

EMPLOYEE COMPLAINTS OF SEXUAL HARASSMENT

The Board of Directors recognizes that an employee's right to freedom from discrimination includes the opportunity to work in an environment untainted by sexual harassment. Sexually offensive speech and conduct are wholly inappropriate to the operation of the School and will not be tolerated.

It shall be a violation of this policy for any member of the School staff or a third party (i.e., visiting speaker or a visiting athletic team) to harass an employee through conduct or communications of a sexual nature as defined below. This includes harassment by a supervisor or another co-employee.

1. Definition

- a. Sexual harassment – conduct on the basis of sex that satisfies one or more of the following:
 - (i) A school employee conditioning education benefits on participation in unwelcome sexual conduct (*i.e., quid pro quo*); or
 - (ii) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
 - (iii) Sexual assault (as defined in the Clery Act, 20 U.S.C. 1092(f)), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.
- b. Complainant – an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- c. Respondent – an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- d. Formal complaint – 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 the education programs or activities of the School.

2. Duty to Respond

The School will promptly respond when an allegation of sexual harassment occurs in an education program or activity. Education programs and activities include locations, events, or circumstances over which the School exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

3. Supportive Measures

“Supportive measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge, to an alleged victim or respondent, before or after the filing of a formal complaint or where no formal complaint has been filed. The purpose of supportive measures is equal access to education.

The School shall offer supportive measures to a complainant. The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

Supportive measures may include:

- a. Counseling;
- b. Modifications of work schedules;
- c. Campus escort services;
- d. Mutual restrictions on contact between the parties;
- e. Changes in work locations;
- f. Leaves of absence;
- g. Increased security and monitoring of certain areas of campus.

4. Complaint Procedure

- a. Retaliation against those who file a complaint or participate in the investigation of the complaint is prohibited. No employee or representative of the School, nor any other person, may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Complaints alleging retaliation may be filed according to the procedures for sex discrimination.

- b. The intent of the following reporting procedure is to provide a quick and fair resolution of complaints of sexual harassment.
- c. The staff member desiring to file a sexual harassment complaint must present the complaint, in writing to the Title IX Coordinator. The School's designated and authorized Title IX Coordinator is:

For Girls: Susie Sexton
Civic and Family Engagement Coordinator
3700 County Road 168
Cardington, OH 43315
(419) 718-4242
ssexton@thetomorrowcenter.org

For Boys: Joe Sumner
Teacher
3700 County Road 168
Cardington, OH 43315
(419) 718-4242
jsumner@thetomorrowcenter.org

The Title IX Coordinator or his/her designee shall promptly investigate the matter unless otherwise designated by the Board.

The designated/authorized Title IX Coordinator and his/her contact information shall be made known to all applicants for admission and employment, students, parents or legal guardians of students, employees, and all of the School's employee unions. Further, the School shall prominently display on its website the contact information for the Title IX Coordinator.

- d. If the Title IX Coordinator is the employee alleged to have engaged in sexual harassment, the complaint shall be sent directly to the President of the Board. The Board will either conduct the investigation set out below, or appoint an investigator in its place.
- e. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or

electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

- f. The School will treat a person as a complainant any time it has notice that the person is alleged to be the victim of conduct that could constitute sexual harassment (regardless of whether the person themselves reported, or a third party reported the sexual harassment), and irrespective of whether the complainant ever chooses to file a formal complaint.
- g. The right to confidentiality, both of the complainant and of the respondent, will be respected consistent with the School's legal obligation and with the necessity to investigate allegations of misconduct and take corrective action when this conduct has occurred. The School will keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.

5. Investigation

- a. The investigator should remember that the investigation requires a balancing of the respondent's rights, the complainant's right to an environment free of sexual harassment, and the Board's interest in a prompt and fair investigation. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the School and not on the parties.
- b. The investigator shall send written notice to both parties of the allegations set forth in the complaint upon receipt of a formal complaint. The notice must include sufficient details known at the time, including the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process; that the parties may have an advisor of their choice, who may be an attorney, and may inspect and review evidence; and notice of any provision in School's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- c. The investigator shall meet with the complainant within a reasonable period of time from the time of making the complaint. However, the investigator is urged to meet with the complainant as soon as possible.

