

**Formal Grievance Process**  
**Pursuant to U.S. Department of Education, 34 C.F.R. § 106.45,**  
**Effective August 14, 2020**

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**I. Introduction**

As required by the U.S. Department of Education under new Title IX Regulations, effective August 14, 2020, this grievance process addresses certain types of sexual misconduct via a defined process. The scope of this formal grievance process is set forth in Section II, below. This formal grievance process contains citations to the applicable Title IX Regulations throughout. See 34 C.F.R. Part 106.

This formal grievance process is divided into five sections.

**Section II** defines the scope of this formal grievance process. Under the new Title IX Regulations, sexual harassment (a subset of sexual misconduct) must be investigated and adjudicated pursuant to the procedures set forth in this formal grievance process. Although the new Title IX Regulations narrowly define sexual harassment, The Fulton County School District (FCS) remains committed to providing an education environment that is free from sexual discrimination, misconduct, and harassment. To that end, sexual misconduct that does not rise to the level of sexual harassment as defined by the U.S. Department of Education, or that does not meet Title IX's jurisdictional requirements, will still be investigated and addressed pursuant to Fulton Board of Education Policies.

**Section III** reiterates FCS' statements addressing non-discrimination and equitable treatment, and provides the name and contact information for the Title IX Coordinators. The concepts of equitable treatment include the provision of supportive measures and waiting until the grievance process concludes to make conclusions.

**Section IV** contains the operational steps of FCS' formal grievance process in the event of a potential violation of Title IX, as required by the regulations. This section contains information on filing a formal complaint of sexual harassment, the investigation process, the role of the Title IX Coordinator, Title IX's the decision-making process, the appeals process, and much more. Students, faculty, and staff should consult this section to learn about the process FCS will use to investigate and adjudicate allegations of sexual harassment that fall within the jurisdiction of Title IX.

**Section V** explains that FCS will not retaliate against any person for that person's involvement in the Title IX process.

This formal grievance process, as dictated by the U.S. Department of Education (USDOE), is intended to define, address and remedy sexual misconduct for FCS students and employees. FCS prohibits sexual misconduct by faculty, staff, students. Please refer to Fulton Board of Education Policies for further information. This formal

grievance process applies to all members of the FCS community, including students, faculty and staff.

## **II. Scope of Formal Grievance Process**

This formal grievance process shall apply only to “sexual harassment” in an FCS “education program or activity” against a person in the United States, per USDOE Regulations, effective August 14, 2020. 34 C.F.R. § 106.44(a).

### **A. Definitional Requirement**

“Sexual harassment” is defined in the Regulations (34 C.F.R § 106.30) to be conduct on the basis of sex that satisfies one or more of the following:

1. An FCS employee conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to FCS’ education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking.
  - A. “Sexual assault” has the same definition contained in is 20 U.S.C. § 1092(f)(6)(A)(v).<sup>1</sup>
  - B. “Dating violence” has the same definition contained in 34 U.S.C. § 12291(a)(10).<sup>2</sup>
  - C. “Domestic violence” has the same definition contained in 34 U.S.C. § 12291(a)(8).<sup>3</sup>
  - D. “Stalking” has the same definition contained in 34 U.S.C. § 12291(a)(30).<sup>4</sup>

“Sexual misconduct” is a broader term that covers other sex-based conduct beyond the USDOE’s “sexual harassment” definition.

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<sup>1</sup> 20 U.S.C. § 1092(f)(6)(A)(v) defines “sexual violence” as “an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.”

<sup>2</sup> 34 U.S.C. § 12291(a)(10) defines “dating violence” as “violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; the frequency of interaction between the persons involved in the relationship.”

<sup>3</sup> 34 U.S.C. § 12291(a)(8) defines “domestic violence” as “felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction”

<sup>4</sup> 34 U.S.C. § 12291(a)(30) defines “stalking” as “engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

If sexual misconduct is alleged to have occurred that does not satisfy the USDOE's definitional requirement, then it may be addressed Fulton Board of Education Policy, as applicable, instead of this formal grievance process.

### B. Jurisdictional Requirement

An "education program or activity" includes locations, events, or circumstances over which FCS exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by FCS. Pursuant to the Regulations, it excludes any "education program or activity" that does not occur in the United States, such as international field trips. (34 C.F.R § 106.44(a).)

If sexual misconduct is alleged to have occurred that does not satisfy the USDOE's jurisdictional requirement, such as off-campus behavior alleged to have an on-campus effect, then it may be addressed other applicable Fulton Board of Education policies instead of this formal grievance process.

### C. Other Definitions

The terms "complainant" and "respondent" are used throughout this formal grievance process. A complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. A respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX. (34 C.F.R § 106.30.)

Other terms used within this formal grievance process, like "supportive measures" and "formal complaint," are defined below.

