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Section	Special Update - July 2020 - Title IX
Title	New Guideline - Special Update - July 2020 - Title IX - NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES
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## 2266 - NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES

This guideline provides additional information about the School Corporation's guidelines in addressing allegations of sex discrimination, including Sexual Harassment. All information below supplements School Board Policy 2266 – Nondiscrimination on the Basis of Sex in Education Programs or Activities. To the extent there is a conflict between these guidelines and Policy 2266, the Policy controls.

### General Information

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

- A. A Corporation employee conditioning the provision of an aid, benefit, or service of the Corporation on an individual's participation in unwelcome sexual conduct (often called "quid pro quo" harassment);
- B. Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature that is determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the Corporation's education program or activity; or
- C. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)A(v), or "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).

Sexual Harassment may involve the behavior of a person of any gender against a person of the same or another gender.

The following conduct – if sufficiently severe, pervasive, **and** objectively offensive – may constitute Sexual Harassment (this list provides examples and is not meant to be exhaustive or exclusive):

- A. unwelcome sexual propositions, invitations, solicitations, and flirtations;
- B. unwanted physical and/or sexual contact;
- C. threats or insinuations implying that a person's conditions of education or employment may be adversely affected by not submitting to sexual advances;
- D. unwelcome sexual verbal expressions, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; unwelcome sexually degrading language, profanity, jokes, or innuendoes;
- E. sexually suggestive objects, pictures, graffiti, videos, posters, audio recordings or literature;
- F. unwelcome and inappropriate touching, patting, or pinching;
- G. asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities;

H. speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history;

I. giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship; and

J. leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks, or groin.

Sexual assault, for purposes of Policy 2266, refers to any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent (e.g., due to the person's age, intellectual or other disability, or use of drugs or alcohol). Sexual assault includes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape. All such acts of sexual assault are forms of Sexual Harassment and, in turn, sex discrimination prohibited by Title IX and Policy 2266.

Two critical components of assessing allegations of sexual assault involve the concepts of "consent" and a person being "incapacitated." Policy 2266 states that "consent" involves words or actions that a reasonable person would understand as agreement to engage in the sexual conduct at issue. A person, however, may be incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. A person who is incapacitated is not capable of giving consent.

Determining whether there was consent is a critical factor in evaluating whether a sexual assault occurred. As defined above, consent is a mutual, voluntary, and informed agreement to participate in specific sexual acts with another person that is not achieved through manipulation, force, or coercion of any kind, and requires having cognitive ability to agree to participate. Force involves the use, or the threatened use, of physical violence to achieve sexual access. Force further includes the use of a person's body in a physically imposing manner to elicit unwelcome or unwanted sexual contact. Coercion involves unreasonable pressure for sexual activity or contact.

Consent requires an outward demonstration, through mutually understandable words, conduct or action, indicating that an individual has freely chosen to engage in the specific sexual acts. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive. Silence or an absence of resistance does not imply consent, and consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Even in the context of an ongoing relationship, consent must be sought and freely given for each specific sexual act. Consent may be withdrawn at any time. When consent is withdrawn, sexual activity must immediately stop.

Impairment or incapacitation due to alcohol and/or drug use, permanent/ temporary mental or physical disability, and being below the age of consent - are factors that detract from or make consent impossible. Incapacity is defined as an inability to make rational, reasonable decisions or judgments. Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the "who, what, where, when, why or how" of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation is found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One's own intoxication is not an excuse for failure to recognize another person's incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual's:

- A. decision-making ability;
- B. awareness of consequences;
- C. ability to make informed judgments;
- D. capacity to appreciate the nature or circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

#### **Title IX Coordinator(s)**

The following individual(s) serve as the Corporation Title IX Coordinator(s) and is/are responsible for overseeing and coordinating the Corporation's efforts to comply with Title IX and its implementing regulations:

Mrs. Lori Rayl  
(Name)

Tipton Community School Corporation, Elementary Principal  
(School Corporation Title)

765-675-7397  
(Telephone Number)

1099 South Main Street, Tipton, Indiana 46072  
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Mr. Richard Stillson  
(Name)

Tipton Community School Corporation, High School, Principal  
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619 Main Street, Tipton, Indiana 46072  
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The Title IX Coordinator(s) report(s) directly to the Superintendent except when the Superintendent is a Respondent. In such matters, the Title IX Coordinator(s) shall report directly to **(X)** the Board Attorney ( ) Board President ( ) \_\_\_\_\_.  
Questions about Policy 2266 and/or this administrative guideline should be directed to the Title IX Coordinator(s).

