

# **HARASSMENT, INTIMIDATION, BULLYING, AND TITLE IX POLICY FLEX High School**

The Harassment, Intimidation, Bullying, and Title IX Policy of FLEX High School (the “School”), an Ohio non-profit corporation and tax-exempt organization, has been established to set forth requirements established by the United States Department of Education, the Ohio Department of Education, and the Ohio Revised Code, with respect to school policies prohibiting harassment, intimidation or bullying.

## **Article I: Harassment, Intimidation, and Bullying**

### **Section I: Policy**

1. It is the policy of the School that any form of bullying behavior, whether in the classroom, on school property, to and from school or at school-sponsored events, is expressly forbidden.
2. The disciplinary procedure for any student guilty of harassment, intimidation, or bullying shall not infringe on any student’s rights under the first amendment to the Constitution of the United States.
3. The School’s administration shall semiannually provide the president of the board of directors a written summary of all reported incidents and post the summary on its web site, to the extent permitted by section 3319.321 of the Revised Code and the “Family Educational Rights and Privacy Act of 1974,” 88 Stat. 571, 20 U.S.C. 1232q, as amended.
4. The School’s policy on harassment, intimidating and bullying shall appear in any student handbooks, and in any of the publications that set forth the comprehensive rules, procedures, and standards of conduct for schools and students. Information regarding the policy shall be incorporated into employee training materials.
5. Any School employee, student, or volunteer shall be individually immune from liability in a civil action for damages arising from reporting an incident in accordance with a policy adopted pursuant to this policy if that person reports an incident of harassment, intimidation, or bullying promptly in good faith and in compliance with the procedures as specified in this policy.
6. Except as provided in paragraph five (5) above, nothing in this section prohibits a victim from seeking redress under any other provision of the Ohio Revised Code or common law that may apply.
7. This policy does not create a new cause of action or a substantive legal right for any person.
8. Students who have been determined to have engaged in prohibited behaviors are subject to disciplinary action, which may include suspension or expulsion from school. The School’s commitment to addressing such prohibited behaviors, however, involves a multifaceted approach, which includes education and the promotion of a school atmosphere in which harassment, intimidation or bullying will not be tolerated by students, faculty or school personnel.

9. It is imperative that harassment, intimidation, or bullying be identified only when the specific elements of the definition are met because the designation of such prohibited incidents carry special statutory obligations. However, misconduct by one student against another student, whether appropriately defined or not, will result in appropriate disciplinary consequences for the perpetrator.

## **Section II: Definitions**

1. Harassment, intimidation or bullying means either of the following:
  - a. Any intentional written, verbal, or physical act that a student has exhibited toward another particular student more than once and the behavior both:
    - i. Causes mental or physical harm to the other student;
    - ii. Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student.
  - b. Violence within a dating relationship.
2. Harassment, intimidation or bullying also means electronically transmitted acts i.e., Internet, cell phone, personal digital assistance (PDA) or wireless hand-held device that a student has exhibited toward another particular student more than once and the behavior both:
  - a. Causes mental or physical harm to the other student/school personnel; and
  - b. is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for the other student/school personnel.
3. In evaluating whether conduct constitutes harassment, intimidation or bullying, special attention should be paid to the words chosen or the actions taken, whether such conduct occurred in front of others or was communicated to others, how the perpetrator interacted with the victim, and the motivation, either admitted or appropriately inferred.
4. A school-sponsored activity shall mean any activity conducted on or off school property (including school buses and other school-related vehicles) that is sponsored, recognized or authorized by The School.