## **III. Statements of Non-Discrimination and Equitable Treatment**

### A. Statement of Non-Discrimination

FCS does not discriminate on the basis of sex in its education program and activities, as required by Title IX. Such requirement to not discriminate extends to admission and employment. As required by Title IX of the Education Amendments of 1972, FCS prohibits all unlawful discrimination, harassment and retaliation on the basis of sex, gender, gender identity, gender expression, or sexual orientation in any employment decision, admissions determination, education program or educational activity. This formal grievance process applies to all members of the FCS community, including students, faculty, and staff.

FCS, through the Title IX Coordinators, has jurisdiction over and the authority to receive, investigate, hear and resolve reports and/or complaints brought by or against any member of the FCS community that invoke Title IX. The Title IX Coordinators are ultimately authorized to enact procedures that include specific instructions for reporting,

investigating and resolving Title IX Complaints and Reports. The Title IX Coordinators are:

Maribel Bell, Title IX Coordinator for Student Matters  
Director of Student Discipline  
Phone: 470-254-0480  
[bellmv@fultonschools.org](mailto:bellmv@fultonschools.org)  
6201 Powers Ferry Road NW, Atlanta, GA 30339

Jim Yerich, Title IX Coordinator for Employee Matters  
Executive Director of Internal Affairs  
Phone: 470-254-6808  
[yerichj@fultonschools.org](mailto:yerichj@fultonschools.org)  
6201 Powers Ferry Road NW, Atlanta, GA 30339

## B. Equitable Treatment

- i. As required by USDOE's Regulations, FCS' formal grievance process will "treat complainants and respondents equitably by [1] offering supportive measures ... to a complainant, and [2] by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures ... against a respondent." (34 C.F.R § 106.44(a); 106.45(b)(1)(i).)

Supportive measures also may be offered as needed to respondents and other members of the FCS community who may be affected by sexual misconduct.

- ii. Pursuant to 34 C.F.R § 106.30, "supportive measures" are "non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent." They may be sought or provided before or after the filing of a formal complaint, or where no formal complaint has been filed. "Such measures are designed to restore or preserve equal access to the [school's] education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the [school's] educational environment, or deter sexual harassment."

Supportive measures may include: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, leaves of absence for student complainants or respondents, increased security and monitoring of certain areas of the campus, and other similar measures. This is not an exhaustive list, and FCS reserves the right to offer additional and/or different supportive measures to both complainants and respondents as appropriate.

FCS will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would

not impair its ability to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

- iii. An individual's status as a respondent will not be considered a negative factor during consideration of the grievance. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct until the grievance process concludes and a determination regarding responsibility is issued. Similarly, credibility determinations will not be based on a person's status as a complainant, respondent, or witness. (34 C.F.R § 106.45(b)(1)(ii-iv).)
- iv. This formal grievance process will provide remedies to a complainant after a determination of responsibility for sexual harassment has been made against a respondent following the procedure described in Section IV. Remedies are designed to restore or preserve equal access to the school's education program or activity. Remedies may include the same individualized services as supportive measures. Remedies may be disciplinary and punitive and may burden a respondent. (34 C.F.R § 106.45(b)(1)(i).)
- v. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process will not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent in the grievance process. FCS will provide necessary and appropriate training to such people. Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment. (34 C.F.R § 106.45(b)(1)(iii).)

## **IV. Formal Grievance Process**

### **A. Formal Complaint**

- i. The submission of a formal complaint triggers the formal grievance process described herein when received by the Title IX Coordinator.

The Title IX Regulations define a formal complaint as “a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment [as defined by the Title IX Regulations] against a respondent and requesting that the [school] investigate the allegation of sexual harassment.”

At the time of filing a formal complaint, “a complainant must be participating in or attempting to participate in the education program or activity.” A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by email. The formal complaint must contain the complainant's physical or digital signature, or some other indication that the complainant is the person filing it. (34 C.F.R § 106.30.)

- ii. **If FCS receives an allegation of sexual misconduct that falls within this formal grievance process's scope (i.e., it meets both the Title IX Regulations' jurisdictional requirements and definition of “sexual harassment” (see Section**

II)) but no formal complaint is filed, then the new Title IX Regulations prevent FCS from administering a formal grievance process that may permit “the imposition of any disciplinary sanctions or other actions ... against a respondent.” Supportive measures, however, may still be given. 34 C.F.R. § 106.44(a); 34 C.F.R. § 106.45(b)(1)(i); see also 34 C.F.R. § 106.8(c). USDOE has explained that the purpose of the formal complaint is to clarify that the complainant (or the Title IX Coordinator) believes that the school should investigate the allegations of sexual harassment against the respondent.

