

MUSKINGUM COUNTY BOARD OF DEVELOPMENTAL DISABILITIES

TITLE IX POLICY REGARDING SEXUAL HARASSMENT AND MISCONDUCT

Policy Reference:
Title IX

Policy Number:
6.04

I. INTRODUCTION

Title IX of the Education Amendments of 1972 (20 U.S.C. §1681(a)) generally states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

Thus, Title IX prohibits the Board from discrimination in its educational programs or activities, admission/enrollment/placement, and employment. Pursuant to Title IX and its implementing regulations (34 C.F.R. 106), sexual harassment is a form of prohibited sex discrimination. The Board does not and shall not discriminate on the basis of sex (including sexual orientation or gender identity), in its educational programs or activities. The Board is committed to an educational environment that is free from unlawful discrimination on the basis of sex and hereby prohibits unlawful discrimination on the basis of sex, including sexual harassment, as defined by Title IX and under other law, in all of its programs and services, including education.

When the Board has actual knowledge of sexual harassment it shall promptly respond in a manner that is not clearly unreasonable in light of the circumstances known to the Board, meaning the Board will not be deliberately indifferent in its response. The Board shall provide “supportive measures” to a person who has been the victim of sexual harassment that will restore or preserve that person’s access to the Board’s educational programs and activities. The Board shall take all necessary and appropriate action when an individual is determined responsible for violating this policy. Those persons, including third parties over whom the Board has control, who commit sexual harassment shall be subject to disciplinary sanctions set forth in this Policy.

II. SCOPE OF POLICY

All students participating in the Board’s educational programs and activities and all Board staff and members are subject to this Title IX Policy. For all Starlight School students investigations of sexual abuse and sexual harassment, as well as all other Major Unusual Incidents will follow ORC 5123.61 and OAC 5123-17-02. Children Services Board and law enforcement will be the lead for all investigations. This Policy applies to unlawful discrimination based upon sex and sexual harassment that occurs in the United States, on or after August 14, 2020, and within the

Board's educational programs and activities, whether committed by a student, employee, member, contractor, vendor, parent, visitor or guest. This Policy applies to persons, locations, events, and circumstances over which the Board exercises substantial control over both the Respondent, defined in Procedure 6.04.1 (II) (25) and the context in which the Prohibited Conduct, defined in Procedure 6.04.1 (11) (20) occurs. The Board may not have the authority or ability to implement disciplinary action in every circumstance. When that is not possible, the Board shall nevertheless comply with its obligations under Title IX by evaluating conduct reported to it, providing supportive measures, assisting a Complainant, defined in Procedure 6.04.1 (11) (4) in identifying external reporting options, and taking reasonable action to end the Prohibited Conduct.

This Policy may not apply to certain misconduct that is prohibited by another Board policy or procedure or applicable federal and state laws and regulations.

III. NOTICE OF NON-DISCRIMINATION AND TITLE IX POLICY

In accordance with Title IX and this Policy, the Board requires the Superintendent to notify applicants for admission/enrollment/placement and employment; students; parents or legal guardians of students; Board employees and members and volunteers with the Board of the following information (said notice will be posted on the MCBDD website and in the Starlight School Parent Manual and the Board Policy Manual):

Pursuant to and in accordance with Title IX and its regulations, the Board does not discriminate on the basis of sex in its educational programs or activities. The requirement not to discriminate in its educational program or activity extends to admission/enrollment/placement and employment. The Board's Title IX Coordinators are:

BRENT BRANNON
DIRECTOR OF EDUCATIONAL SERVICES
1330 NEWARK RD ZANESVILLE, OH 43701
740-455-4176 EXT. 1680
BBRANNON@MUSKINGUMDD.ORG

MELINDA RUSSELL
HUMAN RESOURCES DIRECTOR
1304 NEWARK RD. ZANESVILLE, OH 43701
740-453-4829 EXT. 1213
MRUSSELL@MUSKINGUMDD.ORG

Any inquiries about the application of Title IX and its regulations to the District may be referred to the Board's Title IX Coordinators (listed above), the Assistant Secretary for the U.S. Department of Education's Office for Civil Rights, or both.

The Board has adopted Policy No. 6.04 – Title IX Policy and The Superintendent Approved Procedure Regarding Sexual Harassment and Misconduct, which contains a complaint and investigation process that provide for the prompt and

equitable resolution of complaints alleging any action that is prohibited by Title IX and/or its regulations. Policy No. 6.04 is available at: <https://www.muskingumdd.org/>. Policy No. 6.04 along with Procedure No. 6.04.1 addresses how to report a complaint of sex discrimination or harassment, how to file a formal complaint of sexual discrimination or harassment, and how the Board will respond.

