

Formal Title IX Complaint Procedure

Reporting Complaints

Any person who believes he or she has been the subject of sexual harassment by a student, district employee or “non-employee” or third party related to the school is encouraged to report complaints as soon as possible after the incident in order to enable the district to promptly and effectively investigate and resolve the complaint. Any person who witnesses or is aware of sexual harassment of a student, employee, or “non-employee” is also encouraged to report the incident or behavior to the district. Complainants are encouraged to submit the complaint in writing; however, complaints may be filed verbally.

Complaints should be filed with the Building Principal or the Title IX Coordinator. The District’s Title IX Coordinator is Jennifer Morris, CSE Chair, and can be contacted as follows:

Address: 1478 State Route 20, New Lebanon, NY 12125
Phone: (518) 794-7600
Email: jmorris@newlebanoncsd.org

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the above-listed contact information for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.

Any school employee who receives a complaint of sexual harassment shall inform the complainant of the employee’s obligation to report the complaint to the school administration, and then shall immediately notify the Building Principal and/or the Title IX Coordinator. Any school employee who witnesses sexual harassment or what might be considered sexual harassment or otherwise becomes aware of potential sexual harassment shall immediately notify the building principal and/or the Title IX Coordinator.

Upon the receipt of a complaint of sexual harassment, the Title IX Coordinator will promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a Formal Title IX Complaint, and explain to the complainant the process for filing a Formal Title IX Complaint (as explained below).

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services that will be 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 Title IX Complaint or where no Formal Title IX Complaint has been filed. Such measures are designed to restore or preserve equal access to the district’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district’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,
- safety plans,
- no contact orders, or other mutual restrictions on contact between the parties,
- changes in work locations,
- leaves of absence,
- increased security and monitoring of certain areas of the campus, and
- other similar measures.

The district will maintain as confidential any supportive measures provided to the complainant and/or respondent, to the extent that maintaining such confidentiality would not impair the district’s ability to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Formal Title IX Complaint

Federal law allows an employee, student, or a student’s parent (the “complainant”) to file a “formal Title IX complaint” of sexual harassment when:

- the complainant files and signs a written document alleging sexual harassment against an alleged harasser and requesting that the district investigate the allegation of sexual harassment;
- the complainant (or the complainant’s child) is participating in or attempting to participate in the district’s education programs or activities;
- the alleged sexual harassment occurred in the district’s education program or activity, within the United States; and
- the alleged sexual harassment constitutes “Title IX sexual harassment,” because it is conduct on the basis of sex that satisfies one of the following:
 - a district employee conditions the provision of an aid, benefit, or service of the district on an individual’s participation in unwelcome sexual conduct;
 - 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 recipient’s education program or activity; or
 - “Sexual assault,” “dating violence,” “domestic violence,” or “stalking” as defined in **Appendix A**.

For the purpose of this policy, the district’s “education program or activity” includes locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurred.

If the Title IX Coordinator becomes aware of a complaint of sexual harassment, the Title IX Coordinator will discuss the Formal Title IX Complaint and grievance process with the complainant so the complainant can make an informed decision whether to file a Formal Title IX Complaint. A complainant’s wishes with respect to whether the district will investigate will be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known

circumstances. In instances where the allegations are of a serious nature and the complainant declines to file a formal complaint, the Title IX Coordinator retains the ability to sign a formal complaint based on such allegations.

If the allegations in a Formal Title IX Complaint do not meet the definition of Title IX sexual harassment listed above, the district must dismiss the Formal Title IX Complaint, but may still address the allegations using the process outlined in Board Policy No. 0110-R, Discrimination and Harassment of Employees and Certain Non-Employees (for employees and adult non-employees) and in Board Policy No. 0115-R, Discrimination, Harassment, Hazing, and Bullying of Students (for students). The district will investigate complaints of sexual harassment in accordance with these regulations whether or not a Formal Title IX Complaint is submitted. The district will offer a complainant supportive measures, as described in these regulations, whether or not a Formal Title IX Complaint is submitted.

Upon receipt of a Formal Title IX Complaint, the district must provide the following written notice to the parties:

- Notice of the district’s grievance procedures, including any informal resolution process.
- Notice of the allegations of sexual harassment potentially constituting Title IX sexual harassment as defined above, including sufficient time to prepare a response before any initial interview, and sufficient details known at the time, including:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting Title IX sexual harassment, and
 - the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
- Notice of any provision in the district’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Emergency Removal Pending an Investigation

No discipline will be imposed upon students prior to the completion of the investigation or decision-making processes outlined below. However, the District may remove an accused student from the district’s education program or activity on an emergency basis, provided that the district 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 accused with notice and an opportunity to challenge the decision immediately following the removal.