## **Section III: Types of Conduct**

1. Harassment, intimidation or bullying can include many different behaviors including overt intent to ridicule, humiliate or intimidate another student or school personnel. Examples of conduct that could constitute prohibited behaviors include:
  - a. Physical violence and/or attacks;
  - b. threats, taunts and intimidation through words and/or gestures;
  - c. extortion, damage or stealing of money and/or possessions;
  - d. exclusion from the peer group or spreading rumors; and

- e. repetitive and hostile behavior with the intent to harm others through the use of information and communication technologies and other web-based/online sites (also known as “cyber bullying”), such as the following:
  - i. Posting slurs on websites where students congregate or on web-logs (personal online journals or diaries);
  - ii. sending abusive or threatening instant messages;
  - iii. using camera phones to take embarrassing photographs of students and posting them online;
  - iv. using websites to circulate gossip and rumors to other students; and
  - v. excluding others from an online group by falsely reporting them for inappropriate language to Internet service providers.

#### **Section IV: Complaint Process**

1. Publication of the prohibition against harassment, intimidation and bullying and related procedures.
  - a. The prohibition against harassment, intimidation or bullying shall be publicized in any student handbooks and in any of the publications that set forth the comprehensive rules, procedures and standards of conduct for students at the School. In addition, information regarding the policy shall be incorporated into employee training materials. The following statement shall be included:
    - i. Harassment, intimidation, or bullying behavior by any student/school personnel at the School is strictly prohibited, and such conduct may result in disciplinary action, including suspension and/or expulsion from school. Harassment, intimidation, or bullying, in accordance with House Bill 276, means any intentional written, verbal, graphic or physical acts including electronically transmitted acts i.e., Internet, cell phone, personal digital assistant (PDA), or wireless hand-held device, either overt or covert, by a student or group of students toward other students/school personnel with the intent to harass, intimidate, injure, threaten, ridicule or humiliate. Such behaviors are prohibited on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop that a reasonable person under the circumstances should know will have the effect of:
      1. Causing mental or physical harm to the other student/school personnel including placing an individual in reasonable fear of physical harm and/or damaging of students’/personal property; and
      2. is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student/school personnel.

## Section V: Complaints

1. Formal complaints
  - a. Students, parents, or guardians may file reports regarding suspected harassment, intimidation, or bullying. Such written reports shall be reasonably specific including person(s) involved, number of times and places of the alleged conduct, the target of suspected harassment, intimidation and/or bullying, and the names of any potential student or staff witnesses. Such reports may be filed with any school staff member or administrator, and they shall be promptly forwarded to the principal for review and action in accordance with Section 7 of this policy.
  
2. Informal complaints
  - a. Students, parents or guardians and school personnel may make informal complaints of conduct that they consider to be harassment, intimidation and/or bullying by verbal report to a teacher, school administrator, or other school personnel. Such informal complaints shall be reasonably specific as to the actions giving rise to the suspicion of harassment, intimidation and/or bullying, including person(s) involved, number of times and places of the alleged conduct, the target of the prohibited behavior(s), and the names of any potential student or staff witness. A school staff member or administrator who receives an informal complaint shall promptly document the complaint in writing, including the above information. This written report by the school staff member and/or administrator shall be promptly forwarded to the principal for review and action in accordance with Section 7 of this policy.
  
3. Anonymous complaints
  - a. Students who make informal complaints as set forth above may request that their name be maintained in confidence by the school staff member(s) and administrator(s) who receive the complaint. The anonymous complaints shall be reviewed and reasonable action will be taken to address the situation, to the extent such action may be taken that (i) does not disclose the source of the complaint, and (ii) is consistent with the due process rights of the student(s) alleged to have committed acts of harassment, intimidation and/or bullying.
  
4. False complaints
  - a. Students are prohibited from deliberately making false reports of harassment, intimidation, or bullying. Any complaints made or reports filed alleging harassment, intimidation or bullying, as provided in this policy, found to be false will be disciplined according to current school disciplinary procedure(s) established and implemented and being consistent with due process rights of all students involved, including the student(s)

making such false claims. If it is found that a student made deliberately false claim(s) of harassment, intimidation, or bullying the student is subject to the full range of disciplinary consequences in accordance with Section 7 of this policy and being consistent with due process rights of the student making such false claims.

