

EQUAL EDUCATIONAL OPPORTUNITIES

FILE: JB

TITLE: Nondiscriminatory Admission of Students

POLICY:

The School Board of Orange County, Florida ("Board") shall admit students to district schools and programs without regard to race, color, religion, age, sex, national origin, marital status, disability, sexual orientation, genetic information, gender identity or expression, language spoken, homelessness, or any other reason prohibited by law.

SPECIFIC AUTHORITY:

Sections 760.01; 1000.05; 1001.41; 1001.43; 1002.20; and 1003.21, Florida Statutes

20 U.S.C. Sections 1681-1688, as amended

42 U.S.C. Sections 2000d, as amended

42 U.S.C. Section 12132, as amended

TITLE: Nondiscrimination/Respect for the Individual

POLICY:

All students attending school in the Orange County Public Schools ("OCPS") district shall be treated according to a unitary code which applies equally, regardless of race, color, religion, age, sex, national origin, marital status, disability, sexual orientation, genetic information, gender identity or expression, language spoken, homelessness, or any other reason prohibited by law.

- (1) All activities, curricular and extracurricular, which are sponsored by OCPS shall evidence respect for the individual student. Every reasonable attempt shall be made to ensure that activities do not disparage or offend any student because of race, color, religion, age, sex, national origin, marital status, disability, sexual orientation, gender identity or expression, genetic information, language spoken, homelessness, or any other reason prohibited by law. It is the responsibility of the school principal to monitor all school activities for compliance with this policy.
- (2) The Superintendent shall designate an OCPS Equity Officer who shall serve as the contact person in matters pertaining to this policy. The name, address, and phone number of the OCPS Equity Officer shall appear in conjunction with all notices of nondiscrimination policies.
- (3) The Superintendent shall provide a notice of nondiscrimination at each site on a bulletin board which is available to students, employees, applicants and the general public. The notice shall also be included in applicable OCPS publications and shall include the name, address and phone number of the OCPS Equity Officer.

SPECIFIC AUTHORITY:

Sections 760.01; 1000.05; 1001.41; 1001.43; 1002.20; 1003.21; and 1012.23, Florida Statutes

20 U.S.C. Sections 1681-1688, as amended

42 U.S.C. Sections 2000d, as amended

42 U.S.C. Section 12132, as amended

TITLE:

Title IX Sexual Harassment Complaint and Investigation Procedures

POLICY:

(1) Definitions. For the purposes of this policy, the following definitions shall apply:

- (a) Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - (i) An OCPS employee conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct;
 - (ii) 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
 - (iii) 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).
- (b) Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- (c) Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- (d) 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. Schools 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 school-based Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

- (e) Remedies are designed to restore or preserve equal access to the school's education program or activity. Remedies may be issued at the conclusion of the grievance process.
 - (f) Formal complaint refers to a document filed by a complainant or signed by the school-based Title IX Coordinator alleging sexual harassment against a respondent and requesting investigation of the allegation. The formal complaint may be filed in person, by mail, or by electronic mail.
 - (g) The District Title IX Coordinator is responsible for coordinating OCPS compliance with Title IX of the Education Amendments of 1972 ("Title IX") regulations.
 - (h) The school-based Title IX Coordinator is responsible for coordinating Title IX compliance at an assigned school.
 - (i) The investigator is responsible for conducting the investigation as required by Title IX and preparing the investigative report.
 - (j) The decision-maker reviews the evidence, determines responsibility for all formal complaints, and provides a written determination to the parties. The decision-maker cannot be the same person as the school-based Title IX Coordinator or the investigator.
 - (k) The appeals decision-maker is responsible for reviewing the written determination and issuing a written decision describing the result and rationale for the appeal.
 - (l) The hearing officer reviews the evidence, determines responsibility for all formal complaints filed at postsecondary schools, and provides a written determination to the parties.
- (2) Scope of Title IX. This policy applies to allegations that meet the definition of sexual harassment as defined in section (1)(a) of this policy, conduct that occurred in an OCPS education program or activity, and allegations against a person in the United States.
- (a) "Education program or activity" includes locations, events, or circumstances over which OCPS exercised substantial control over both the respondent and the context in which the sexual harassment occurred.
- (3) Reporting Sexual Harassment. Any person may report sexual harassment, regardless of whether the reporting person is the alleged victim of the conduct. A report can be made in person, by mail, by telephone, or by electronic mail, using the contact information for the District Title IX Coordinator or school-based Title IX Coordinator. Reports may be made at any time, including during non-business hours. Any person with knowledge of sexual harassment is strongly encouraged to report the incident(s).