Further, the District may place an accused employee on administrative leave during the pendency of the investigation and decision-making process.

Investigation of Formal Title IX Complaints

A Formal Title IX Complaint will then be investigated by the Title IX Coordinator or another designated investigator who: (1) is not decision-maker who will determine responsibility or

dismissal, or the decision-maker for any appeal; and (2) has received training on the following topics (collectively referred to as the “Title IX Training”):

- the definition of sexual harassment;
- the scope of the district’s education program or activity;
- how to conduct an investigation and grievance process including appeals and informal resolution processes;
- how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- technology to be used at a live hearing;
- issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant; and
- issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any investigation of a Formal Title IX Complaint must comply with the following rules and procedures:

- the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the district and not on the parties;
- investigations must be conducted by an investigator who is trained as set forth above, and does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
- investigators must presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process;
- the district 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 district obtains that party’s voluntary, written consent to do so;
- the parties must have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- the district cannot restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- the parties have the same opportunities to have others present, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney;
- any party whose participation is invited or expected must be provided with written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate;
- the investigator must make an objective evaluation of relevant evidence, including both inculpatory and exculpatory evidence;
- the investigator’s credibility determinations may not be based on a person’s status as a complainant, respondent, or witness; and

- the investigation must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The investigation must be completed within a reasonable prompt time frame, but must allow for the temporary delay of the grievance process or the 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. The standard of evidence used for the investigation is a preponderance of the evidence.

The district may dismiss the Formal Title IX Complaint or any allegations therein, if at any time during the investigation:

- a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- the respondent is no longer enrolled or employed by the district; or
- specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Once the investigation is complete, the investigator must create an investigative report that fairly summarizes relevant evidence. Prior to the completion of the report, both parties must be provided with 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 Title IX Complaint, including the evidence that the investigator does not intend to rely upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. Prior to completion of the investigative report, the district must send the evidence for inspection and review to each party and the party's advisor, if any, in an electronic format or a hard copy. The parties must have at least 10 days to submit a written response to the evidence, which the investigator will consider prior to completion of the investigative report.

At least 10 days prior to the time of determination regarding responsibility, the district must send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Once the investigative report is sent to the parties, and before reaching a determination regarding responsibility, the decision-maker must 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.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior cannot be considered as relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, 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. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

Decision by the Building Principal

Once the investigation report is sent to the parties, the investigator will refer the report to the Building Principal (for students) or the Title IX Coordinator, Jennifer Morris, (for employees), or a designated decision maker who (1) is not same person as the investigator, Title IX Coordinator, or the decision-maker for an appeal; and (2) has received the Title IX Training. This decision maker must issue a written decision regarding responsibility, which includes the following:

- identification of the allegations potentially constituting Title IX sexual harassment;
- 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 other evidence;
- findings of fact supporting the determination;
- conclusions regarding the application of the recipient's code of conduct to the facts;
- a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant; and
- the district's procedures and permissible bases for the complainant and respondent to appeal.

The district must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the district provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The Title IX Coordinator is responsible for effective implementation of any remedies.

Any individual who violates the sexual harassment policy by engaging in prohibited Title IX Sexual Harassment will be subject to appropriate disciplinary action. Disciplinary measures that may be imposed include, but are not limited to the following:

- **Students:** Discipline may range from a reprimand up to and including a short-term suspension from school, to be imposed consistent with the student conduct and discipline policy and applicable law. Specifically, the penalties described in the Code of Conduct Policy #5300 Level II Consequences and Level III Consequences may be applied. These include but are not limited to:
 - In-school suspension;
 - External Suspension;
 - Suspension from transportation;
 - Loss of computer or Internet privileges; or
 - Exclusion from school.
 - Exclusion from extra-curricular activities

If the Building Principal or other designated decision maker believes a long-term suspension may be warranted, the decision maker will refer the matter to the Superintendent for a Superintendent's hearing to determine whether a harsher penalty may be warranted under the code of conduct.

- **Employees:** Discipline may range from a warning up to and including termination, to be imposed consistent with all applicable contractual and statutory rights. Specifically, the following penalties may be applied: counseling; administrative leave; leave without pay; disciplinary proceedings; termination.
- **Volunteers:** Penalties may range from a warning up to and including loss of volunteer assignment.
- **“Non-employees”** (i.e., contractors, subcontractors, vendors, consultants and other persons providing services pursuant to a contract, or their employees): Penalties may range from a warning up to and including loss of district business.
- **Other individuals:** Penalties may range from a warning up to and including denial of future access to school property.

