**TCSS Title IX Procedural Guide**

Inquiries concerning the application of Title IX may be referred to the District’s Title IX Coordinator:

 Mr. Tyrone Blocker, Coordinator of Student Services Email: tublocker@tcss.net

 Phone: (205) 342-2724

 Tuscaloosa County School System Central Office

 1118 Greensboro Avenue

 Tuscaloosa, AL 35401

In accordance with Title IX (20 U.S.C. §1681, *et seq*.), Tuscaloosa County School System strictly prohibits discrimination on the basis of sex or gender in its programs or activities, including sexual harassment, as defined by law and Board policy. Student sexual harassment complaints should be filed and reviewed under this policy. All other complaints under Title IX will be filed and reviewed according to the Board’s general complaint and grievance procedures

Title IX protects every student’s right to educational opportunities and benefits free from sex

discrimination. Sexual harassment is a form of sex discrimination under Title IX. TCSS Policy prohibits the discrimination of students based on sex or gender, including sexual harassment. This Guide details the procedures that must be followed under the Title IX regulations published May 19, 2020, by the U.S. Department of Education. *Not all allegations of sexual harassment will trigger Title IX – only objectively serious behavior qualifies as sexual harassment under Title IX.*

Title IX regulations carry the force of law. The new regulations detail due process protections in the Title IX grievance process related to sexual harassment. The new regulations describe the following:

1. What constitutes sexual harassment actionable under Title IX;
2. What triggers a school’s legal obligation to respond to incidents or allegations of sexual harassment; and
3. How the school must respond.
4. What procedures are required for a formal complaint of sexual harassment.

***These procedures DO NOT eliminate the mandatory reporting requirement for suspected child abuse or neglect.***

**Definitions and Procedures**

Complainant: The student who is making allegations of Title IX sexual harassment. A complainant will be given a copy of these procedures.

Respondent: The student or employee accused of Title IX sexual harassment.

Supportive Measures: These are non-punitive/non-disciplinary steps taken to protect the safety of all parties or the district’s educational environment or deter sexual harassment. These measures will be offered to both parties regardless of the filing of a formal complaint and during the course of the grievance process. Supportive measures shall comply with Section 504 and the Individuals with Disabilities Education Act (“IDEA”).

Formal Complaint: A written and signed Title IX complaint containing allegations of Title IX sexual harassment. An individual believing that he or she has been the victim of sexual harassment (Complainant) may file a complaint with the Title IX Coordinator within 30 days of the incident(s) giving rise to the allegations. The complaint must be in writing, signed (either physically or digitally) and needs to specify the allegations which the individual believes constitutes sexual harassment. The complainant has the right to contact law enforcement to determine if criminal activity occurred.

Grievance Process: Certain steps triggered by a formal complaint that must be taken before imposing discipline or other actions that are not supportive measures against a respondent.

Confidentiality: TCSS will maintain the confidentiality of an individual making a report of sexual harassment, the Complainant; the alleged perpetrator of sexual discrimination, the Respondent; and any witnesses except as disclosure may be permitted to conduct an investigation, judicial proceeding, or as permitted under FERPA.

Informal Resolution: TCSS may utilize an informal resolution process, but only after a formal complaint has been filed. The decision to invoke the informal resolution process is voluntary and not required as a condition of enrollment or employment. TCSS may determine that this matter is not appropriate for informal resolution, including where an employee is alleged to have sexually harassed a student. If an informal resolution is appropriate, both the Complainant and the Respondent must agree to informal resolution. Either party has the right to end the informal resolution process at any time and may request the commencement of the formal complaint process at any time prior to a determination of responsibility.

Remedies: TCSS will take all reasonable and necessary measures to prevent the recurrence of any harassment and to correct its discriminatory effects on the individual and others. Remedies shall be provided to a Complainant where a determination of responsibility for sexual harassment has been made after the grievance procedure is complete. Remedies will be designed to restore or preserve equal access to the school system’s education program or activity. Remedies may include discipline against the Respondent, counseling, extensions of deadlines or other course-related adjustments, modifications of schedules, restrictions on contact, increased security/monitoring of the school campus, and training. Discipline for a student includes, but is not limited to, any disciplinary action allowed under the Student Code of Conduct. Discipline for an employee includes, but is not limited to, warning, reprimand, suspension with or without pay, termination from employment or any other action allowed under the Students First Act.