The Superintendent shall conspicuously display the Title IX Coordinators' contact information and this Policy on the Board's website and in the Starlight School Parent Manual and the Board Policy Manual.

IV. MISCELLANEOUS

A. Training

The Title IX Coordinators, Investigator, decision-maker(s), Appeal Officer, or other person(s) designated to facilitate an informal resolution process shall receive training on:

- the definition of Prohibited Conduct (as that term is used in this Policy);
- the scope of the Board's educational programs and activities;
- how to conduct an investigation and implement the investigation and decision-making process under this Policy, including appeals and Informal Resolution, as applicable; and
- how to serve in their respective role impartially, including by avoiding prejudgment of the facts at issue, presumption of responsibility by the Respondent, conflicts of interests, and bias.

Materials used for training shall not rely on sex stereotypes and must promote impartial investigations and determinations of Formal Complaints.

Any Investigator appointed shall receive training on issues of relevance, including how to apply the rape shield protections provided only for Complainants, in order to create an Investigative Report that objectively evaluates and fairly summarizes all relevant evidence gathered by the Investigator.

Any decision-maker appointed shall receive training on evaluating evidence, including, but not limited to, determining issues of relevance and including how to apply the rape shield protections provided only for Complainants, and when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant. Decision-maker should outsource legal counsel as needed.

Upon hire and during initial orientation all Starlight School employees shall be trained concerning their legal obligation to report Prohibited Conduct to the Title IX Coordinator under this Policy.

Board members will also be trained concerning their legal obligation to report Prohibited Conduct to the Title IX Coordinator under this Policy. Such training shall address how to identify Prohibited Conduct.

B. Conflict of Interest or Bias

No person involved in the investigation and decision-making process, including, but not limited to, the Title IX Coordinators, Investigator, decision-maker, Appeal Officer, or any other person appointed to facilitate Informal Resolution shall have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent in a particular case. A conflict of interest exists if the person has prior involvement in or knowledge of the allegations at issue in the case, has a personal relationship with one of the parties or witnesses, or has some other source of bias. The Superintendent shall take reasonable actions to ensure that no person involved in the investigation and decision-making process has a conflict of interest or bias.

C. Recordkeeping

The Board shall maintain the following records permanently in the HR files in the Board's Administration Office as established in an approved records retention schedule:

1. Records of each investigation of Prohibited Conduct, including any determination regarding responsibility, any Sanctions recommended and/or imposed on the Respondent, and any Remedies provided to the Complainant;
2. Records of any appeal and the resulting Notice of Outcome of Appeal;
3. Records of any Informal Resolution; and
4. All training materials.

D. Criminal Acts

A person may file criminal charges with appropriate law enforcement simultaneously with filing a Formal Complaint. A person does not need to wait until the Title IX investigation is completed before filing a criminal complaint. Likewise, questions or complaints relating to Title IX may be filed with the U.S. Department of Education's Office for Civil Rights at any time.

At any point, the Board, its Title IX Coordinator, or the Investigator may involve local law enforcement and/or file criminal charges related to allegations of Prohibited Conduct that involve a sexual assault or other crime.

If the decision-maker(s) determines a Third Party Respondent is responsible for violating this Policy (*i.e.*, engaging in Prohibited Conduct), the decision-maker(s) shall recommend appropriate Remedies, including the imposition of Sanctions.

E. Retaliation

Neither the Board nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this Policy, including making a report or filing a Formal Complaint, testifying, assisting, or participating or refusing to participate in any manner in an Investigation or proceeding under this Policy. Such actions, for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this Policy, constitute retaliation.

Proven retaliation is a violation of this Policy, which shall result in the imposition of Sanctions and/or other appropriate Remedies. A person subject to retaliation may file a complaint with the Title IX Coordinator, the Superintendent, or the Board President.

Taking action against a person for making a materially false statement in bad faith in the course of the investigation and decision-making process under this Policy shall not constitute retaliation. A determination regarding responsibility itself does not mean a person made a materially false statement in bad faith.

F. Confidentiality

Except in order to carry out its responsibilities under Title IX and this Policy, or as permitted by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. §1232g, and FERPA's regulations, and Ohio law, including Ohio Revised Code §5126.044, the Board and its staff and agents shall keep confidential the identity of all Complainants, Respondents, and Witnesses. Disclosure of such information may be required by federal or state law, and the Board's commitment and obligation to keep such information confidential shall not impair or otherwise affect the Complainant's and Respondent's right to receive the information under this Policy and Title IX.

Approved: January 14, 2021