#### Notices

The Title IX Coordinator's(s') name(s), title(s), and contact information – including office address(es), telephone number(s), and email address(es) - must be published:

- A. on the Corporation's website **(X)** and on each individual school's website;
- B. In the student, parent, ( **X** ) and Employee/Administrator handbooks; **[DRAFTING NOTE: The preceding does not require the creation of a specific handbook; rather, if the Corporation publishes a handbook, it must contain the specified information.]**
- C. **(X)** In the Corporation's Annual Report to the public;
- D. **(X)** In the Corporation's calendar;
- E. ( ) \_\_\_\_\_.

Policy 2266 also must be published on the Corporation's website and in each handbook or catalog that the Corporation makes available to applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the Corporation.

#### Reports of Sexual Harassment

All students and Corporation employees share responsibility for avoiding, discouraging, and reporting Sexual Harassment.

The Title IX Coordinator(s) shall be available during regular school/work hours to discuss Title IX questions, including questions related to Sexual Harassment, and assist students, parents/guardians, employees, other members of the Corporation Community and Third-Parties with any issues they may have related to Policy 2266. The Title IX Coordinator(s) shall accept reports of Sexual Harassment directly from any member of the Corporation Community or any Third Party. Reports may be submitted in person, by mail, by telephone, or by electronic mail, using the Title IX Coordinator's(s')

published contact information, or by any other means that results in the Title IX Coordinator receiving the person's oral or written report. Reports may be made at any time (including during non-work hours).

The Corporation will be considered to have actual knowledge of Sexual Harassment or an allegation of Sexual Harassment if : (1) a Formal Complaint is filed by a Complainant (or a parent/guardian on behalf of a minor child); (2) a Corporation employee receives a report or otherwise has notice of an incident of Sexual Harassment or allegations of Sexual Harassment; or (3) a Corporation employee witnesses the misconduct. The Corporation also may receive notice about Sexual Harassment in an indirect manner from a member of the local community, social networking sites, the media, or if the information is shared by survivors during public awareness events or campaigns.

When a Corporation employee files a report of Sexual Harassment or allegations of Sexual Harassment with the Title IX Coordinator, the employee is required to report all known details about the alleged Sexual Harassment, including: (1) the name of the alleged Respondent; (2) the person who experienced the alleged Sexual Harassment (i.e., the Complainant); (3) other persons involved in the alleged Sexual Harassment; and (4) any other relevant facts, such as date, time, and location.

When possible, before a reporting student or parent/guardian discloses the above information, the Corporation employee should inform the student and/or parent/guardian of the employee's obligation to report the information to the Title IX Coordinator.

**[X]** The employee also will inform the student and/or parent/guardian of his/her right to file a Formal Complaint with the school and a separate complaint with local law enforcement.

Upon receiving a report of Sexual Harassment or allegations of Sexual Harassment, the Title IX Coordinator will provide the appropriate notice to the Complainant, discuss supportive measures with the Complainant, and explain the Formal Complaint process. The Title IX Coordinator also will inform the Complainant that s/he is available to assist the Complainant in filing a Formal Complaint if that is what the Complainant wants to do. The Title IX Coordinator further will explain to the Complainant that Federal law includes protections against retaliation, and that the Corporation will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

**[X]** When it comes to allegations of stalking, the Title IX Coordinator will inform the Complainant that it is important to take steps to preserve evidence in cases of stalking, to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, etc. rather than evidence of physical contact and violence. This type of non-physical evidence also will be useful in all types of Sexual Harassment investigations.

**[DRAFTING NOTE: Select either Option 1 or Option 2.]**

**[ ] OPTION 1**

If the report involves a student Respondent, the Title IX Coordinator will determine whether the circumstances warrant consideration of emergency removal of the student Respondent.

**[END OF OPTION 1]**

**[X ] OPTION 2**

If the report involves a student Respondent, while the Title IX Coordinator is communicating with the Complainant concerning supportive measures and whether to file a Formal Complaint, the Superintendent will determine whether the circumstances warrant consideration of emergency removal of the student Respondent.

**[END OF OPTION 2]**

If the ( ) Title IX Coordinator ( **X** ) Superintendent **[END OF OPTION]** decides that the situation calls for possible emergency removal of the student Respondent, the ( ) Title IX Coordinator ( **X** ) Superintendent **[END OF OPTION]** will ( **X** ) convene ( ) direct the Principal to convene **[END OF OPTION]** a team of educators and other appropriate staff members (e.g., school psychologist, guidance counselor, mental health counselor, etc.) to conduct an individualized safety and risk analysis. **[DRAFTING NOTE: The Corporation already may have in place a team that conducts a risk assessment to determine when a student is a risk to the health or safety of himself/herself or others. The safety and risk analysis is similar to this risk assessment.]** The team will be tasked with determining whether the student Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment that justifies removal.