Appeal Procedure

Both parties may appeal from (1) a decision maker’s determination regarding responsibility for Title IX sexual harassment, or (2) the dismissal of a Formal Title IX Complaint or any allegations therein, by submitting a written appeal to the President of the Board of Education within ten (10) days from receipt of the decision being appealed from.

An appeal may only be based on one or more of the following reasons:

- procedural irregularity that affected the outcome of the matter;
- new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- the Title IX Coordinator, investigator(s), 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.

If an appeal is received, the President of the Board of Education, or a designee who (1) has received the Title IX Training, and (2) is not the same person as the decision-maker, Title IX Coordinator, or the investigator will:

- notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- issue a written decision describing the result of the appeal and the rationale for the result; and
- provide the written decision simultaneously to both parties within 30 days of receiving the appeal.

Informal Resolution of Complaint

Mediation and alternate methods of resolution may be used at any time after a formal complaint is filed and before a determination is made upon voluntary, written agreement of the target and alleged harasser. The district cannot require the parties to participate in an informal resolution process. The district must provide written notice to the parties of the following:

- the allegations;
- 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 (provided, however, that the party has a right to withdraw from the informal resolution process at any time prior to agreeing to a resolution); and
- any consequences resulting from participating in the informal resolution process, including the records that could be shared.

An informal resolution process cannot be offered or used to resolve allegations that an employee sexually harassed a student.

Retaliation

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 or this Policy, 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 under this part.

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 Policy, constitutes retaliation.

The district will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, except as authorized under FERPA, required by law, or to carry out the purposes of Title IX, including the conduct of any investigation or judicial proceeding arising under Title IX, 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.

Complaints alleging retaliation may be filed according to the procedures outlined in this Policy.

The exercise of rights protected under the First Amendment does not constitute retaliation. Additionally, charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Documentation

This policy shall be included in student and employee handbooks, on the district website, and in student registration materials. A poster summarizing the policy shall also be posted in a prominent location at each school.

For a period of seven years, the district will maintain records of:

- Each sexual harassment investigation under this Policy, including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the district's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The Title IX training materials are also publicly available on the district's website.

Additionally, the district will create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report of sexual harassment or Formal Title IX Complaint. In each instance, the district will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the district's education program or activity. If the district does not provide a complainant with supportive measures, then district will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

External Remedies

Complainants have the right to file sexual harassment complaints with the U.S. Department of Education's Office for Civil Rights (OCR). The OCR can be contacted at (800) 421-3481, 400 Maryland Avenue SW, Washington, DC 20202-1100, or at <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>.

Employee complainants also have the right to file complaints with the federal Equal Employment Opportunity Commission (EEOC) and the New York State Division of Human Rights (DHR). The EEOC can be contacted at (800) 669 4000, <https://www.eeoc.gov/employees/howtofile.cfm>, info@eeoc.gov, or at 33 Whitehall Street, 5th Floor, New York, NY 10004 or 300 Pearl Street, Suite 450, Buffalo, NY 14202. The DHR can be contacted at (888) 392-3644, www.dhr.ny.gov/complaint, or at 1 Fordham Plaza, Fourth Floor, Bronx, NY 10458.

Nothing in these regulations shall be construed to limit the right of the complainant to file a lawsuit in either state or federal court, or to contact law enforcement officials if the sexual harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, which may constitute a crime. No district contract or collective bargaining agreement entered into after July 11, 2018 may include a binding arbitration clause for sexual harassment requiring arbitration before bringing a sexual harassment claim to a court.

Appendix A

A. Dating violence – The term “dating violence” means violence committed by a person:

1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - a. The length of the relationship.
 - b. The type of relationship.
 - c. The frequency of interaction between the persons involved in the relationship.

B. Domestic Violence – The term “domestic violence” includes 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.

C. Sexual Assault – The term “sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, which include the following:

1. Forcible Sexual Offenses:

- a. Forcible Rape (Except Statutory Rape) – The carnal knowledge of a person, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.
- b. Forcible Sodomy – Oral or anal sexual intercourse with another person, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- c. Sexual Assault With An Object – To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- d. Forcible Fondling – The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is

incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

2. Nonforcible Sexual Offenses:

- a. Incest – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- b. Statutory Rape – Nonforcible sexual intercourse with a person who is under the statutory age of consent.

D. Stalking – The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. fear for his or her safety or the safety of others; or
2. suffer substantial emotional distress