- (a) Reports should be made as soon as possible after the alleged incident. A formal complaint must be filed within ten (10) school days after the alleged incident. Failure on the part of the complainant to initiate and/or follow up on the complaint within this period may result in the complaint being deemed abandoned.
 - (i) OCPS is responsible for responding to complaints of which it has notice even if notice is not received within the aforementioned time frame.
 - (b) All OCPS employees are required to, and must, report, in writing, any allegations of sexual harassment or violations of this policy to the District Title IX Coordinator, school-based Title IX Coordinator, or appropriate area or district administrator.
- (4) The Superintendent may identify, upon request of a complainant or respondent, a designee for the District Title IX Coordinator when, in his/her judgment, it is warranted. Should an alternate be designated to investigate a complaint, the complainant may request a review by the Superintendent.
- (5) Knowledge of Sexual Harassment. When a school-based employee assigned to an elementary or secondary school has knowledge of sexual harassment or allegations of sexual harassment, OCPS is obligated to respond. When any Orange Technical College (“OTC”) Title IX Coordinator or official with the authority to institute corrective measures has knowledge of sexual harassment or allegations of sexual harassment, OTC is obligated to respond.
- (6) Response to Knowledge of Sexual Harassment. A school must respond to knowledge of sexual harassment in the school’s education program or activity against a person in the United States within twenty-four (24) hours or no more than two (2) school days.
- (a) If the alleged sexual harassment might constitute a crime the matter shall immediately be reported to the School Resource Officer or the appropriate law enforcement agency. Any uncertainty regarding whether the alleged sexual harassment might constitute a crime must be resolved in favor of reporting the incident to law enforcement.
 - (b) If the alleged sexual harassment might constitute child abuse the matter shall immediately be reported to the Florida Department of Children and Families. Any uncertainty regarding whether the alleged sexual harassment might constitute child abuse must be resolved in favor of reporting the incident.
 - (c) When an OCPS employee is the respondent, the school-based Title IX Coordinator or school administrator shall immediately notify OCPS Professional Standards. If the respondent is an OCPS employee, discipline may be taken, consistent with any applicable collective bargaining agreement provisions or statutory provisions to resolve a complaint of sexual harassment.

- (d) Upon knowledge of sexual harassment, the school-based Title IX Coordinator must:
 - (i) Contact the complainant to discuss the availability of supportive measures;
 - (ii) Consider the complainant's wishes with respect to supportive measures;
 - (iii) Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
 - (iv) Explain to the complainant the process for filing a formal complaint.
- (7) Filing of Formal Complaint. The formal complaint may be filed by a complainant, parent or legal guardian, or signed by the school-based Title IX Coordinator. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the school's education program or activity.
- (8) Response to Filing of Formal Complaint.
 - (a) When a formal complaint has been filed, the school must immediately determine if:
 - (i) The allegations meet the definition of sexual harassment even if proved, as defined in section (1)(a) of this policy;
 - (ii) The conduct occurred in an OCPS education program or activity; and
 - (iii) The allegations occurred against a person in the United States.
 - (b) If the school determines these requirements are met, the school must follow the grievance process outlined in section (12) of this policy. If the school determines any of these requirements are not met, the school must dismiss the formal complaint pursuant to section (10)(c) of this policy. For all K-12 schools, written notice of dismissal must be sent to the parent and/or legal guardian.
- (9) Consolidation of Formal Complaints. Formal complaints involving allegations of sexual harassment arising from the same facts or circumstances may be consolidated against more than one (1) respondent, if multiple complainants file a complaint against multiple respondents, or if one (1) party files a complaint against the other party.
- (10) Dismissal of Formal Complaints. Schools shall investigate allegations in a formal complaint and determine whether dismissal is required or permitted.
 - (a) Required Dismissal.
 - (i) OCPS must dismiss a formal complaint if the alleged conduct:

1. Does not constitute sexual harassment even if proved as defined in section (1)(a) of this policy;
 2. Did not occur in a school's education program or activity; or
 3. Did not occur against a person in the United States.
- (ii) OCPS may take action under another provision of the OCPS Code of Student Conduct in the event dismissal is required.
- (b) Permitted Dismissal. Schools may dismiss a formal complaint or any allegations during the investigation or hearing if:
- (i) The complainant provides written notice to the school-based Title IX Coordinator of their intent to withdraw the formal complaint or any allegations;
 - (ii) The respondent is no longer enrolled or employed by OCPS; or
 - (iii) Specific circumstances prevent the school from gathering evidence sufficient to reach a determination.
- (c) Written Notice of Dismissal. Upon a required or permitted dismissal, schools must send written notice of the dismissal and reasons for the dismissal simultaneously to parties within twenty-four (24) hours or no more than two (2) school days. For all K-12 schools, written notice of dismissal must be sent to the parent and/or legal guardian.
- (d) Appeal of Dismissal. Parties may request an appeal from a dismissal within two (2) school days of issuance of the dismissal. Requests for an appeal should be sent to the decision-maker, as outlined in section (17) of this policy.
- (11) Emergency Removal. OCPS may remove a respondent from a school's education program or activity on an emergency basis, only after undertaking an individualized safety and risk analysis, and determining if 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 providing the respondent with notice and an opportunity to challenge the decision within two (2) school days following the removal. For all K-12 schools, notice of emergency removal must be sent to the parent and/or legal guardian. 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.
- (12) Grievance Process for Formal Complaints of Sexual Harassment. In response to a formal complaint, schools must provide written notice to all known parties and follow a specified grievance process before the imposition of any disciplinary sanctions against the respondent.

- (a) **Written Notice of Allegations.** A school must provide written notice within two (2) school days of the allegations to all known parties upon receipt of a formal complaint. For all K-12 schools, written notice must be sent to the parent and/or legal guardian.
- (i) Written notice must include:
1. The identities of the parties involved in the incident, if known;
 2. The conduct allegedly constituting sexual harassment;
 3. The date and location of the alleged incident, if known;
 4. A statement that the respondent is presumed not responsible for the alleged conduct;
 5. The school's grievance process;
 6. A statement that a determination regarding responsibility is made at the conclusion of the grievance process;
 7. A statement informing the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;
 8. A statement advising parties that they may inspect and review evidence, as outlined in section (13)(f)(i); and
 9. A statement informing the parties of any provision in the school's Code of Student Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- (ii) If during the course of an investigation the school decides to investigate allegations about the complainant or respondent that are not included in the original notice, the school must provide written notice of the additional allegations to the known parties within two (2) school days, pursuant to the requirements of written notice in this policy. For all K-12 schools, written notice of additional allegations must be sent to the parent and/or legal guardian.
- (b) **Response to Complaint.** Parties shall be afforded the opportunity to prepare a response regarding the complaint and provide that response during the initial interview. Parties shall have no less than two (2) school days from the date of the written notice to prepare a response. The school-based Title IX Coordinator shall conduct the initial interviews with both the complainant and the respondent within five (5) school days. Each individual shall be interviewed separately and at no time will the complainant and respondent be interviewed together. This time frame may be modified for good cause. 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.

- (c) Basic Requirements for Grievance Process. A school's grievance process must:
 - (i) Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility has been made against the respondent;
 - (ii) Require an objective evaluation of all relevant evidence;
 - (iii) Include a presumption that the respondent is not responsible for the alleged conduct until the written determination is made at the end of the grievance process;
 - (iv) Ensure the School-based Title IX Coordinator, investigator, decision-maker, and appeals decision-maker are free from any conflicts of interest or bias for or against any complainants or respondents;
 - (v) Include reasonably prompt time frames for the conclusion of the grievance process;
 - (vi) Include reasonably prompt time frames for filing and resolving appeals;
 - (vii) Allow for the temporary delay of the grievance process or 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;
 - (viii) List the range of possible disciplinary sanctions and remedies that may be implemented;
 - (ix) Include the procedures and grounds for appeal;
 - (x) Describe the range of supportive measures available to parties;
 - (xi) Not allow, require, rely upon, or otherwise use questions or evidence that seek disclosure of protected information under a legally recognized privilege, unless the person holding such privilege waives the privilege; and
 - (xii) Notify parties that the preponderance of the evidence standard will be used to determine responsibility.
- (13) Procedures for Investigation of a Formal Complaint. The investigation must be completed and evidence provided to the respondent and complainant within five (5) school days of the initial interviews with the complainant and respondent,

whichever interview is later. For all K-12 schools, evidence must be provided to the parent and/or legal guardian. This time frame may be extended for good cause. 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.