If the team determines the student Respondent poses such a threat, it will recommend to the Principal that the Corporation implement an emergency removal (i.e., removal of the student Respondent from the school premises). If the Principal agrees with the recommendation, the Principal will notify the student Respondent, remove the student Respondent from the school premises for the remainder of the school day, and begin the process of suspending or expelling the Respondent pursuant to I.C. 20-33-8. The student Respondent will have an opportunity to challenge the team's recommendation and the Principal's corresponding decision to remove the student Respondent immediately following the implementation of the removal. The challenge may be filed directly with the Superintendent – even before any recommendation for expulsion is processed by the Superintendent – or by following the due process procedures outlined in Policy 5605 – Suspension and Expulsion of Students

with Disabilities 5610 – Suspension and Expulsion of Students, Policy 5611 – Due Process Rights, and 5620 – Court Assisted Resolution of Suspension and Expulsion.

### **Formal Complaint of Sexual Harassment**

The Complainant (or his/her parent/guardian if the Complainant is a minor) may file a Formal Complaint with the Title IX Coordinator. Alternatively, the Title IX Coordinator may sign a Formal Complaint. When deciding whether to sign a Formal Complaint, the Title IX Coordinator should consider a variety of factors, including but not limited to: (1) circumstances that suggest an increased risk of repeated Sexual Harassment, such as the alleged Respondent's previous history of threats; (2) whether the Sexual Harassment was perpetrated with a weapon; (3) the age of the student subjected to the Sexual Harassment; (4) and whether the school can obtain relevant evidence through other means, such as from security cameras or witnesses.

~~[ ] The Corporation will honor a student's or a parent's request to inform an alleged Respondent that the Title IX Coordinator made the decision to proceed with signing the Formal Complaint without the student's or parent's consent. [END OF OPTION]~~

The Title IX Coordinator must balance the student's or parent's request that a Formal Complaint not be initiated with the Corporation's obligation to provide a safe and non-discriminatory environment for all students.

Even when the Title IX Coordinator signs the Formal Complaint, the Title IX Coordinator is not a Complainant; the Complainant remains the Individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

Upon receipt of a Formal Complaint, the Corporation will follow its Grievance Process, and undertake an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence. The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

### **Grievance Process**

The Corporation's grievance process is detailed in Policy 2266. The grievance process seeks a prompt and equitable resolution of the Formal Complaint.

It is critical that the Title IX Coordinator, and any investigator, decision-maker or person designated to facilitate an informal resolution, does not have a conflict of interest or bias for or against Complainants and Respondents generally or any individual Complainant(s) or Respondent(s).

The Title IX Coordinator shall appoint an investigator (unless the Title IX Coordinator intends to serve as the investigator) and a decision-maker to assist the Corporation in resolving the Formal Complaint. Upon being assigned to conduct an investigation or to serve as a decision-maker, the investigator and the decision-maker shall confirm in writing that they do not have a conflict of interest or bias for or against Complainants and Respondents generally. After learning the name(s) of the Complainant(s) and Respondent(s), the investigator and decision-maker also shall confirm in writing that they do not have a conflict of interest or bias for or against the individual Complainant(s) and Respondent(s) involved in the specific Formal Complaint.

In appropriate circumstances, the Title IX Coordinator may appoint/assign a person to facilitate an informal resolution process. The facilitator must confirm in writing that s/he does not have a conflict of interest or bias for or against Complainants and Respondents generally and does not have a conflict of interest or bias for or against the individual Complainant(s) and Respondent(s) involved in the specific Formal Complaint.

Within two (2) days of learning of the identity of the investigator, decision-maker, and/or facilitator of the informal resolution process, the Complainant and/or Respondent may submit a written objection to the Title IX Coordinator concerning the investigator, decision-maker and/or facilitator of the informal resolution process, based upon an actual or perceived conflict of interest or bias for or against complainants and/or respondents generally or either party to the Formal Complaint. The objecting party must explain the basis for the contention that the investigator, decision-maker and/or facilitator of the informal resolution process has a conflict of interest or is biased and submit any substantiating evidence. Within two (2) days of receiving the written objection, the Title IX Coordinator will decide whether to replace the investigator, decision-maker and/or facilitator of the informal resolution process and notify the parties of the decision, including the reasons for it.