Retaliation: Any individual who participates in a sex discrimination investigation shall notify the Title IX Coordinator if he or she believes that he or she is being retaliated against for participating in the investigation. TCSS prohibits retaliations against individuals making complaints under these procedures and participating in any investigation that may ensue.

**What constitutes sexual harassment actionable under Title IX? (*Note: not all allegations of sexual harassment will trigger Title IX – only objectively serious behavior qualifies as sexual harassment under Title IX*.)** *“Where conduct is sexual in nature, or whether conduct references one sex or another, that suffices to constitute conduct on the basis of sex.” 85 Fed. Reg. at 30, 146.*

1. A school employee engaging in quid pro quo harassment by conditioning an educational benefit or service upon a student’s participation in unwelcome sexual conduct (e.g., a teacher tells a failing student that he/she will give the student a passing grade if the student texts a nude photo of herself to his personal cell phone); or
2. Unwelcome conduct on the basis of sex that is so severe, pervasive **and** objectively offensive that it effectively denies a person equal access to the school’s education program or activity or
3. Other conduct as defined by federal law, including: sexual assault, dating/domestic violence, and stalking.

**What triggers a school’s obligation to respond?**

1. Actual knowledge of sexual harassment or allegations of sexual harassment where an employee:
* Witnesses the conduct.
* Hears about the conduct from the alleged victim or anyone else (e.g., parent, friend, peer, anonymous reporter).
* Receives a written report of the conduct from the alleged victim or anyone else.
1. The alleged harassment must involve conduct that occurs within the school’s own educational program or activity. An “education program or activity” includes locations, events, or circumstances over which a school district exercised substantial control over the alleged perpetrator and the context in which the sexual harassment occurred. This may cover off-campus or online conduct and will be a fact specific determination.

**How must a school respond?**

1. Schools must treat all reports of sexual harassment seriously and respond meaningfully to every report of sexual harassment, whether or not the complainant files a formal complaint.
2. Upon actual knowledge of sexual harassment allegations, schools must respond promptly and in a manner that is not deliberately indifferent.
3. There must be a “presumption of non-responsibility” during the complaint and investigation.
4. The school system has a Title IX Coordinator designated to receive both reports and formal complaints, and to coordinate effective implementation of supportive measures. A formal complaint form is provided as part of these procedures.
5. The district-level Title IX Coordinator is to coordinate compliance efforts by:
* Meeting with the alleged victim and his or her parents/guardians once made aware of alleged sexual harassment
* Coordinating implementation of supportive measures
* Signing a formal complaint to initiate grievance process
1. Every formal complaint must be investigated following the established grievance procedure. Following this procedure provides the school with a safe harbor against a later finding of deliberate indifference.
2. Where no formal complaint is filed or while a formal complaint is being investigated, the school still must “do something,” specifically, offer the complainant supportive measures. These are non-disciplinary and non-punitive services as appropriate to protect the safety of all parties and deter any future harassment. This is the “go-to” response in all cases where a formal complaint is not filed.

**What are some examples of supportive measures, keeping in mind that these measures are available to the alleged victim with or without the filing of a formal complaint?**

* Counseling.
* Extensions of deadlines or other course-related adjustments.
* Changes to class schedules.
* Increased monitoring/security of certain areas.

**What happens if a formal complaint is filed?**

1. Schools must follow this grievance process.
2. If the allegations made in the Complaint would not constitute Title IX sexual harassment even if true, the Complaint must be dismissed and no investigation would proceed (this does not prohibit action that can be taken under the TCSS Student Code of Conduct).
3. The grievance process is initiated by the filing of a written complaint alleging sexual harassment actionable under Title IX.
4. The complaint must be signed by either the Complainant or Title IX Coordinator.
5. The grievance process must follow a reasonable timeframe.
6. After the formal complaint is in place, written notice is provided to the involved individuals and parent/guardians.
7. A presumption of innocence is required for the respondent throughout the process.
8. The school must objectively evaluate all relevant evidence.
9. The Title IX Coordinator, Investigator and Decision-maker must not have any conflict of interest or bias for or against complainants or respondents.