- (a) OCPS must ensure that the burden of proof and the burden of gathering evidence rests on the school.
- (b) Confidentiality of Medical Records. OCPS 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 under this section (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) Schools shall not restrict the ability of either party to discuss the allegations under investigation.
- (d) Written Notice of Grievance Proceedings. Notice for any investigative interviews, or meetings must be sent at least two (2) school days prior to the interview or meeting. For all K-12 schools, written notice of any investigative interviews, or meetings must be sent to the parent and/or legal guardian. Notice for any hearings at OTC must be sent at least ten (10) school days prior to the hearing. Notice must include the date, time, location, participants, and purpose of meeting to all parties whose participation is expected or invited.
- (e) Grievance Proceedings. Both parties must be given an equal opportunity to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding with an advisor of their choice.
- (f) Evidence
 - (i) Inspection and Review of Evidence. Both parties must be given 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. OTC must make all evidence subject to the parties' inspection and review available at any hearing to give each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
 - (ii) Prior to completion of the investigative report, schools shall send to each party and their advisor, if any, the evidence subject to

inspection and review in an electronic format or a hard copy. For all K-12 schools, evidence must be sent to the parent and/or legal guardian. Parties have ten (10) school days to submit a written response to all evidence, for the investigator to consider before concluding the investigative report. If a response is not received within ten (10) school days, the investigator will deem the non-response as a waiver and continue with the investigative report.

- (iii) Gathering and Presentation of Evidence. Schools may not restrict the ability of either party to gather and present relevant evidence.
- (g) Presenting Witnesses. Both parties shall be given the equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- (h) The Investigative Report. The investigator shall create an investigative report that fairly summarizes all relevant evidence presented. The investigator must send the report in an electronic form or a hard copy to all parties and all advisors ten (10) days prior to a hearing for their review and written response, if a hearing is required. If a hearing is not required, schools must send the report to all parties and all advisors for their review and written response ten (10) days prior to any written determination. For all K-12 schools, the investigative report must be sent to the parent and/or legal guardian. Parties will have ten (10) days from receipt of the investigative report to provide a written response to the investigative report.
- (i) K-12 Questions. After the investigative report has been sent to all parties and before a determination regarding responsibility is made, each party shall be given two (2) school days to submit written, relevant questions to be asked of any party or witness and provide each party with answers within two (2) school days. Parties shall then be allowed two (2) school days to provide no more than five (5) follow-up questions in total from all parties and witnesses. Parties and witnesses have two (2) school days to respond to any follow-up questions.
 - 1. After parties submit written questions, the decision-maker must:
 - A. Determine whether a question is relevant; and
 - B. Explain to the proposing party any decision to exclude a question as not relevant;
 - 2. Questions and evidence regarding a complainant's sexual predisposition or prior sexual behavior are only relevant if offered to prove someone other than the respondent committed the alleged conduct, 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.

(14) Advisors. Parties may have one (1) advisor of their choosing. If a party does not have an advisor, OTC must provide an advisor to the party without fee or charge. Parties must request an advisor from OTC at least five (5) school days prior to a hearing. The appointed advisor will conduct cross-examination on behalf of the party. OTC may appoint an advisor of their choice, who may be, but is not required to be, an attorney.

(a) The following restrictions will be placed on advisors for both parties:

- (i) Advisors may attend interviews with their party only at their party's request, unless the advisor is a parent or legal guardian;
- (ii) Advisors shall not restrict access to their party;
- (iii) Advisors are only permitted to use the investigative report and evidence received for inspection and review for purposes of the grievance process;
- (iv) Advisors will be required to abide by a non-disclosure agreement that complies with both Title IX and FERPA; and
- (v) Advisors may not request education records that are protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA").

(15) Hearings

(a) K-12 Schools. Hearings do not apply.

(b) Orange Technical College. A live hearing with cross-examination must be provided by OTC.

(i) Live hearings may occur with parties in the same room. At the request of either party, the entire live hearing must occur with parties located in separate rooms with technology allowing the decision-maker and parties to simultaneously see and hear the party or witness answering questions.

(ii) Cross-Examination. At the live hearing, each party's advisor shall be permitted to ask any party and any witness relevant questions and follow-up questions, including questions challenging credibility. This cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. OTC must provide for all parties to have an advisor, as outlined in section (14).