Accordingly, FCS strongly encourages complainants to file formal complaints, so that the formal grievance process described herein can be started. Additionally, all FCS employees are mandated reporters of child abuse, including sexual abuse. Accordingly, if any FCS employee is aware of sexual harassment that falls within the jurisdictional and definitional requirements of this Grievance Process, the employee should report it to the appropriate Title IX Coordinator. If the alleged conduct meets the Regulations’ definitional and jurisdictional requirements, the law now requires a formal complaint before FCS can pursue a full investigation, explore the possibility of an informal or early resolution or issue sanctions.

- iii. After filing a formal complaint, a complainant may withdraw a formal complaint at any time by providing written notice to the Title IX Coordinator. Subject to Subsection A.iv. immediately below, that withdrawal will result in dismissal of the formal grievance process. (See also Subsection D.v. below re permissive dismissal.)
- iv. A Title IX Coordinator may sign a formal complaint to initiate or continue the formal grievance process described herein, if necessary to fulfill the school’s duties under Title IX to not be deliberately indifferent to actual knowledge of sexual misconduct. Signing a formal complaint does not make a Title IX Coordinator a complainant or otherwise a party. (34 C.F.R § 106.30.)
- v. FCS may, but is not required to, consolidate formal complaints arising out of the same factual circumstances in two scenarios:
  1. Where there is more than one complainant or respondent;
  2. Where a cross-complaint has been filed by a respondent against a complainant. (34 C.F.R § 106.45(b)(4).)
- vi. Mandatory Dismissal (34 C.F.R § 106.45(b)(3)(i, iii).)
  1. If a formal complaint is filed, FCS must investigate its allegations.
  2. If the conduct alleged does not meet the formal grievance process scope requirements in Section II for “sexual harassment” per 34 C.F.R § § 106.30, FCS must dismiss the formal complaint under this formal grievance process. However, in such circumstance, the complaint may be reviewed pursuant to other policies and procedures, as applicable.

3. In such circumstance, FCS will promptly and simultaneously send written notice to both the complainant and the respondent of the dismissal of the formal complaint, the reasoning, and whether the complaint will be reviewed pursuant to another applicable policy or procedure.

#### B. Title IX Coordinator Initial Responsibilities

- i. Upon receipt of any report of alleged sexual misconduct, the Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures and explain the process involved in filing a formal complaint. The Title IX Coordinator will inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and will consider the complainant's wishes with respect to supportive measures. (34 C.F.R §106.44(a).)
- ii. Supportive measures shall be assessed and may be offered as needed to complainants, respondents, and other members of the FCS community who may have been affected by the allegations at issue. See Section III.B.ii. regarding supportive measures.
- iii. The Title IX Coordinator may conduct a limited, threshold investigation:
  1. to determine if the formal grievance process scope requirements in Section II for 34 C.F.R § 106.30 "sexual harassment" have been met;
  2. if the complainant does not file a formal complaint, to determine whether the school's Title IX obligations require the Title IX Coordinator to "sign" a formal complaint; and
  3. for other limited purposes;*provided that* if a formal complaint is filed or signed, the Title IX Coordinator will fulfill the terms of this formal grievance process, including the notice provisions immediately below and the more thorough investigation process described below even if it is somewhat duplicative of the threshold investigation.
- iv. Nothing in this formal grievance process precludes the Title IX Coordinator from removing a respondent from the education program or activity on an emergency basis, provided that the Title IX Coordinator undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. (34 C.F.R § 106.44(c).)
- v. Nothing in this formal grievance process precludes the Title IX Coordinator from placing a non-student employee respondent on administrative leave during the pendency of a formal grievance process. (34 C.F.R § 106.44(d).)

#### C. Notice of Allegations (106.45(b)(2))

- i. Receipt of a formal complaint triggers the school's notice requirements. Upon receipt of a formal complaint, FCS will provide written notice to known parties of the following:

1. Notice of this formal grievance process by providing means of access to this document.
  2. Notice of the allegations potentially constituting sexual harassment as defined in 34 C.F.R § 106.30, including sufficient details known at the time. Sufficient details are defined in the Title IX Regulations to include:
    - a. The identities of the parties involved in the incident, if known;
    - b. The conduct allegedly constituting sexual harassment under 34 C.F.R §106.30; and
    - c. The date and location of the alleged incident, if known.
  3. Per the Title IX Regulations, the written notice must include the following statements:
    - a. The respondent is presumed not responsible for the alleged conduct.
    - b. A determination regarding responsibility is made at the conclusion of the grievance process.
    - c. The parties may have an advisor of their choice and at their own expense, who may be, but is not required to be, an attorney.
    - d. The parties may inspect and review evidence.
    - e. The parties are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.
  4. The notice must be given as soon as practicable and with sufficient time to prepare a response before any initial investigation interview.
- ii. If, at any point during the course of the investigation, FCS decides to investigate allegations that are not included in the original notice, it will provide notice of the additional allegations to the parties.