## **Section VI: School Personnel Responsibilities and Intervention Strategies**

1. Teachers and other school staff
  - a. Teachers and other school staff who witness acts of harassment, intimidation or bullying, as defined above, shall promptly notify the building principal and/or their designee of the event observed, and shall promptly file a written incident report concerning the events witnessed. Teachers and other school staff who receive student or parent reports of suspected harassment, intimidation, and bullying shall promptly notify the building principal and/or their designee of such report(s). If the report is a formal, written complaint, such complaint shall be forwarded promptly (no later than the next school day) to the building principal and/or their designee. If the report is an informal complaint by a student that is received by a teacher or other professional employee, he or she shall prepare a written report of the informal complaint which shall be promptly forwarded (no later than the next school day) to the building principal and/or their designee.
  - b. In addition to addressing both informal and formal complaints, school personnel are encouraged to address the issue of harassment, intimidation or bullying in other interactions with students. School personnel may find opportunities to educate students about harassment, intimidation and bullying and help eliminate such prohibited behaviors through class discussions, counseling, and reinforcement of socially appropriate behavior. School personnel should intervene promptly whenever they observe student conduct that has the purpose or effect of ridiculing, humiliating or intimidating another student/school personnel, even if such conduct does not meet the formal definition of “harassment, intimidation or bullying.”
2. Administrator responsibilities
  - a. Investigation
    - i. The principal and/or their designee shall be promptly notified of any formal or informal complaint of suspected harassment, intimidation or bullying. Under the direction of the building principal and/or their designee, all such complaints shall be investigated promptly. A written report of the investigation shall be prepared when the investigation is complete. Such report shall include findings of fact, a determination of whether acts of harassment, intimidation or bullying were verified, and, when prohibited acts are verified, a

recommendation for intervention, including disciplinary action shall be included in the report. Where appropriate, written witness statements shall be attached to the report.

- ii. Notwithstanding the foregoing, when a student making an informal complaint has requested anonymity, the investigation of such complaint shall be limited as is appropriate in view of the anonymity of the complaint. Such limitation of investigation may include restricting action to a simple review of the complaint (with or without discussing it with the alleged perpetrator), subject to receipt of further information and/or the withdrawal by the complaining student of the condition that his/her report be anonymous.

b. Remedial actions

- i. Verified acts of harassment, intimidation, or bullying shall result in an intervention by the building principal and/or their designee that is intended to ensure that the prohibition against harassment, intimidation or bullying behavior is enforced, with the goal that any such prohibited behavior will cease.
- ii. Harassment, intimidation and bullying behavior can take many forms and can vary dramatically in seriousness and impact on the targeted individual and other students. Accordingly, there is no one prescribed response to verified acts of harassment, intimidation and bullying. While conduct that rises to the level of “harassment, intimidation or bullying,” as defined above, will generally warrant disciplinary action against the perpetrator of such prohibited behaviors, whether and to what extent to impose disciplinary action (detention, in and out-of-school suspension, or expulsion) is a matter for the professional discretion of the building principal. The following sets forth possible interventions for building principals to enforce the board of directors prohibition against “harassment, intimidation or bullying.”

c. Non-disciplinary interventions

- i. When verified acts of harassment, intimidation or bullying are identified early and/or when such verified acts do not reasonably require a disciplinary response, students may be counseled as to the definition of harassment, intimidation or bullying, its prohibition and their duty to avoid any conduct that could be considered harassing, intimidating or bullying.
- ii. If a complaint arises out of conflict between students or groups of students, peer mediation may be considered. Special care, however, is warranted in referring such cases to peer mediation. A power imbalance may make the process intimidating for the victim and therefore inappropriate. The victim’s communication and assertiveness skills may be low and could be further eroded by fear resulting from past intimidation and fear of future intimidation. In

such cases, the victim should be given additional support. Alternatively, peer mediation may be deemed inappropriate to address the concern.