- d. Following the meeting with the complainant, the investigator shall conduct an adequate, reliable, and impartial investigation, which shall include the opportunity to identify witnesses and other evidence, to determine if sexual harassment has occurred. The investigation shall include a conference with the respondent and the complainant, as well as any and all other methods which are considered necessary to determine whether harassment has occurred. Both parties must be permitted an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- e. The investigator will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the School obtains that party's voluntary, written consent to do so.
- f. Both parties shall be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the School does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

6. Post-Investigation Procedures

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

Upon conclusion of the investigation, the investigator shall issue a written report. After the investigative report has been sent to the parties and before reaching a determination regarding responsibility, the decision maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. The decision maker(s) must explain to the party proposing the questions any decision to exclude questions as not relevant

Although the facts and circumstances of a particular investigation may require an investigation to continue beyond 45 school days, it is recommended that the investigation and a report of the findings be completed within that time frame. The report shall include a determination of whether the respondent was found to have engaged in harassment, was found not to have engaged in harassment, or whether the investigation was inconclusive. The School shall use a clear and convincing evidence standard to make such determination. The report shall be issued to the complainant, if an employee, or to the complainant's parents, if a student. A copy of the report shall also be sent to the Executive Director or his/her designee.

- b. A finding of no harassment or inconclusive evidence by the decision maker shall end the investigation.
- c. If the decision maker finds that harassment occurred, the investigator shall recommend what steps are necessary to ensure that the harassment is eliminated for the victim and other individuals affected by the sexual harassment and to correct its discriminatory effects on the complainant and others, if appropriate. An individual who complains of sexual harassment shall not be required to work out the problem directly with the person alleged to have harassed him or her.

7. Informal Resolution

The investigator may offer informal resolution options if a formal complaint is filed, and both parties give voluntary, informed, written consent. The School shall not require, as a condition of employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints. Any party has the right to withdraw from informal resolution and resume the grievance process with respect to the formal complaint. The investigator will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

8. Appeals

The School will offer both parties the opportunity to appeal from a determination regarding responsibility, and from a dismissal of a formal complaint or any allegations therein, on the following bases:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or

- c. The Title IX Coordinator, investigator, or decision maker had a conflict of interest or bias that affected the outcome of the matter.

An appeal must be submitted in writing to the Title IX Coordinator within seven calendar days of the issuance of the determination regarding responsibility, which includes a statement specifying the grounds for the appeal. The opposing party will be notified of the appeal and provided seven calendar days from such notice to submit to a statement in support of the outcome.

An “Appeal Decision Maker” shall be designated by the Executive Director to review the investigative report and the statements submitted by the parties as part of the appeal. The Appeal Decision Maker shall investigate whether a basis for overturning the decision regarding responsibility exists. The Appeal Decision Maker shall not be the same person as the decision maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

The Appeal Decision Maker shall issue a written decision describing the result of the appeal and the rationale for the result, and shall provide the written decision simultaneously to both parties and their advisors within 28 calendar days of the Title IX Coordinator’s receipt of a parties’ notice of appeal of the original decision maker.

9. Dismissal of Complaints

- a. Complaints must be dismissed by the decision maker where the allegations, if true, would not meet the Title IX jurisdictional conditions:
 1. The actions complained of do not meet the definition of “sexual harassment”;
 2. The actions complained of were not against a person in the United States;
 3. The actions complained of did not occur in the School’s education program or activity.
- b. Complaints may be dismissed by the decision maker where:
 1. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 2. The respondent is no longer enrolled or employed by the School; and/or

3. Specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the allegations contained in the formal complaint.
- c. The Title IX Coordinator will send the parties written notice of any dismissal decision, and the reason(s) therefore.
- d. Both parties shall have the right to appeal a dismissal decision by submitting written notice of appeal to the Title IX Coordinator within seven calendar days of the issuance of the dismissal notice. The Appeal Decision Maker shall review the notice of appeal and issue a decision regarding the appeal in writing to both parties within 14 calendar days of the issuance of the notice of dismissal.

10. Discipline

If sexual harassment is found to have occurred, the person who engaged in such harassment may be disciplined. The discipline must be reasonably calculated to end the harassment and to remedy its effects on the complainant, and others, if appropriate. Any discipline not resulting in termination must include a directive that the employee not engage in such harassment in the future. Making a materially false statement in bad faith in the course of an investigation under this Policy may subject an employee to disciplinary action.

11. Notice

Written notice of the outcome of the complaint shall be provided to the complainant and the respondent.

LEGAL REFS: Title IX of the Education Amendments of 1972
20 C.F.R. 1604.11

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