#### D. Investigation Procedure

- i. The Title IX Coordinator will appoint an Investigator to investigate the allegations subject to the formal grievance process. The investigation may include, among other things, interviewing the complainant, the respondent, and any witnesses; reviewing law enforcement investigation documents if applicable; reviewing relevant student or employment files; and gathering and examining other relevant documents, social media and evidence.

The Investigator will attempt to collect all relevant information and evidence. While the Investigator will have the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the Investigator so that they may be considered during the investigation. As described below in Section E.vii.1, while all evidence gathered during the investigative process and obtained through the exchange of written questions in Section E.vii.2 below will be considered, the decision maker may in his/her discretion grant lesser weight to last-minute information or evidence introduced through the exchange of written questions that was not previously presented for investigation by the Investigator.

The investigation file should contain all information gathered during the investigation that is potentially relevant to the alleged misconduct; the Investigator should not filter or exclude evidence or decide the weight or credibility of evidence, unless the evidence is clearly irrelevant or not pertinent to the facts at issue.

Following the investigation, the Investigator will draft an investigation report succinctly describing all collected information. The Investigator will not make any recommendation as to whether a Title IX violation has occurred or potential sanctions.

ii. Evidentiary Considerations

1. In conducting the investigation into the allegations of any formal complaint of sexual harassment, the Investigator will conduct an objective evaluation of all relevant evidence. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true (both inculpatory and exculpatory evidence). (34 C.F.R § 106.45(b)(1)(ii).)

2. Standard of evidence

a. In assessing allegations of sexual harassment and conducting its formal grievance process, FCS will employ a preponderance of the evidence standard. (34 C.F.R § 106.45(b)(1)(vii).) The “preponderance” standard means that the alleged sexual misconduct is “more likely than not” to have occurred.

b. That standard will apply to all formal complaints of sexual harassment, regardless of whether the formal complaint is against a student or an employee. (34 C.F.R § 106.45(b)(1)(vii).)

iii. As dictated by the Title IX Regulations at 34 C.F.R. § 106.45(b)(5), when investigating a formal complaint and throughout the grievance process, FCS will:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on FCS and not on the parties. (34 C.F.R § 106.45(b)(5)(i).) This means that FCS’ decision-makers will follow the preponderance standard. See also Subsection D.i. above.

2. Provide an equal opportunity for the parties to present witnesses and other relevant evidence. (34 C.F.R § 106.45(b)(5)(ii).)

3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. (34 C.F.R § 106.45(b)(5)(iii).)

a. That said, FCS expects the parties to respect the sensitive nature of allegations of sexual misconduct and to respect other parties’ sense of confidentiality.

b. While FCS cannot prevent a party from discussing the allegations under investigation, the Title IX Regulations and this formal grievance process prevent a party from retaliating against any person because they participate or refuse to participate in any part of the school’s sexual misconduct processes. See Section V. below.

- c. Consistent with FERPA's prohibition on re-disclosure of confidential information, any person who receives another person's confidential information solely as a result of participation in any investigation or proceeding under this formal grievance process, is prohibited from using or disclosing such confidential information outside of such forums without express consent or for any improper purpose. This provision only applies to other people's confidential information, as a party is never restricted from discussing their own experience. This provision does not apply to any information learned outside of an investigation or proceeding under this formal grievance process.
  4. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, and at the party's expense. The advisor may be, but is not required to be, an attorney. FCS will not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding; however, FCS will restrict the extent to which the advisor may participate in the proceedings, which will apply equally to both parties' advisors. (34 C.F.R § 106.45(b)(5)(iv).)
    - a. Advisors are not permitted to directly participate in any proceeding. Otherwise, advisors may be present solely to advise or support the party and are prohibited from speaking directly to the investigator, adjudicators, other parties, or witnesses in such proceedings.
  5. Provide 3 calendar day's written notice to each party of the date, time, location, participants, and purposes of each investigative meeting at which they are invited to participate, with sufficient time for the party to prepare to participate. Such notice may be provided by email to the party. (34 C.F.R § 106.45(b)(5)(v).)
  6. Provide both parties an equal opportunity to inspect and review any evidence FCS obtained as part of the investigation, whether obtained from a party or other source, that is directly related to the allegations raised in a formal complaint. The provision of such evidence is intended to help each party meaningfully respond to the evidence prior to conclusion of the investigation. (34 C.F.R § 106.45(b)(5)(vi).)
    - a. FCS will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, *unless* the party voluntarily consents in writing to their use in a Formal Grievance Process. (106.45(b)(5)(i).)
- iv. Investigative Report (106.45(b)(5)(vi-vii).)
  1. Prior to completion of the investigative report, FCS will send to each party, and the party's advisor if any, a draft investigative report and the evidence subject to inspection and review. FCS retains discretion to elect to send such materials in an electronic format or a hard copy. The provision of such evidence may include

data security safeguards that prevent it from being downloaded, printed or forwarded. (See 85 Fed. Reg. at 30304.)