d. Disciplinary interventions

- i. When acts of harassment, intimidation and bullying are verified, or a false claim alleging the same is substantiated, and a disciplinary response is warranted, students are subject to the full range of disciplinary consequences. Anonymous complaints that are not otherwise verified, however, shall not be the basis for disciplinary action.
- ii. In and out-of-school suspension may be imposed only after informing the accused perpetrator of the reasons for the proposed suspension and giving him/her an opportunity to explain the situation.
- iii. Expulsion may be imposed only after a hearing before the board of directors or an impartial hearing officer designated by the board of directors in accordance with board policy. This consequence shall be reserved for serious incidents of harassment, intimidation or bullying and/or when past interventions have not been successful in eliminating prohibited behaviors.

3. Intervention strategies

a. General

- i. In addition to the prompt investigation of complaints of harassment, intimidation or bullying and direct intervention when such prohibited acts are verified, other board actions may ameliorate any potential problem with harassment, intimidation or bullying in school or at school-sponsored activities. While no specific action is required and school needs for such interventions may vary from time to time, the following list of potential intervention strategies shall serve as a resource for administrators and school personnel:
  1. Respectful responses to harassment, intimidation or bullying concerns raised by students, parents or school personnel;
  2. planned professional development programs addressing targeted individuals' problems, including what is safe and acceptable Internet use;
  3. data collection to document victim problems to determine the nature and scope of the problem;
  4. use of peers to help ameliorate the plight of victims and include them in group activities;
  5. avoidance of sex-role stereotyping (e.g., males need to be strong and tough);

6. awareness and involvement on the part of all school personnel and parents with regard to victim problems;
7. an attitude that promotes communication, friendship, assertiveness skills and character education;
8. modeling by school personnel of positive, respectful and supportive behavior toward students;
9. creating a school atmosphere of team spirit and collaboration that promotes appropriate social behavior by students in support of others (Ohio School Climate Guidelines);
10. employing classroom strategies that instruct students how to work together in a collaborative and supportive atmosphere; and
11. form harassment, intimidation and bullying task forces, programs and other initiatives involving volunteers, parents, law enforcement and community members.

b. Intervention strategies for protecting victims

- i. Supervise and discipline offending students fairly and consistently;
- ii. provide adult supervision during recess, lunch time, bathroom breaks and in the hallways during times of transition;
- iii. maintain contact with parents and guardians of all involved parties;
- iv. provide counseling for the victim if assessed that it is needed;
- v. inform school personnel of the incident and instruct them to monitor the victim and the offending party for indications of harassing, intimidating and bullying behavior. Personnel are to intervene when prohibited behaviors are witnessed; and
- vi. check with the victim daily to ensure that there has been no incidents of harassment/intimidation/bullying or retaliation from the offender or other parties.

### **Section VII: Reporting Obligations**

1. Report to the parent or guardian of the perpetrator

- a. If after investigation, acts of harassment, intimidation and bullying by a specific student are verified, the building principal and/or their designee shall notify in writing the parent or guardian of the perpetrator of that finding. If disciplinary consequences are imposed against such student, a description of such discipline shall be included in such notification.

2. Reports to the victim and his/her parent or guardian

- a. If after investigation, acts of bullying against a specific student are verified, the building principal and/or their designee shall notify the parent or guardian of the victim of such finding. In providing such notification, care



must be taken to respect the statutory privacy rights of the perpetrator of such harassment, intimidation, and bullying.

3. List of verified acts of harassment, intimidation, or bullying
  - a. It is a requirement that the School administrators semiannually provide the president of the board of directors a written summary of all reported incidents and post the summary on the School website. The list shall be limited to the number of verified acts of harassment, intimidation and bullying, whether in the classroom, on school property, to and from school, or at school-sponsored events.
  - b. This policy shall not be interpreted to prohibit a reasonable and civil exchange of opinions or debate that is protected by state or federal law such as the nondiscrimination, suspension/expulsion, due process, violent and aggressive behavior, hazing, discipline/punishment, sexual harassment, peer sexual harassment and equal educational opportunity acts.