1. Only relevant cross-examination and other questions may be asked of a party or witness.

- A. Questions and evidence regarding a complainant's sexual predisposition or prior sexual behavior are only relevant if offered to prove someone other than the respondent committed the alleged conduct, 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.
 - 2. The hearing officer must determine whether a question is relevant before a party or witness answers and explain any decision to exclude a question as not relevant.
 - (iii) OTC must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.
 - (iv) Parties shall have access to all evidence at any hearing and be given the opportunity to refer to such evidence, including for purposes of cross-examination.
 - (v) The hearing officer must not:
 - 1. Rely on any statement of a party or witness who does not submit to cross-examination, when reaching a determination; or
 - 2. Draw an inference about the determination based solely on a party's or witness's absence from a live hearing or refusal to answer cross-examination or other questions.
- (16) Procedures for Written Determination. At the conclusion of the grievance process, the decision-maker or hearing officer must apply the preponderance of the evidence standard to reach a determination and then issue a written determination to the parties simultaneously within three (3) school days. For all K-12 schools, the written determination must be sent to the parent and/or legal guardian. The school-based Title IX Coordinator is responsible for implementing remedies stated in the written determination.
 - (a) The written determination must include:
 - (i) Identification of the allegations potentially constituting sexual harassment, pursuant to the definition in this policy;
 - (ii) A description of the procedural steps taken from the receipt of the formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings;
 - (iii) Findings of fact supporting the determination;

- (iv) Conclusions regarding application of the Code of Student Conduct to the facts;
 - (v) The result and rationale as to each allegation;
 - (vi) A determination regarding responsibility as to each allegation;
 - (vii) Any disciplinary sanctions imposed on the respondent by the school;
 - (viii) Whether remedies will be provided by the school to the complainant; and
 - (ix) Permissible procedures and grounds for the complainant and respondent to appeal.
- (17) Appeals. Each party has the opportunity to appeal from both a written determination, and a dismissal of a formal complaint or any allegations. A request for an appeal from a dismissal must be made within two (2) school days of issuance of the dismissal. A request for an appeal from a written determination must be made within two (2) school days of issuance of the written determination. Requests for an appeal should be sent to the original decision-maker.
- (a) If an appeal is not filed, the determination regarding responsibility becomes final on the date after the two (2) school days to file an appeal has passed. If an appeal is filed, the determination regarding responsibility becomes final on the date the school provides the written appeals decision.
 - (b) Grounds for Appeal. Appeals may take place for the following reasons:
 - (i) Procedural issues affected the outcome;
 - (ii) New evidence that was not reasonably available at the time the written determination or dismissal was made becomes available that could affect the outcome; or
 - (iii) There was a conflict of interest or bias by the school-based Title IX Coordinator, investigator, or decision-maker, against any complainant or respondent that affected the outcome.
 - (c) Notification of Appeal. Schools must notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. For all K-12 schools, the parent and/or legal guardian must be notified when an appeal is filed. Parties must be given three (3) school days to submit a written statement in support of, or challenging, the outcome of the written determination. If a written statement is not received within three (3) school days, the appeals decision-maker will deem the non-response as a waiver and continue with the appeals process.
 - (d) Appeals Decision-Maker. The appeals decision-maker may not be the same person as the investigator, school-based Title IX Coordinator, or

decision-maker who reached the initial determination of responsibility or dismissal. The appeals decision-maker must not have a conflict of interest or bias for or against any complainant or any respondent.

- (e) Written Appeals Determination. The written appeals determination describing the result and rationale for the decision must be provided simultaneously to both parties within five (5) school days. For all K-12 schools, the written appeals determination must be sent to the parent and/or legal guardian.
- (18) Retaliation. No school or other person may intimidate, threaten, coerce, or discriminate against any individual for the purposes of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.
- (a) Definition of Retaliation.
 - (i) Intimidation, threats, coercion, or discrimination, including 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, constitutes retaliation.
 - (ii) The exercise of rights protected under the First Amendment does not constitute retaliation.
 - (iii) A Code of Student Conduct violation for making a materially false statement in bad faith during the course of the grievance process does not constitute retaliation. A determination regarding responsibility alone is insufficient to conclude that any party made a materially false statement in bad faith.
 - (b) Confidentiality of Parties. Schools must keep confidential the identity of the following individuals:
 - (i) Any individual who has made a report or complaint of sex discrimination;
 - (ii) Any individual who has made a report or filed a formal complaint of sexual harassment;
 - (iii) Any complainant;
 - (iv) Any individual reported to be the perpetrator of sex discrimination;
 - (v) Any respondent; and
 - (vi) Any witness.