**[DRAFTING NOTE: The timelines identified in the preceding paragraph are not mandated by the Title IX regulations but rather are suggested as a means of conveying the need for these issues to be raised promptly so as not to delay unnecessarily the grievance process; the Corporation may select different timelines but certainly should impose some timeframe to ensure such matters are brought to the Title IX Coordinator's attention in a timely manner.]**

If there is an ongoing criminal investigation involving the incident that is the subject of the Formal Complaint, the Title IX Coordinator will seek to implement the Corporation's grievance process in a manner that does not impact the criminal investigation unduly. To the extent appropriate, the Title IX Coordinator and/or the Corporation-assigned investigator will consider whether information can be shared among the criminal investigators and the Corporation-assigned investigator so that the Complainant(s) is/are not unnecessarily required to give multiple statements about an alleged traumatic event. If the investigation includes forensic evidence, the Corporation-assigned investigator may consult with ( X ) a school resource

officer, **[END OF OPTION]** local law enforcement or a forensic expert to ensure that the Corporation-assigned investigator is interpreting the evidence correctly.

While the Corporation will not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation, it may delay temporarily the investigation portion of the grievance process while the police are gathering evidence. During this delay in the Title IX investigation, the Title IX Coordinator will implement supportive measures. The Title IX Coordinator also will continue to provide reasonable updates to the parties on the status of the investigation and inform the parties when the Corporation resumes its Title IX investigation.

If the Title IX Coordinator delays the investigation portion of a Title IX investigation due to an ongoing criminal investigation, it promptly will resume and complete the investigation once the Corporation learns that the applicable law enforcement has completed its evidence-gathering stage of the criminal investigation. The Corporation will not delay unreasonably its investigation or the determination of responsibility until the ultimate outcome of the criminal investigation or the filing of any charges. The Corporation may work with its **(X)** school resource officer(s), **[END OF OPTION]** local law enforcement, and local prosecutor's office to learn when the evidence-gathering stage of the criminal investigation is complete.

### **Off-Campus Sexual Harassment**

The Corporation is required to investigate a Formal Complaint that involves conduct that occurred in the Corporation's education program or activity, even if the conduct occurred off school property. The Corporation's education program or activity includes locations, events, and circumstances in the United States over which the Corporation exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs. The Title IX Coordinator shall determine whether any alleged off-campus Sexual Harassment occurred in an educational program context or school activity. If it did, the grievance process shall apply and be implemented in the same manner as with an on-campus complaint. Whether the alleged misconduct occurred in this context may not always be apparent from the initial complaint, so the Title IX Coordinator may need to gather additional information to make such a determination. Off-campus educational programs and activities include school-sponsored field trips, athletic team travel, and school club events.

Upon receipt of a report of Sexual Harassment made pursuant to Policy 2266, the Title IX Coordinator will conduct a preliminary assessment to determine:

- A. Whether the alleged conduct, as reported, falls, or could fall, within the scope of Policy 2266; and
- B. Whether the alleged conduct, as reported, constitutes, or could constitute, Sexual Harassment.

If the Title IX Coordinator determines that the alleged conduct could not fall within the scope of Policy 2266, and/or could not constitute Sexual Harassment, even if investigated, the Title IX Coordinator will close the matter and notify the Complainant if doing so is consistent with the Family Educational Rights and Privacy Act ("FERPA"). The Title IX Coordinator may refer the report to the Principal or another staff member, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of Policy 2266, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator shall contact the Complainant.

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if not apparent from the report.

Upon receipt of a Formal Complaint, the Title IX Coordinator will confirm whether the alleged conduct falls within the scope of Policy 2266, including whether the conduct, as reported, constitutes or could constitute Sexual Harassment, and whether the incident(s) occurred within the context of the Corporation's education program or activity. If the Title IX Coordinator determines the conduct did not occur in the context of an educational program or activity, or could not constitute Sexual Harassment, even if investigated, the Title IX Coordinator will dismiss the Formal Complaint but may refer the matter to the Principal to consider whether the alleged misconduct, while not a Title IX violation, still may involve the creation of an impermissible hostile or discriminatory environment that is prohibited under the Board's other nondiscrimination and anti-harassment policies.

### **Supportive Measures**

Supportive measures involve non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. Supportive measures must be offered to the Complainant after a report of Sexual Harassment is made, and regardless of whether a Formal Complaint is filed, and to both the Complainant and the Respondent after a Formal Complaint is filed.