### **Section VIII: Police and Child Protective Services**

1. Allegations of criminal misconduct will be reported to law enforcement, and suspected child abuse must be reported to Child Protective Services, per required timelines. The School must also investigate for the purpose of determining whether there has been a violation of the School's Policy or Procedure, even if law enforcement or CPS is also investigating. All School personnel must cooperate with investigations by outside agencies.
2. In addition to, or instead of filing a harassment, intimidation or bullying complaint through this policy, a complainant may choose to exercise other options, including but not limited to filing a complaint with outside agencies or filing a private lawsuit. Nothing prohibits a complainant from seeking redress under any other provision of the Ohio Revised Code or common law that may apply.

### **Section IX: Training**

1. Orientation sessions for students shall introduce the elements of this policy and procedure. Students will be provided with age-appropriate information on the recognition and prevention of harassment, intimidation or bullying, and their rights and responsibilities under this and other school policies, procedures and rules at student orientation sessions and on other appropriate occasions. Parents will be provided with information about this policy and procedure, as well as information about other school rules and disciplinary policies. This policy and procedure shall be reproduced in student, staff, volunteer and parent handbooks.
2. Information regarding the policy on harassment, intimidation and bullying behavior shall be incorporated into employee and volunteer training materials and with direct contact with students. Time spent by school employees in the training, workshops or courses shall apply toward any state or school mandated continuing education requirements.
3. School personnel members are encouraged to address the issue of harassment, intimidation and bullying in other interaction with students. School personnel may

find opportunities to educate students about bullying and help eliminate bullying behavior through class discussions, counseling and reinforcement of socially appropriate behavior. School personnel should intervene promptly whenever they observe student conduct that has the purpose or effect of ridiculing, humiliating or intimidating another student or school personnel, even if such conduct does not meet the formal definition of “harassment, intimidation or bullying.”

*Policy References: ORC §§3313.666, 3313.667*

## **Article II: Title IX Compliance**

### **Section I: General Notice of Non-Discrimination**

The School provides an equal opportunity for all students to learn regardless of race, color, creed, disability, religion, sex, ancestry, national origin, social or economic background, or other legally protected category. It is the intention of the School to comply with Title IX of the Education Amendments Act of 1972.

### **Section II: Title IX Coordinator**

The Principal shall designate a Compliance Officer/Title IX Coordinator (the “Title IX Coordinator”) and is responsible for leading investigations into any complaint alleging noncompliance with Title IX. The Title IX Coordinator’s contact information, must be made available to all students, employees, parents or legal guardians, and applicants for admission and employment. The Title IX Coordinator’s contact information must also be displayed in a conspicuous location on the School’s website.

The Coordinator should be involved with the drafting a revision of all policies and procedures to ensure that they comply with the requirements of Title IX.

### **Section III: Postings**

The School shall publish a notice in a conspicuous location on the School’s website which shall contain the following information:

- The General Notice of Non-Discrimination and Board adopted grievance process and policy;
- A statement stating that any person may make a report at any time to a School employee;
- A statement stating that any questions regarding Title IX and the School’s policy may be referred to the Title IX Coordinator;
- Contact information for the Title IX Coordinator including name/title, office address, telephone number, and email; and
- All Title IX materials used to train the Coordinator and School personnel must be published to the School’s website.

### **Section IV: Title IX Grievance Procedure**

The Title IX Grievance Procedure below is meant to provide for timely and equitable resolution of complaints. The School shall respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent. This means that the School’s response will not be considered unreasonable in light of the known circumstances.

Any individual may report allegations of sex discrimination, including sexual harassment (victim or third-party), by any 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 by using the contact information listed for the Title IX Coordinator.

A School employee or School official receives notice of sexual harassment or allegations of sexual harassment, they shall immediately report it to the Title IX Coordinator.