2. The parties will have 10 calendar days to submit a written response. The investigator will consider any such response prior to completion of the investigative report.
3. The investigator will then create a final investigative report that fairly summarizes the relevant evidence. The investigative report will not make any recommendation as to whether a Title IX violation has occurred or potential sanctions. FCS will send the investigative report to each party, and the party's advisor if any, for their review and written response.
4. Any such written response to the final investigative report must be received by the Title IX Coordinator within five calendar days of when the final investigative report was delivered to the party, so that the party's response may be available for consideration by the decision-maker. If warranted, the investigator may choose to update the investigative report to take a party's response into account. Any updated investigative report will be provided simultaneously to the parties.

v. Permissive Dismissal

1. At any time during the investigation or hearing, FCS may dismiss the formal complaint or any of its allegations if:
  - a. A complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the formal complaint or any allegation therein;
  - b. The respondent is no longer enrolled or employed by the school; or
  - c. Specific circumstances prevent FCS from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. (34 C.F.R. § 106.45(b)(3)(ii).)
2. In all such circumstances, supportive measures may be continued.
3. Under the first circumstance, the Title IX Coordinator may choose in his or her discretion to sign the formal complaint to continue to the Formal Grievance Process. See also Sections IV.A.iii-iv, above.
4. Under the second circumstance:
  - a. The respondent's student or employee records may be marked to indicate their departure during a disciplinary process (which may resume if they return to FCS), but shall not indicate that such respondent was found or assumed responsible for any alleged misconduct pending at the time of departure.
  - b. The respondent may be required to notify the Title IX Coordinator if they intend to visit any building owned or controlled by FCS, or if they otherwise seek to attend any FCS education program or activity or event, so that the complainant may be given an opportunity to receive supportive measures if needed.
5. If permissive dismissal is granted under this section, the formal grievance process will cease. Pursuant to the Title IX Regulations, effective August 14, 2020, no further investigation will occur, and no disciplinary sanctions or actions can be imposed against the respondent. See Section IV.A.ii. (citing 34 C.F.R. § 106.44(a); 34 C.F.R. § 106.45(b)(1)(i); 34 C.F.R. § 106.8(c).)

6. A permissive dismissal under this section differs from a mandatory dismissal under Section IV.A.vi. for alleged conduct that does not meet the formal grievance process scope requirements contained in Section II for 34 C.F.R § 106.30 “sexual harassment.”

#### E. Decision Making

- i. FCS’ formal grievance process will culminate in a written decision making process before one or more decision makers, who will consider all evidence presented (subject to the terms below) and determine whether a respondent is responsible or not responsible for a violation of Title IX, based on the criteria of a preponderance of evidence. Under this standard, the burden of proof is met and a respondent may be found responsible for a violation if the decision maker determines that it is more likely than not that the respondent committed the conduct alleged.
- ii. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct until the grievance process concludes and a determination regarding responsibility is issued.
- iii. If the respondent is found responsible for a violation of Title IX, the respondent may be subjected to disciplinary action. (34 C.F.R § 106.45(b)(6)(i).)
- iv. FCS will create written records of the decision making process. Records will be available to the parties for inspection and review pursuant to FERPA.
- v. The decision makers will be selected by the Title IX Coordinator and may vary based on the enrollment or employment of the respondent.
  1. Employee-respondent cases typically will be decided by the Chief Human Resources Officer or designee.
  2. Student-respondent cases typically will be adjudicated by a Zone Superintendent or designee. The decision makers will not be the same person as the Title IX Coordinator or the Investigator.
- vi. The Title IX Coordinator will identify the decision makers to the parties 3 business days in advance of the commencement of the decision making process. Either party may challenge a named decision maker if believed to have a conflict of interest or bias, which shall be delivered in writing to the Title IX Coordinator at least one day in advance of the commencement of the decision making process, specifying the reasons for such belief. The Title IX Coordinator shall have sole discretion to keep or replace the challenged decision maker, and if replaced, shall postpone the decision making process to allow for a decision maker.
- vii. Evidence
  1. During the decision making process, all relevant evidence will be objectively evaluated. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true (inculpatory and exculpatory evidence). Credibility determinations will not be based on a person’s status as a complainant, respondent, or witness. (34 C.F.R § 106.45(b)(1)(ii).) Evidence shall be limited to evidence gathered during the investigative process and

evidence obtained through the exchange of written questions in the next paragraph.