The Corporation will implement supportive measures that are designed to restore or preserve equal access to the Corporation's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Corporation's educational environment or deter Sexual Harassment. The Corporation will 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 counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, school/campus escort services, mutual restrictions of contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus (including school buildings and facilities), and other similar measures (e.g., instituting changes to extracurricular activities, transportation, and lunch in order to allow the Complainant and Respondent to avoid contact; informing the Complainant of other available resources, such as victim advocacy, academic support, disability services, health and mental health services, the right to report a crime to local law enforcement, the right to seek judicial no-contact, restraining and protective orders, and other forms of legal assistance).

The Title IX Coordinator will determine appropriate supportive measures on a case-by-case basis.

#### **Notice Provided Prior to a Meeting, Interview ( ) ~~or Hearing~~**

In advance of any interview, meeting ( ) ~~or hearing~~, the Title IX Coordinator, Investigator and/or decision-maker will transmit a written notice to the Complainant and Respondent that includes:

- A. a physical copy of Policy 2266 or a hyperlink to Policy 2266;
- B. sufficient details known at the time so that the parties may prepare for an initial interview with the Investigator, 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);
- C. a statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- D. notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice;
- E. notifying the Complainant and Respondent of their right to inspect and review evidence;
- F. notifying the Complainant and Respondent of the Corporation's prohibitions on retaliation and false statements; and
- G. information about resources that are available at the Corporation and in the community.

Should the Title IX Coordinator decide, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the Title IX Coordinator will provide a supplemental written notice describing the additional allegations to be investigated.

#### **Role of Advisors**

All parties are entitled to have an advisor of their choosing to assist them throughout the grievance process. The advisor may be a parent/guardian, relative, friend, attorney, or any other supporter that the party chooses to advise them who is eligible and available. A party may not select a person who is identified as or may be called as a witness to serve as an advisor, with the exception of a parent/guardian.

The parties are expected to notify the Title IX Coordinator, Investigator and/or decision-maker of the identity of their advisors at least two (2) days before any meeting, interview (x) ~~or hearing~~ **[END OF OPTION]**. A party may change advisors during the grievance process but needs to provide a minimum of two (2) days advanced notice to the Title IX Coordinator, Investigator and/or decision-maker, as appropriate.

~~[ ] If a party is unable to identify and secure an advisor, upon request, the Title IX Coordinator will appoint an advisor, who may or may not be an attorney. Unless a party presents evidence of a conflict of interest or bias, the party may not decline the advisor assigned by the Title IX Coordinator.~~ **[DRAFTING NOTE: This option should be selected only if the Corporation provides for a hearing that involves live cross-examination of parties and witnesses by an advisor; if the Corporation provides for such a hearing, it must offer an advisor to a party who otherwise is unable to secure one.]**

A party's advisor is permitted to accompany the party in all meetings and interviews at which the party is entitled to be present, including intake and investigative interviews, ( ) ~~hearings~~, **[END OF OPTION]** and appeals. Advisors should help their advisees to prepare for each meeting/interview ( ) ~~or hearing~~ **[END OF OPTION]**.

Advisors are expected to conduct themselves in a professional and ethical manner, with integrity and in good faith.

All advisors are subject to the same rules, regardless of whether they are an attorney or not. The Title IX Coordinator, the Investigator and the decision-maker shall have discretion to determine whether advisors may be permitted to present on

behalf of the Complainant or Respondent in a meeting or interview ( ) ~~or hearing~~ [END OF OPTION]. Under no circumstances would a parent/guardian be prevented from doing so. Any limitations placed on the advisors shall apply to the advisors for all parties. If it is determined the advisors are not permitted to present on behalf of the Complainant or Respondent, the advisor should request or wait for a break in the proceeding before interacting with Corporation officials. Advisors may confer quietly with their advisees as necessary, as long as they do not disrupt the process. Advisors may request breaks, as needed, in order to confer with their advisees.

Prior to the first meeting or interview, ( ) ~~or hearing~~ [END OF OPTION], the Title IX Coordinator, the investigator or the decision-maker will meet or speak with the advisors to clarify their roles and answer any questions they may have.

Advisors are prohibited from interfering with the investigation or the grievance process. If an advisor acts in a disruptive manner or outside the role at a meeting or interview, ( ) ~~or hearing~~ [END OF OPTION], the Corporation official in charge of the meeting or interview ( ) ~~or hearing~~ [END OF OPTION] will warn the advisor. If the advisor continues to disrupt the proceeding or act in an unprofessional manner, the advisor will be asked to leave and will be dismissed from the meeting or interview ( ) ~~or hearing~~ [END OF OPTION]. ( ) ~~Except with respect to a hearing~~ [END OF OPTION], the meeting or interview typically will continue after the advisor is excused. The Title IX Coordinator will subsequently decide whether the original advisor will be reinstated or will need to be replaced by a different advisor.