### **Subsection A: Grievance Process for Complaints Not Alleging Sexual Harassment**

#### **Level I**

If a student or employee (the "grievant") believes there is a Title IX grievance, they may present the grievance to the Coordinator. The alleged grievance shall be investigated by the Title IX Coordinator and they shall meet with the grievant and attempt to resolve the matter informally. The decision on the grievance shall be delivered orally to the grievant.

#### **Level II**

If the grievant believes that the grievance has not been resolved appropriately, they may make a statement in writing of the alleged grievance to the Governing Authority of the School. This statement must be filed within ten (10) days of the date of the Title IX Coordinator's decision. The statement shall state the nature of the alleged grievance and the relief sought. If the grievant is a student, the Coordinator shall assist in the preparation of the statement and submission to the Governing Authority within the appropriate time frame.

The Board or its designee (1-3 members of the Board) shall make a decision on the grievance and shall give that decision in writing to the Title IX Coordinator and the grievant.

#### **Level III**

If the grievant is not satisfied with the decision of the Governing Authority, they may appeal it to the Office of Civil Rights. A complaint should be filed in writing and sent to Office for Civil Rights, U.S. Department of Education, 600 Superior Avenue East, Suite 750, Cleveland, Ohio 44114-2611. Any such written complaint must be filed within one hundred eighty (180) days from the date of the alleged discrimination.

### **Subsection B : Grievance Process for Complaints of Sexual Harassment**

#### **Definitions**

For purposes of this grievance process,

*"Complainant"* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

“*Formal complaint*” means 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 program or activity of the School with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator.

“*Respondent*” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

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

- (1) An employee of the School conditioning the provision of an aid, benefit, or service of the School on an individual’s participation in unwelcome sexual conduct (quid pro quo sexual harassment);
- (2) 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’s education program or activity; or
- (3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

“*Supportive measures*” means 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’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the School’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The School must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the School to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

### **Training**

Any individual designated by the School as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. In addition, these individuals shall not require,

allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

All Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, shall receive training on the definition of sexual harassment, the scope of the School's education program or activity, how to conduct an investigation and grievance process (including hearings, appeals, and informal resolution processes, as applicable), and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

The School will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, and that decision-makers receive training on any technology to be used at a live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

### **Presumption of No Responsibility**

Throughout this grievance procedure, there shall be a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. In addition, the School shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The School must comply with this grievance process before the imposition of any disciplinary sanctions, or other actions that are not supportive measures, against a respondent.

The investigation of the grievance shall include an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The standard of evidence to be used to determine responsibility will be the clear and convincing evidence standard.

### **Good Cause Delay**

There may be a temporary delay of the grievance process or a limited extension of time-frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

### **Level I – Response to Report**

Upon receiving a report of sexual harassment, 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. The School will maintain as confidential any supportive measures provided before or after the filing of a formal complaint or where no formal complaint has been filed, to the extent that maintaining such confidentiality would not impair the ability of the School to provide the supportive measures.

### **Level II – Formal Complaint**

Upon receipt of a formal complaint (or later as additional allegations become known), the School will provide the following written notice to the parties who are known:

(A) Notice of the School's grievance process that complies with this section, including any informal resolution process.

(B) Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include 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 written 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. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice must also inform the parties of any provision in the School's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the School decides to investigate allegations about the complainant or respondent that are not included in the foregoing notice provided, the School must provide notice of the additional allegations to the parties whose identities are known.