2. The decision-maker(s) will afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
3. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.
4. Pursuant to the Title IX Regulations at 34 C.F.R. § 106.45(b)(6)(i), questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
  - a. "offered to prove that someone other than the respondent committed the conduct alleged" or
  - b. "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."

viii. Determination Regarding Responsibility

1. The decision maker will issue a written determination following the review of evidence.
2. Based on the criteria of a preponderance of the evidence, the decision maker will decide if the respondent is responsible for engaging in the conduct alleged, and if so, what disciplinary action may be appropriate.
3. The written determination will include:
  - a. Identification of the allegations potentially constituting sexual harassment as defined in 34 C.F.R § 106.30;
  - b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather evidence;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of this formal grievance process to the facts;
  - e. A statement of, and rationale for, the result as to each allegation, including:
    - i. A determination regarding responsibility;
    - ii. Any disciplinary sanctions the decision maker imposes on the respondent; and
    - iii. Whether remedies designed to restore or preserve equal access to FCS' education program or activity will be provided to the complainant; and
  - f. Procedures and permissible bases for the parties to appeal the determination.  
(34 C.F.R § 106.45(b)(7)(ii).)
4. The written determination will be provided to the parties simultaneously.

5. Supportive measures also may be provided to the complainant that are designed to restore or preserve equal access to FCS' education program or activity, even if they are not listed in the written determination. Remedies and supportive measures that do not impact the respondent should not be disclosed in the written determination; rather, the determination should simply indicate that "remedies will be provided to the complainant." 85 Fed. Reg. at 30425. The Title IX Coordinator is responsible for effective implementation of any remedies and supportive measures. (34 C.F.R § 106.45(b)(7)(iv).)
- ix. Range of Sanctions and Remedies (34 C.F.R § 106.45(b)(1)(vi))
1. For a student respondent, the range of disciplinary sanctions and remedies shall be:
    - a. Detention/Saturday School, for a specified time period to be determined by the decision-maker
    - b. In-school suspension, for a specified time period to be determined by the decision-maker
    - c. Out-of-school suspension/expulsion, for a specified time period from one day to permanent expulsion, to be determined by the decision-maker (decision-maker may allow for attendance at alternative education program such as PEAK for out-of-school suspensions for periods of 11 school days or longer)
  2. For an employee respondent who is a probationary employee subject to Policy GBKL, the range of disciplinary sanctions and remedies shall be:
    - a. Termination of employment;
    - b. Suspension without pay for a period of time not to exceed sixty (60) working days; and
    - c. Recommendation to issue a Letter of Reprimand from the Superintendent.
  3. For an employee respondent who has a contract for a definite term subject to Policy GBKL and who has acquired tenure, the range of disciplinary sanctions and remedies shall be:
    - a. Recommendation to terminate the contract of a teacher, administrator or other school employee;
    - b. Recommendation to suspend a teacher, administrator or other school employee without pay for a period of time not to exceed sixty (60) working days.
    - c. Recommendation to non-renew a teacher's, administrator's or other school employee's contract;
    - d. Recommendation of demotion during the contract year of a tenured teacher or administrator who acquired tenure as an administrator on or before April 7, 1995);
    - e. Demotion for the next contract year for any administrator who did not acquire tenure as an administrator on or before April 7, 1995); and
    - f. Recommendation to issue a Letter of Reprimand from the Superintendent.
  4. For an employee respondent who has a contract for a definite term subject to Policy GBKL and who has not acquired tenure, the range of disciplinary sanctions and remedies shall be:

- a. Recommendation to terminate the contract of a teacher, administrator or other school employee;
- b. Recommendation to suspend a teacher, administrator or other school employee without pay for a period of time not to exceed sixty (60) working days.
- c. Non-renewal of a teacher's, administrator's or other school employee's contract;
- d. Recommendation of demotion during the contract year of a non-tenured teacher, administrator or other employee;
- e. Demotion for the next contract year of a non-tenured teacher, administrator or other employee and
- f. Recommendation to issue a Letter of Reprimand from the Superintendent.

- 5. For an employee respondent who is characterized as classified personnel, the range of disciplinary sanctions and remedies shall be:
  - a. Suspension without pay, for a specified time period to be determined by the decision-maker;
  - b. Demotion;
  - c. Termination of employment and
  - d. Recommendation to issue a Letter of Reprimand from the Superintendent.

- 6. For any other employee respondent, the range of disciplinary sanctions and remedies shall be:
  - a. Suspension with or without pay, for a specified time period to be determined by the decision-maker;
  - b. Demotion;
  - c. Recommendation to issue a Letter of Reprimand from the Superintendent; and
  - c. Termination of employment.

- 7. Nothing in this Grievance Process shall in any way limit FCS' ability to apply non-disciplinary actions, such as administrative conferences and counseling, restorative practices, letters of concern, letters of direction, requiring professional learning, administration of corrective action and/or professional development plans, referral to the Georgia Professional Standards Commission, referral to law enforcement authorities, and/or referral to child protection agencies. This is a non-exhaustive list.

x. Finality

The determination regarding responsibility becomes final either:

- 1. if an appeal is filed, on the date that FCS provides the parties with the written determination of the result of the appeal, or
- 2. if an appeal is not filed, the date on which an appeal would no longer be considered timely. (34 C.F.R § 106.45(b)(7)(iii).)