In order for the Corporation to share documentation related to the allegations pertaining to a student with the student party's advisor, the Eligible Student or the student party's parent/guardian must provide written consent authorizing such sharing.

The parties are not restricted from discussing or sharing information related to the allegations with their advisor or others who may support or assist them in the process.

Consistent with the Title IX regulations, advisors are required to maintain the privacy of records shared with them by the Corporation during the grievance process; pursuant to FERPA and State law, the records may not be shared with third parties, disclosed publicly, or used for purposes unrelated to the grievance process.

If an advisor is unable to attend a meeting in person, the Corporation official in charge of the meeting will attempt to arrange for the advisor to participate by telephone, video, and/or virtual meeting. ( ) ~~However, an advisor's inability to attend a meeting ordinarily will not excuse or prevent the meeting from occurring.~~

If a party is a Corporation employee who is entitled to a union representative, the Corporation employee may be accompanied by both a union representative as well as another advisor at any meeting or interview ( ) ~~or hearing~~ [END OF OPTION].

## **Remedies**

If the decision-maker(s) determines the Respondent is responsible for violating Policy 2266, the Corporation will take prompt and effective steps to end the sex discrimination/Sexual Harassment, ( ) eliminate the hostile environment, [END OF OPTION] prevent its recurrence, and remedy its effects. The decision-makers(s') written determination should recommend to the Title IX Coordinator and the Superintendent appropriate remedies that may include, but are not limited to:

- A. providing an escort for the Complainant to move safely between classes and activities;
- B. ensuring the Complainant and Respondent do not share classes or extracurricular activities (e.g., re-arranging schedules at the Complainant's request);
- C. moving the Respondent or Complainant to another school within the Corporation;
- D. providing medical, counseling, and academic support services to the Complainant and/or Respondent;
- E. affording/arranging for the Complainant to have extra time to complete or re-take classes or exams without academic penalty (e.g., the Complainant is provided extensions on due dates for papers, assignments, quizzes, tests, etc.);
- F. reviewing disciplinary proceedings/actions against the Complainant to see if there is a causal connection between the Sexual Harassment and the misconduct that may have resulted in the Complainant being disciplined;
- G. initiating evaluations for special education or accommodations/modifications under the Individuals with Disabilities Education Act as amended (IDEA) or Section 504 of the Rehabilitation Act of 1973;
- H. imposing disciplinary sanctions/consequences on a Respondent, up to and including expulsion or permanent exclusion of a student Respondent and termination of an employee Respondent; and
- I. ordering other global remedies such as:



1. training or re-training of employees;
2. developing and distributing materials on Sexual Harassment;
3. conducting Sexual Harassment prevention programs; and/or
4. conducting climate checks/surveys.

### **Training**

Given that the Corporation is considered to have actual knowledge of Sexual Harassment or allegations of Sexual Harassment if any Corporation employee has notice of the same, all Corporation employees shall receive training in:

- A. the definition of Sexual Harassment (as that term is used in Policy 2266) **(X)** and practical information about preventing and identifying sex discrimination and Sexual Harassment **[END OF OPTION]**;
- B. **(x)** the behaviors and conduct that lead to and result in Sexual Harassment;
- C. **(x)** the attitudes of bystanders allowing the misconduct to continue;
- D. **(x)** the potential for re-victimization by Corporation employees and its effect on students;
- E. **(x)** appropriate methods for responding to a student who may have experienced Sexual Harassment, including the use of nonjudgmental language;
- F. **(x)** the impact of trauma on victims;
- G. the person(s) to whom such misconduct must be reported, including the contact information for the Title IX Coordinator(s); and
- H. what information should be included in a report, the consequences for failing to report, and what information must be provided to the student and/or parent. For example, Corporation employees will be trained to inform students about:
  1. the employee's reporting responsibilities; and
  2. their right to file a Title IX complaint with the school and to report a crime to local law enforcement. Corporation employees shall be trained to report to the Title IX Coordinator(s) both allegations of and actual incident(s) involving Sexual Harassment without determining first whether the incident or allegations meet the applicable definition of Sexual Harassment or are substantiated.