**What are the various roles and steps involved in the Title IX Formal Grievance Process?**

1. There are two roles at the local school: Investigator and Decision-maker. The Investigator cannot also be the Decision-maker.
2. The Investigator carries out the investigation by conducting interviews of the involved individuals and witnesses, collecting documentary and other evidence, and drafting an investigative report.
3. The Investigator does not need to make credibility determinations as part of the report, but can make factual observations related to the investigation.
4. All relevant evidence gathered and received in the course of the grievance process will be objectively evaluated, including both inculpatory and exculpatory evidence.
5. Once the report is completed, the involved individuals and their parents will have the opportunity to inspect and review evidence, and respond to the report, subject to the disclosure of information under the Family Educational Rights Privacy Act (FERPA) and Alabama law. A written response to the report may be submitted by the parties within 10 days of receipt of the investigative report.
6. After the investigative report is submitted to the parties and forwarded to the Decision-maker, the Decision-maker provides an opportunity for involved individuals and parents/guardians to prepare written questions to be answered by the other side along with allowing for limited follow-up questions from each party. If the Decision-maker refuses to submit a question to another party, the Decision-maker will provide an explanation for the refusal.
7. The Decision-maker reaches the responsibility determination by applying a “preponderance of the evidence” evidentiary standard (“More likely than not…”).
8. The Decision-maker’s responsibility determination must be in writing and:
* Identify the allegations
* Describe the procedural steps taken
* Include findings of fact, disciplinary sanctions, applicability of the code of conduct, and remedies
* Outline appeal procedures
1. A Respondent cannot face discipline without due process protections.
2. Where a Respondent is found responsible, the Complainant must be given remedies designed to restore or preserve equal access to education (may be similar to supportive measure in place during investigation).
3. As long as voluntary and both parties are fully informed and written consent provided by both parties, a school may facilitate informal resolution of a sexual harassment complaint.

**What if there is an appeal of the responsibility determination?**

1. An appeal must be offered if the involved individual and his or her parents/guardians assert that:
* A procedural irregularity affected the outcome
* New evidence may affect the outcome that was not previously reasonably available
* The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias that affected the outcome
1. The Decision-maker on appeal must be a different individual than involved in the initial process.
2. An appeal must be made to the Superintendent within 10 days of the issuance of the responsibility determination. The Superintendent or designee shall provide both parties with written notice that an appeal is filed. Both parties will have the opportunity to submit a written statement in support of or challenging the outcome within 10 days of issuance of the notice of appeal. The Superintendent or designee shall issue a written decision to both parties within 30 days of receipt of any appeal, regardless of whether any written statements have been provided, of the result of the appeal and rationale for the result.

**What happens to the records?**

1. The following records must be retained:
* Every report of sexual harassment event when no formal complaint is filed, including the response to the report and documentation of supportive measures implemented.
* Every Title IX sexual harassment investigation and determination of responsibility, including any informal resolution and appeal.
* All materials used to train the Title IX Coordinator, investigators, and decision-makers.
* The documentation must include the facts on which any conclusions were based to show the school/system was not deliberately indifferent to the allegation sexual harassment.
1. Copies of all school records will be delivered at the end of each school year to the Coordinator of Student Services (System Title IX Coordinator) and retained at the Central Office. Originals will be retained at the local school.

**What is the Time Frame?**

TCSS will complete the grievance process within 120 days of receipt of a formal complaint. The grievance process or other time frame specified may be delayed or extended for good cause. Good cause may include issues related to the absence of a party, a party’s advisor or witness; concurrent law enforcement activity; or the need for assistance or accommodation of a personal with a disability. TCSS will provide written notice to the parties for any delays or extension of the time frames or grievance process with an explanation for such delay or extension.