- (c) Exceptions to Confidentiality. OCPS may release confidential information as 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.
 - (d) Filing of Retaliation Complaints. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination as outlined in section (12) of this policy.
- (19) Training. All materials used to train school-based Title IX Coordinators, investigators, decision-makers, and appeals decision-makers must not rely on sex stereotypes and must promote impartial investigations and adjudications.
- (a) School-based Title IX Coordinators, investigators, decision-makers, hearing officers, and appeals decision-makers must receive training on:
 - (i) The definition of sexual harassment as defined in (1)(a);
 - (ii) The scope of the school's education program or activity;
 - (iii) How to conduct an investigation and grievance process, including hearings and appeals; and
 - (iv) How to serve impartially by avoiding prejudgment of the facts, conflicts of interest, and bias.
 - (b) Decision-makers and hearing officers must receive training on:
 - (i) Any technology used at a live hearing; and
 - (ii) Relevance of questions and evidence, including the relevance of the complainant's sexual predisposition or prior sexual behavior as set forth in section (13)(h)(i)(2) of this policy.
 - (c) Investigators must receive training on:
 - (i) Issues of relevance to create an investigative report that fairly summarizes relevant evidence; and
 - (ii) Sending the investigative report, in an electronic or hard copy, to each party and their advisor ten (10) days prior to a hearing for their review and written response.
- (20) Recordkeeping.
- (a) Required Recordkeeping. Schools must create records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment. If supportive measures are not provided,

the school must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

- (b) Maintaining Records. Schools must maintain records related to any sexual harassment investigation for seven (7) years, including records of:
 - (i) Any actions taken in response to a report of sexual harassment;
 - (ii) Any actions taken in response to a formal complaint of sexual harassment;
 - (iii) Any supportive measures provided;
 - (iv) Each sexual harassment investigation;
 - (v) Any determination regarding responsibility;
 - (vi) Any audio or audiovisual recording or transcript;
 - (vii) Any disciplinary sanctions imposed on the respondent;
 - (viii) Any remedies provided to the complainant;
 - (ix) Any appeal and written appeal decision; and
 - (x) All materials used to train school-based Title IX Coordinators, investigators, decision-makers, hearing officers and appeals decision-makers.

(21) Dissemination of Policy.

- (a) Notification of Title IX Coordinator. OCPS must notify students, parents or legal guardians of elementary and secondary school students, employees, applicants for admission and employment, and all unions or professional organizations OCPS holds collective bargaining or professional agreements with, of the name, office address, electronic mail address, and telephone number of the District Title IX Coordinator.
- (b) Notification of Policy. OCPS must notify students, parents or legal guardians of elementary and secondary school students, employees, applicants for admission and employment, and all unions or professional organizations OCPS holds collective bargaining or professional agreements with, that:
 - (i) OCPS does not discriminate on the basis of sex in any education program or activity;
 - (ii) OCPS is required by Title IX not to discriminate on the basis of sex;
 - (iii) The requirement to not discriminate on the basis on sex extends to admission and employment; and

- (iv) Inquiries about Title IX are referred to the District Title IX Coordinator.
- (22) Publication. Schools must not use or distribute a publication that states OCPS treats applicants, students, or employees differently on the basis of sex, except as permitted by Title IX.
- (a) Website Publication. OCPS must prominently display the name, office address, electronic mail address and telephone number of the District Title IX Coordinator on the OCPS website.
 - (b) Handbook Publication. OCPS must prominently display the name, office address, electronic mail address and telephone number of the District Title IX Coordinator in each handbook or catalog made available to students, parents or legal guardians of elementary and secondary school students, employees, applicants for admission and employment, and all unions or professional organizations who hold collective bargaining or professional agreements with OCPS.
 - (c) Training Materials Publication. OCPS must make all training materials publicly available on the OCPS website.
- (23) FERPA. OCPS should interpret Title IX and FERPA in a manner to avoid any conflicts. Where a true conflict exists, the obligation to comply with Title IX is not obviated or alleviated by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99.