F. Time Frame.

- i. FCS intends to issue a written determination of responsibility no later than 120 days of the date a formal complaint is filed or signed.
- ii. FCS reserves the right to extend this time frame for good cause, in order to allow for a temporary delay or extension of this process. 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. This is not an exhaustive list.
- iii. If the time frame is extended, FCS will provide written notice to the parties of the delay or extension, and the reasons for the delay or extension.

#### G. Appeals process for matters involving student respondent

- i. Both parties may appeal from a determination regarding responsibility, or from a dismissal of a formal complaint or any allegations therein, on the following bases:
  - 1. A procedural irregularity that affected the outcome of the matter;
  - 2. New evidence that was not reasonably available to the appealing party at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
  - 3. The Title IX Coordinator, Investigator, or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
  - 4. The discipline is inappropriate: too harsh, not harsh enough, incomplete, or incorrect.
  - 5. FCS reserves the right to offer an appeal equally to both parties on additional bases in its discretion. (34 C.F.R § 106.45(b)(8)(i-ii).)
- ii. Appeals must be submitted in writing and received by the Title IX Coordinator within 5 calendar days (including weekends, but excluding days on which FCS is closed due to a holiday) of the date that the written decision is provided to the parties. The written appeal must state the grounds for the appeal, include the name of the appealing party, and bear evidence that it was submitted by the appealing party. The appeal statement must contain a sufficient description supporting the grounds for appeal. If the grounds for appeal is to consider new evidence that could affect the outcome of the matter that was not reasonably available to the appealing party before or during the time of the decision, investigation or the dismissal, then the written appeal must include such information. The Title IX Coordinator retains discretion to verify and/or waive minor procedural variations in the timing and content of the appeal submission.
- iii. Upon receipt of an appeal, FCS will
  - 1. Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
  - 2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the original determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

3. Ensure that the decision-maker(s) for the appeal does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and that the decision-maker(s) for the appeal has received the appropriate and necessary training;
  4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the decision-maker. (106.45(b)(8)(iii).)
- iv. FCS shall provide a copy of the appeal to the non-appealing party. The non-appealing party may submit a written statement that may seek to affirm the initial decision and/or respond to the appeal statement. Such written statement must be received by the Title IX Coordinator within 5 calendar days (including weekends, but excluding days on which FCS is closed due to a holiday) of the date that FCS provided a copy of the appeal to the non-appealing party.
  - v. FCS shall schedule an in-person hearing within 5 calendar days (excluding weekends and days on which FCS is closed due to a holiday) of the deadline for the non-appealing party to submit a written statement. Such in-person hearing shall solely be to allow for the parties to orally present their information in support of or in opposition to the appeal. Should a party be unable or unwilling to attend such a hearing, the appellate decision-maker will rely on that party's written submission. In its discretion, and at the request of either party, FCS may require a virtual hearing that allow participants to simultaneously see and hear each other.
  - vi. The Title IX Coordinator shall have discretion to impose or withhold any applicable sanctions or supportive measures prior to the appeal deadline and prior to the resolution of any appeal.
  - vii. The appeal is determined based on the existing record and in light of the parties' written appellate submissions and any oral presentation at the appellate hearing.
  - viii. The decision-maker(s) for the appeal shall issue a written notice of a decision describing the result of the appeal and the rationale for the result within 5 calendar days following the close of the record (receipt of all appeals materials or following a hearing). The time frame may be extended as described in Section IV.F above. The appeal shall determine whether the decision maker made an error on the grounds alleged in the appeal statement.
  - ix. The appeal decision will be given simultaneously to both parties. (106.45(b)(8)(iii)(E-F).)
  - x. No further appeal is available under Title IX. However, should the Title IX appellate decision uphold a disciplinary sanction of at least 11 days of out-of-school suspension/expulsion and/or assignment to an alternative education program such as PEAK, then the student who is subject to the disciplinary sanction may appeal the sanction to the Fulton Board of Education pursuant to OCGA 20-2-754(c).