### **Title IX Coordinator(s)/Investigator(s)/Decision-Maker(s)/Facilitators of Informal Resolution Process**

The Corporation's Title IX Coordinator(s), along with any investigator(s), decision-maker(s), or persons designated to facilitate an informal resolution process, shall receive training on the definition of Sexual Harassment (as that term is used in Policy 2266), the scope of the Corporation's education program or activity, how to conduct an investigation and grievance process, including ( ) ~~hearings~~ **[END OF OPTION]**, appeals and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interests, and bias.

The training shall include information on the following topics:

- A. working with and interviewing persons subjected to Sexual Harassment;
- B. particular types of conduct that constitute Sexual Harassment;
- C. the proper standard of review for Formal Complaints (i.e., ( **x** ) preponderance of the evidence ~~(-) clear and convincing evidence~~);
- D. consent, incapacity, coercion, force, and the role age, mental or physical disability, and/or drugs or alcohol can play in a person's ability to consent;
- E. **(x)** the importance of accountability for Respondents determined responsible for engaging in Sexual Harassment;
- F. the need for remedial actions for the Respondent, Complainant, and school community;

- G. how to determine credibility;
- H. how to evaluate evidence and weigh it in an impartial manner;
- I. how to conduct investigations;
- J. confidentiality;
- K. (x ) the effects of trauma, including neurobiological change; and
- L. (x ) cultural awareness training about how Sexual Harassment may impact students differently depending on their cultural backgrounds.

~~Decision makers also must receive training on ( ) any technology to be used at a hearing and on~~ **[Drafting Note: Add the preceding option if pursuant to Policy 2266, the Corporation permits hearings.]** 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.

Investigators must receive training on how to prepare an Investigative report that fairly summarizes relevant evidence.

Any materials used to Train IX Coordinators, investigators, decision-makers, and any persons who facilitate an Informal resolution process must not rely on sex stereotypes, and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.

### Students

The Corporation shall provide age-appropriate education about Sexual Harassment to students ~~( ) and their parents~~ **[END OF OPTION]**. In the younger grades, the Corporation will cover these topics in its anti-bullying and harassment training. In the older grades, students will receive training in specific topics, including:

- A. Title IX and what constitutes Sexual Harassment under the school's policies;
- B. the school's definition of consent applicable to sexual conduct, including examples;
- C. how the school analyzes whether conduct was unwelcome under Title IX;
- D. how the school analyzes whether unwelcome sexual conduct creates a hostile environment;
- E. reporting options, including how to file a Formal Complaint and any timeframes set by the school for reporting;
- F. the school's grievance process used to address reports of and Formal Complaints alleging Sexual Harassment;
- G. disciplinary code provisions relating to Sexual Harassment and the consequences of violating those provisions;
- H. (x ) effects of trauma, including neurobiological changes;
- I. (x ) the role alcohol and drugs often play in Sexual Harassment incidents, including the deliberate use of alcohol and/or other drugs to perpetrate Sexual Harassment;
- J. ( x ) strategies and skills for bystanders to intervene to prevent possible Sexual Harassment;
- K. how to report Sexual Harassment to school officials and local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance; and
- L. Title IX's protections against retaliation.

The training also will encourage students to report Sexual Harassment, even if they are unsure whether the incident meets the definition of Sexual Harassment contained in Policy 2266. The Corporation will emphasize that its primary concern is student safety and that use of alcohol or drugs never makes the alleged victim at fault for Sexual Harassment.

The Corporation shall specifically inform students that all Corporation employees are responsible for reporting information involving Sexual Harassment to the Title IX Coordinator(s), including the need to report the names of the alleged Complainant and Respondent, and relevant facts such as the date, time, and location of incidents. The issue of confidentiality will be discussed during the training.

**[ x]** Further, the Corporation shall identify the individuals with whom students can speak confidentially and offer information about resources such as victim advocacy, academic support, counseling, disability services, and health and mental health services.

The Corporation shall provide the above trainings on a regular basis and periodically review their efficacy.

### **Retaliation**

Federal law strictly prohibits retaliation against a Complainant, Respondent, or witness. The Title IX Coordinator will inform the Complainant, Respondent and other individuals who participate in the grievance process of this prohibition and direct the Complainant to report any retaliation, whether by students, Corporation employees, or other members of the Corporation Community or Third Parties that is directed toward the Complainant. Upon learning of alleged retaliation, the Title IX Coordinator and/or the Superintendent will take strong responsive action as appropriate.

