual nature that nevertheless does not meet the definition of “sex-based harassment” as defined above. Such conduct is nevertheless prohibited and may be the subject of discipline pursuant to the following procedures.

B. Sexual Harassment Defined. For purposes of this Section of this Administrative Regulation, sexual harassment is broadly defined as unwelcome behavior towards a person based on their sex. Sexual harassment may be perpetrated by a member of the same or opposite sex of the victim. Sexual harassment is defined as any unwelcome sexual advancement, request for sexual favors, or other physical or verbal conduct of a sexual nature when:

- (1) Submission to such conduct is made whether explicitly or implicitly a term or condition of an individual’s employment or education; or
- (2) Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; or
- (3) Such conduct has the purpose or effect of unreasonably interfering with an individuals’ academic or professional performance or creating an intimidating, hostile or offensive employment or education environment.

Sexual harassment may include, but is not limited to, the following:

- i. leering at someone else’s body
- ii. making comments, gestures or jokes of a sexual manner
- iii. manipulating clothing in a sexual manner
- iv. displaying sexual pictures or objects
- v. spreading sexual rumors or commenting about sexual behavior
- vi. repeatedly pressuring for dates or unwanted sexual behavior
- vii. touching, grabbing, and/or pinching
- viii. teasing and/or bullying using sexual terms
- ix. asking for sexual favors in exchange for grades or participation in school activities
- x. inflicting physical sexual assault or abuse

C. Investigation Generally. Upon referral of a matter from the Title IX Coordinator, the Director of Human Resources or the school principal, whichever is appropriate, shall promptly conduct an investigation of the allegations. In conducting an investigation, the Director of Human Resources and/or the school principal may rely in

whole or in part on the record developed by the Title IX Coordinator or through the formal grievance process.

D. Investigation of Sexual Harassment by Employees. Sexual harassment by employees directed against a student, another employee, or member of the public is considered an immoral act and misconduct in office and will be considered grounds for suspension or dismissal in accordance with Section 6-202 of the Education Article of the Annotated Code of Maryland and Board Policy. The procedure for handling complaints of sexual harassment by employees that does not meet the definition of sexual harassment set forth in Section I of this Administrative Regulation is as follows:

- (1) Processing of sexual harassment complaints involving employees is the responsibility of the Human Resources Department. If the complaint concerns a school based employee, the principal shall also participate in the investigation. An attorney may be used to facilitate the investigation if deemed appropriate.
- (2) The individuals conducting the investigation must be objective, asking questions but expressing any opinion as to the merits of the claim.
- (3) If necessary, the individuals conducting the investigation will interview and obtain a written, signed statement from the person making the complaint. Sensitivity and respect must be shown to all parties involved.
- (4) The names of all witnesses and all surrounding circumstances which might help resolve any question of fact must be obtained.
- (5) Next, the person accused of the sexual harassment behavior must be interviewed.
- (6) Witnesses must also be interviewed.
- (7) If possible, written, signed statements must be obtained from all persons interviewed.
- (8) A written log of the investigation should be kept.
- (9) Throughout the investigation it should be stressed that not only is Talbot County Public Schools committed to maintaining an environment free of sexual harassment but also to protecting innocent individuals from false accusations.
- (10) A prompt determination of whether the alleged conduct occurred and whether it constituted sexual harassment must be made.
- (11) If it is determined that sexual harassment has occurred, immediate and appropriate steps must be taken to prevent recurrence. A written recommendation

should be given to the Superintendent for appropriate disciplinary action, including suspension or termination, in accordance with Section 6-202 of the Education Article of Annotated Code of Maryland and/or Board Policy.

E. Investigation of Sexual Harassment by Students. Sexual harassment by students is considered an expellable offense in accordance with Talbot County Public School Suspension and Expulsion Policy Codes 10.22 and 10.23. The procedure for handling complaints of sexual harassment by a student that does not meet the definition of sexual harassment set forth in Section I of this Administrative Regulation may be found in Board Policy and Administrative Regulation 10.16 Student Conduct – Bullying, Harassment or Intimidation.

F. Retaliation Prohibited. The Board of Education prohibits any form of retaliatory action against any employee or student who files complaint of sexual harassment or who participates in any investigation or proceeding under this procedure.