**Can a complaint be dismissed?**

1. At any time during the grievance process, TCSS is required to dismiss a complaint if the conduct alleged in the formal complaint:
* Would not constitute sexual harassment as defined by Title IX even if proven;
* Did not occur in the school system’s education programs or activities; or
* Did not occur against a person in the United States
1. Additionally, TCSS may dismiss a complaint where:
* The Complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or allegations;
* The Respondent is no longer enrolled in or employed by the school system; or
* Specific circumstances prevent the school system from gathering evidence sufficient to reach a determination regarding responsibility.
1. TCSS will provide the parties with written notice of a dismissal, whether mandatory or discretionary, and the reason for the dismissal. Dismissal of the formal complaint under Title IX does not preclude action under another policy or the Code of Conduct.

**Student on Student Sexual Harassment Local School Response**

**Actual Knowledge or Report of Complaint**

**System Title IX Coordinator (Coordinator of Student Services)**

**Appeal**

(Superintendent)

**Written Decision issued by Decision-maker**

(Deputy Superintendent)

**Formal Complaint**

Supportive Measures Implemented

Investigation

(Sr. Director of Human Resources)

**Appeal**

(Director of Student Services)

**Written Decision issued by Decision-maker**

(School Principal)

**Formal Complaint**

Supportive Measures Implemented

Investigation

Counselor, Central Office staff, or Assistant Principal may be the Investigator

**No Formal Complaint**

Supportive Measures Implemented

**No Formal Complaint**

Supportive Measures Implemented

**Actual Knowledge or Report of Complaint**

**System Title IX Coordinator (Coordinator of Student Services)**

**Employee-Student Sexual Harassment School System Response**

**Procedural Steps (“Grievance Process”) upon Formal Complaint**

 **TITLE IX COMPLAINT FORM**

**Purpose**: This grievance form is used to gather the essential basic facts of the alleged actions so that prompt and equitable resolutions based on sex discrimination, including complaints of sexual harassment or sexual violence can be resolved as expediently and appropriately as possible. This form only applies to complaints alleging discrimination prohibited by Title IX of the Education Amendments of Title IX (“Title IX”), including sexual harassment and sexual violence.

**Instructions**: Individuals alleging Title IX discrimination and requesting review are required to complete this form and submit it to the appropriate administrator as soon as possible after the occurrence of the alleged discrimination.

**Title IX Coordinator Contact Information**:

 Mr. Tyrone Blocker, Coordinator of Student Services Email: tublocker@tcss.net

 Phone: (205) 342-2724

 Tuscaloosa County School System Central Office

 1118 Greensboro Avenue

 Tuscaloosa, AL 35401

Name of Complainant (Student):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

School: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Grade:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Parent/Guardian Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Parent/Guardian Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Nature of the Complaint: Please describe the action you believe may be sex discrimination, including complaints of sexual harassment or sexual violence, in violation of Title IX. Identify as best possible the names of any student, employee, or other person you believe is responsible. Please attach additional sheets if necessary.

2. When did the actions described above occur?

3. Were there any witnesses to this matter? \_\_\_\_\_\_\_\_\_ If yes, please identify the witnesses.

4. Did you discuss this matter with any of the witnesses above? \_\_\_\_\_\_ If yes, please identify the person(s) to whom you have spoken:

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 Name Date Method of Communication

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 Name Date Method of Communication

5. Have you spoken to any administrator(s) or other school employee(s) about this matter? \_\_\_\_\_ If yes, please state the following for each: The name of the person you spoke to, the date you spoke to that person, and the method of communication with that person (in person, phone, text, email, etc.)

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 Name Date Method of Communication

6. What were the results of the discussions, if any, with school administrator(s) or school employee(s) identified above?

**Please attach any statements, names of witnesses, reports, or other documents which you feel are relevant to your complaint.**

I certify that the foregoing information is true and correct.

Student’s Name (Please Print): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Student’s Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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