### **Contact Information for the Office of Civil Rights**

Individuals may submit questions or file complaints relating to Title IX with the U.S. Department of Education's Office for Civil Rights at any time. OCR's regional office in Chicago has jurisdiction for all of Indiana:

U.S. Department of Education  
Office for Civil Rights  
Chicago Office  
John C. Kluczynski Federal Building  
230 S. Dearborn Street, 37<sup>th</sup> Floor  
Chicago, IL 60604  
(312) 730-1560  
Fax: (312) 730-1576  
Email: OCR.Chicago@ed.gov

Web: <http://www.ed.gov/ocr>

### **Retention of Investigatory Records and Materials**

The Title IX Coordinator is responsible for overseeing retention of all records that must be maintained pursuant to Policy 2266. All investigators, decision-makers (including decision-makers of appeals) and facilitators of informal resolution processes shall retain all documents, electronically stored information ("ESI"), and electronic media (as defined in Policy 8315) created and/or received as part of an investigation, determination of responsibility, or informal resolution process, which may include but are not limited to:

- A. all written reports, allegations, Formal Complaints, statements, and responses pertaining to an alleged violation of Policy 2266;
- B. any narratives that memorialize oral reports, allegations, statements, and responses pertaining to an alleged violation of Policy 2266;
- C. any documentation that memorializes the actions taken by Corporation personnel or individuals contracted or appointed by the Board to fulfill its responsibilities related to the investigation, determination of responsibility, and/or the Corporation's response to an alleged violation of Policy 2266;
- D. written witness statements;
- E. narratives, notes from, or audio, video, or digital recordings of witness interviews/statements;
- F. e-mails, texts, or social media posts that directly relate to or constitute evidence pertaining to an alleged violation of Policy 2266 (i.e., not after-the-fact commentary about or media coverage of the incident);
- G. notes or summaries prepared contemporaneously by the investigator in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.), but not including transitory notes whose content is otherwise memorialized in other documents;
- H. written disciplinary sanctions issued to students or employees and other documentation that memorializes oral disciplinary sanctions issued to students or employees for violations of Policy 2266;
- I. dated written determinations of responsibility/investigative reports (including summaries of relevant exculpatory and inculpatory evidence) and other documentation that memorializes oral notifications to the parties concerning the outcome of the investigation, including any consequences imposed as a result of a violation of Policy 2266;

- J. documentation of any supportive measures offered and/or provided to Complainants and/or Respondents, including no contact orders issued to both parties, the dates the no contact orders were issued, and the dates the parties acknowledged receipt of the no contact orders;
- K. documentation of all actions taken, both individual and systemic, to stop the discrimination or harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects;
- L. copies of the Board Policy and/or guidelines used by the Corporation to conduct the investigation and any documents used by the Corporation at the time of the alleged violation to communicate the Corporation's expectations to student and staff with respect to the subject of Policy 2266 (e.g., Student Code of Conduct and/or Employee/Administrator Handbooks);
- M. copies of any documentation that memorializes any Informal resolution to a Formal Complaint of Sexual Harassment;
- N. documentation of any training provided to Corporation employees related to Policy 2266, including but not limited to, notification of the prohibitions and expectations of staff set forth in the policy and the role and responsibility of all Corporation employees related to enforcement of Policy 2266, including their duty to report alleged violations of the policy and/or conducting an investigation and making a determination of responsibility related to any Formal Complaints of Sexual Harassment; **[REMINDER: Documentation of training must be maintained regardless of whether there is an investigation of a report of an alleged violation of Policy 2266. The Corporation should maintain a log of all Corporation employees who participate in a training, along with the date, time and location of the training, the name and title of the presenter, and a copy of the materials reviewed and/or presented during the training.][DRAFTING NOTE: The following options may be selected if the Corporation determines that they are not adequately encompassed in the preceding paragraphs.]**
- O. ☒ documentation that any rights or opportunities that the Corporation made available to one party during the investigation were made available to the other party on equal terms;
- P. ☒ copies of any notices sent to the Respondent that detail allegations of conduct that may constitute a violation of Policy 2266;
- Q. ☒ copies of the notices sent to the Complainant and Respondent in advance of any interview, hearing or meeting;
- R. ☒ copies of any documentation or evidence used during an Investigatory meeting or hearing, including the Investigative report, and any written responses submitted by the Complainant or the Respondent to it.

The documents, ESI, and electronic media (as defined in Policy 8315) retained may include public records and records exempt from disclosure under Federal (e.g., FERPA, ADA) and/or State law – e.g., student records and confidential medical records.

The documents, ESI, and electronic media (as defined in Policy 8315) created or received as part of an investigation or proceeding related to determination of responsibility shall be retained in accordance with Policy 8310, Policy 8315, Policy 8320, and Policy 8330 for not less than seven (7) calendar years, but longer if otherwise required by the Corporation's records retention schedule.