The School may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

### **Investigation:**

The Title IX Coordinator or his/her designated investigator will investigate the allegations in a formal complaint. When investigating a formal complaint and throughout the grievance process, the Title IX Coordinator or his/her designated investigator must:

- (A) Remain neutral and impartial during the investigative process, and must not have a conflict of interest for or against complainant(s) or respondent(s);
- (B) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the School and not on the parties provided that the School cannot 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 for a grievance process (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the School must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);
- (C) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- (D) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- (E) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the School may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- (F) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- (G) Provide both parties 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. 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 ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report;
- (H) Keep party and witness identities confidential except as permitted by law or the Family Educational Rights and Privacy Acts (FERPA); and
- (I) Create an investigative report within thirty (30) business days of receipt of a formal complaint that fairly summarizes relevant evidence and, at least ten (10)



business days prior to a time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

### **Question and Answer Period**

After the School has sent the investigative report to the parties, the Title IX Coordinator or his/her designated investigator shall submit the investigative report to the **School Principal** as decision-maker to reach a determination regarding responsibility. The decision-maker cannot be the same person(s) as the Title IX Coordinator or the investigator(s).

Before reaching a determination regarding responsibility, the **School Principal** must afford each party five (5) business days 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. However, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The **School Principal** must explain to the party proposing the questions any decision to exclude a question as not relevant.

### **Dismissal**

The School must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in the School's education program or activity, or did not occur against a person in the United States, then the School must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. However, such a dismissal does not preclude action under another provision of the School's code of conduct.

The School may also dismiss the formal complaint or any allegations therein, if at any time during the investigation: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the School; or specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal, the School will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

### **Determination Regarding Responsibility**

The **School Principal** as decision-maker must issue a written determination regarding responsibility within fifteen (15) business days of the conclusion of the question and answer period.

The written determination must include:

- (A) Identification of the allegations potentially constituting sexual harassment;
- (B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
- (C) Findings of fact supporting the determination;
- (D) Conclusions regarding the application of the School's code of conduct to the facts;
- (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the School imposes on the respondent, and whether remedies designed to restore or preserve equal access to the School's education program or activity will be provided by the School to the complainant; and
- (F) The School's procedures and permissible bases for the complainant and respondent to appeal.

The School must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the School provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

If a determination of responsibility for sexual harassment has been made against a respondent, the School will provide remedies to a complainant. The Title IX Coordinator is responsible for effective implementation of any remedies. Possible remedies to the complainant that the School may implement include: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures or individualized services offered as may be appropriate and reasonably available, without fee or charge to the complainant, that are designed to restore or preserve equal access to the School's education program or activity, to protect the safety of the complainant or the School's educational environment, or to deter sexual harassment.

Possible disciplinary sanctions the School may implement following any determination of responsibility by the respondent may include: suspension, expulsion, reprimand, documenting the occurrence in the personnel file, referral to counseling, withholding of a promotion, demotion, reassignment, temporary suspension without pay, termination of employment, or any other disciplinary measures outlined in the School's code of conduct or Staff Handbook.

### **Level III – Appeal to School Principal**

Either the complainant or respondent, or their parent or guardian, may appeal from a determination regarding responsibility or from a dismissal of a formal complaint, or any allegations therein. Any such appeal shall be in the form of a written statement challenging the outcome, and be received by the Title IX Coordinator within ten (10) business days of the determination.

The appeal may be on one or more of 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
- (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The Title IX Coordinator shall give the written appeal to **Senior Director of People Services or their designee** for decision.

Within three (3) business days of receipt, the Title IX Coordinator shall also provide notice to the other party in writing that the appeal was filed. The other party shall then be provided five (5) business days to submit a written statement in support of, or challenging, the outcome.

Within fifteen (15) business days after the time for the other party to submit a written statement has passed, **Senior Director of People Services or their designee** shall issue a written decision describing the result of the appeal and the rationale for the result, and provide the written decision simultaneously to both parties.

For all appeals, the School must ensure that the decision-maker(s) for the appeal: (i) not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent; (ii) receive training on the definition of sexual harassment, the scope of the School's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; (iii) receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant; and (iv) receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

### **Office for Civil Rights**

If the student (or their parent or guardian) or employee is not satisfied with the grievance process determination, he or she may appeal it to the Office for Civil Rights.