#### H. Appeals process for matters involving employee respondents

- i. Both parties may appeal from a determination regarding responsibility, or from a dismissal of a formal complaint or any allegations therein, on the following bases:
  1. A procedural irregularity that affected the outcome of the matter;

2. New evidence that was not reasonably available to the appealing party at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
  3. The Title IX Coordinator, Investigator, or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
  4. FCS reserves the right to offer an appeal equally to both parties on additional bases in its discretion. (34 C.F.R § 106.45(b)(8)(i-ii).)
- ii. Appeals must be submitted in writing and received by the Title IX Coordinator within 5 calendar days (including weekends, but excluding days on which FCS is closed due to a holiday) of the date that the written decision is provided to the parties. The written appeal must state the grounds for the appeal, include the name of the appealing party, and bear evidence that it was submitted by the appealing party. The appeal statement must contain a sufficient description supporting the grounds for appeal. If the grounds for appeal is to consider new evidence that could affect the outcome of the matter that was not reasonably available to the appealing party before or during the time of the decision, investigation or the dismissal, then the written appeal must include such information. The Title IX Coordinator retains discretion to verify and/or waive minor procedural variations in the timing and content of the appeal submission.
- iii. Upon receipt of an appeal, FCS will
1. Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
  2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the original determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
  3. Ensure that the decision-maker(s) for the appeal does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and that the decision-maker(s) for the appeal has received the appropriate and necessary training;
  4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.  
(34 C.F.R § 106.45(b)(8)(iii).)
- iv. FCS shall provide a copy of the appeal to the non-appealing party. The non-appealing party may submit a written statement that may seek to affirm the initial decision and/or respond to the appeal statement. Such written statement must be received by the Title IX Coordinator within 5 calendar days (including weekends, but excluding days on which FCS is closed due to a holiday) of the date that FCS provided a copy of the appeal to the non-appealing party.
- v. The Title IX Coordinator shall have discretion to impose or withhold any applicable sanctions or supportive measures prior to the appeal deadline and prior to the resolution of any appeal.

- vi. The appeal is determined based on the existing record and in light of the parties' written appellate submissions, if any.
- vii. The decision-maker(s) for the appeal shall issue a written notice of a decision describing the result of the appeal and the rationale for the result within 5 calendar days following the close of the record (receipt of all appeals materials or following a hearing). The time frame may be extended as described in Section IV.F above. The appeal shall determine whether the decision maker made an error on the grounds alleged in the appeal statement.
- viii. The appeal decision will be given simultaneously to both parties. (34 C.F.R § 106.45(b)(8)(iii)(E-F).)
- ix. No further appeal is available under Title IX. However, employees shall retain all rights under the Fair Dismissal Act as conveyed by Policy, as applicable. Any further procedures shall occur pursuant solely under either the Fair Dismissal Act and Policy, as applicable.

#### I. Informal Resolution

- i. At any time prior to reaching a determination regarding responsibility, FCS may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. FCS may not offer an informal resolution process unless a formal complaint is filed. Both parties must agree to participate in an informal resolution process, and if they do, the formal grievance process stops. Either party may withdraw from the informal process and re-start the formal grievance process at any time before an informal resolution is reached. FCS will not require the parties to participate in an informal resolution process, and will not require them to waive their rights to a formal grievance process. (34 C.F.R § 106.45(b)(9).) FCS will facilitate an informal resolution process within a reasonably prompt time frame, which may be extended as described in Section IV.F above.
- ii. FCS will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. (34 C.F.R § 106.45)(b)(9)(iii).)
- iii. Prior to facilitating an informal resolution process, FCS will:
  - 1. Provide written notice to the parties disclosing the following:
    - a. The allegations;
    - b. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
    - c. The fact that, at any time prior to agreeing to an informal resolution, any party may withdraw from the informal resolution process and resume the formal grievance process; and
    - d. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
  - 2. Obtain the parties' voluntary, written consent to the informal resolution process. (34 C.F.R § 106.45)(b)(9)(i-ii).)
- iv. If the parties agree to an informal resolution, the formal complaint shall be deemed withdrawn and the formal grievance process will be terminated. The informal

resolution shall be considered binding, and its breach may give rise to a new formal grievance process, which may resuscitate the prior formal grievance process.

V. Retaliation (34 C.F.R. § 106.71.)

- A. As set forth in 34 C.F.R. § 106.71, no person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its regulation, or this formal grievance process, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding. “Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this formal grievance process, constitutes retaliation.”
- B. FCS will “keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.”
- C. The exercise of rights protected under the First Amendment does not constitute retaliation.
- D. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a sexual misconduct grievance proceeding does not constitute retaliation. A determination regarding responsibility alone, however, is not sufficient to conclude that any party made a materially false statement in bad faith.
- E. Complaints alleging retaliation may be filed with the Title IX Coordinator and will follow grievance procedures either under this formal grievance process, pursuant to the FCS Code of Student Conduct, or applicable FCS employment policies and procedures.

In the event an individual alleges that a Title IX Coordinator retaliated against them, the individual may file a complaint with the other FCS Title IX Coordinator, who will follow the grievance procedures either under this formal grievance process or pursuant to applicable FCS employment policies and procedures. The Title IX Coordinator against whom retaliation is alleged will not oversee the investigation or adjudication of any such complaint.