SPECIFIC AUTHORITY: Sections 760.01; 794.022; 1000.05; 1001.41; 1001.43; 1006.07; 1006.09 and 1012.23, Florida Statutes

20 U.S.C. Section 1092
34 U.S.C. Section 12291
34 C.F.R. Section 106
20 U.S.C. Sections 1681-1688, as amended
42 U.S.C. Sections 2000d, as amended
42 U.S.C. Section 12132, as amended

TITLE: Student Discrimination Grievance/Complaint Procedures

POLICY:

All students attending Orange County Public Schools (“OCPS”) shall be treated according to a unitary code which applies equally, regardless of race, color, religion, age, national origin, marital status, disability, genetic information, language spoken, homelessness, or any other reason prohibited by law. This policy shall govern the process of student grievance/complaint procedures for any allegation of discrimination based on the classifications mentioned above. Students who have an allegation of discrimination should contact the OCPS Equity Officer.

- (1) Discrimination is conduct which deprives the victim of the opportunity to participate in educational programs or activities. The School Board of Orange County, Florida ("Board") or OCPS school sponsored activities, or in any other activities offered or provided by the Board on account of race, color, religion, age, sex, national origin, marital status, disability, sexual orientation, genetic information, gender identity or expression, language spoken, homelessness, or any other reason prohibited by law.
- (2) Any student who believes that he or she has been the victim of discrimination based upon any factor identified above, may and is encouraged to file a grievance/complaint with the OCPS Equity Officer or any OCPS district office or school level administrator. All such complaints must be immediately forwarded to the OCPS Equity Officer or other person who has been specifically designated to handle grievances/complaints of discrimination.
- (3) The Superintendent may identify, upon request of a complainant, a designee for the OCPS Equity officer when in his/her judgment it is warranted. The alternate first point of contact or designee shall be the OCPS Director of Professional Standards. Should an alternate be designated to investigate a grievance/complaint, the complainant may request a review by the Superintendent.
- (4) When any OCPS district office or school level administrator learns of an alleged incident of discrimination, OCPS is obligated to investigate. All OCPS supervisors are required to report complaints in writing on the Complaint Form to the OCPS Equity officer.
- (5) The grievance/complaint may be made orally or may be filed in writing. The complainant has sixty (60) days from the date of the incident for the initial filing of a grievance/complaint.
 - (a) If the grievance/complaint is made orally, the OCPS Equity Officer or other OCPS district office or school level administrator receiving the complaint shall record it in written form, which shall be reviewed and acknowledged by the complainant to verify its accuracy.
 - (b) A written grievance/complaint may be amended to correct technical defects, omissions, or to clarify or amplify allegations made therein. An amendment may be filed at any time before the investigation is completed.
 - (c) The grievance/complainant may withdraw a complaint at any time.
 - (d) OCPS, regardless of whether a grievance/complaint conforms to a certain format or whether or not it is committed to writing, will investigate all allegations of discrimination.
- (6) The investigator may interview the complainant to obtain any additional information needed to clarify the grievance/complaint.
- (7) The OCPS Equity Officer, at this point, may inquire of the complainant as to a possible resolution of the grievance/complaint. If the complainant is amenable to

a resolution of the grievance/complaint prior to implementation of Paragraph 10, below, the OCPS Equity Officer shall begin discussion regarding a resolution.

- (8) The investigation shall include, but not be limited to, investigating all allegations by the complainant and respondent, interviewing any witnesses, and taking statements from witnesses and other persons who may be able to provide valid and relevant information. Upon completion of the investigation, the investigator shall provide a final written disposition of the grievance/complaint containing a summary of findings.
- (9) A substantiated charge may subject such violator to disciplinary action, including, but not limited to, warning, reprimand, suspension or termination, subject to applicable procedural requirements in applicable Board policies and OCPS rules and regulations.
- (10) Retaliation against an individual for filing a grievance/complaint or against an individual providing information regarding the investigation of any grievance/complaint is prohibited.
- (11) The use of this grievance/complaint procedure shall not prohibit the complainant from seeking redress from other available state and/or federal sources.
- (12) To the extent permitted by law, confidentiality will be maintained. However, since an effective investigation requires the discussion of certain information with certain individuals, OCPS must discharge its duty to prevent and correct Discrimination.

SPECIFIC AUTHORITY: Sections 760.01; 1000.05; 1001.41; 1001.43; 1006.07; and 1012.23, Florida Statutes

20 U.S.C. Sections 1681-1688, as amended

42 U.S.C. Sections 2000d, as amended

42 U.S.C. Section 12132, as amended

ADOPTED: 03/09/2004

REVISED: 01/17/2012; 12/11/2012; 8/11/2017; 9/25/2018; 8/11/2020