A student (or their parent or guardian) or employee who believes there is a basis for a grievance related to Title IX may file a written complaint with the Office for Civil Rights, U.S. Department of Education, 600 Superior Avenue East, Suite 750, Cleveland, Ohio 44114-2611. Any such written complaint must be filed within one hundred eighty (180) days from the date of the alleged discrimination, or, if this grievance procedure is utilized, within sixty (60) days after the last act of the grievance process.

### **Informal Resolution Process**

The School may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.

Similarly, the School may not require the parties to participate in an informal resolution process, and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the School may facilitate an informal resolution process that does not involve a full investigation and adjudication, provided that the School:

- (A) Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- (B) Obtains the parties' voluntary, written consent to the informal resolution process; and
- (C) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Any such informal resolution process should not exceed ten (10) business days.

### **Emergency Removal**

Nothing in this grievance procedure precludes the School from removing a respondent from the School's education program or activity on an emergency basis, provided that the School undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. However, this provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

### **Administrative Leave**

Nothing in this grievance procedure precludes the School from placing a non-student employee respondent on administrative leave during the pendency of a grievance process. However, this provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

### **Recordkeeping**

The School must maintain for a period of seven years records of:

- (A) Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the School's education program or activity;
- (B) Any appeal and the result therefrom;
- (C) Any informal resolution and the result therefrom; and
- (D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The School must make these training materials publicly available on its website, or if the School does not maintain a website the School must make these materials available upon request for inspection by the public.

For each response to a report or formal complaint of sexual harassment in an education program or activity, the School must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the School must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the School's education program or activity. If the School does not provide a complainant alleging sexual harassment with supportive measures, then the School must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the School in the future from providing additional explanations or detailing additional measures taken.

### **Retaliation Prohibited**

Neither 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 this grievance procedure, 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 in this grievance procedure. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal

complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this grievance procedure, constitutes retaliation.

The School must 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 by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination complaints not alleging sexual harassment. The exercise of rights protected under the First Amendment does not constitute prohibited retaliation under this grievance procedure. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of this grievance procedure does not constitute prohibited retaliation under this grievance procedure, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

*See 34 CFR part 106*

**Appendix A**  
**Formal Complaint of Sexual Harassment**

**Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name of the Individuals Involved in the Incident:**

\_\_\_\_\_

**Date and Location of the Alleged Incident:**

\_\_\_\_\_

**Description of Conduct Constituting Sexual Harassment:**

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**I acknowledge that the information I have provided is not false. Further, I acknowledge that if I knowingly make a false statement or submit false information, it will be in violation of the School's Bullying, Harassment, and Intimidation Policy.**

**Signature:** \_\_\_\_\_ **Date** \_\_\_\_\_

\_\_\_\_\_

**ADOPTION OF HARASSMENT, INTIMIDATION, BULLYING, AND TITLE IX  
POLICY**

FLEX High School

Moved by TJ Bowen, and seconded by Martina Ellerbe

<b>Board Member Name/Initials</b>	<b>AYE</b>	<b>NAY</b>	<b>OTHER</b> <i>(Not Present, Abstain, Etc.)</i>
TJ Bowen	✓		
Martina Ellerbe	✓		
Lori Hamlin			<i>Not Present</i>
Kelsey Schiffer	✓		
Sean Lehman, Chair	✓		

Duly adopted by a vote of the Board on this 28 day of September 2020.



\_\_\_\_\_  
*Sean Lehman, Chair  
FLEX High School*



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**Harassment, Intimidation, Bullying, and Title IX Policy Acknowledgement**

This is to acknowledge receipt of FLEX High School’s policy concerning harassment, intimidation and bullying. I have carefully read and understand the policy and procedures contained in the policy concerning harassment, intimidation and bullying and acknowledge that it applies to me both in my present capacity and in any future position I may hold with the school and/or board of directors. I will comply with all said policies and procedures as set forth in the policy concerning harassment, intimidation, and bullying. I understand that I should immediately report any violation of this policy.

I understand this will be filed in my official personnel folder and/or board member folder.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

\*\*\*\*\*