**Title IX Policy**

**Robert Bycroft School**

**Columbiana County Board of Developmental Disabilities**

The Columbiana County Board of Developmental Disabilities (hereinafter referred to as the “Board”) prohibits discrimination on the basis of sex (including sexual orientation and/or gender identity) in any educational programs or activities under the control of the Board, in admission to the Board’s program, and in employment with the Board, in accordance with Title IX of the Education Amendments Act of 1972 and its implementing regulations.

**Title IX Coordinator**

The following individuals have been appointed by the Board to serve as the Board’s Title IX Coordinator:

Andrew Garber, Principal

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**Definitions**

Actual knowledge: Notice of sexual harassment or allegations of sexual harassment to any employee of the Board.

Complainant: Any individual who is alleged to be the victim of sexual harassment, even where no formal complaint has been filed and no grievance process is pending.

Education program or activity: The locations, events, or circumstances over which the Board exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

Formal complaint: A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the Board 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 of the Board. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

Informal resolution: An informal resolution is a process in which the parties mutually agree on an outcome that addresses the sexual misconduct raised in a formal complaint. Either party may request informal resolution. Both parties must consent to informal resolution in writing. Cases involving a student complainant and an employee respondent are not eligible for an informal resolution.

Parties: Complainant(s) and respondent(s)

Preponderance of the evidence: Standard of evidence that is summarized as “concluding that a fact is more likely than not to be true.”

Respondent: Any individual who is reported to be the perpetrator of sexual harassment, even where no formal complaint has been filed and no grievance process is pending.

Retaliation: Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or the regulations, 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 Title IX.

Sexual harassment: Conduct on the basis of sex that satisfies one or more of the following:

i. An employee of the Board conditioning the provision of an aid, benefit, or service of the Board on an individual’s participation in unwelcome sexual conduct (quid-pro-quo);

ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Board’s education program or activity.

a. Elements of severity, pervasiveness, and objective offensiveness will be evaluated in light of the known circumstances and depend on the facts of each situation but will be determined from the perspective of a reasonable person standing in the shoes of the complainant.

iii. “Sexual Assault” as defined in 20 U.S.C. § 1092(f)(6)(A)(v); “Dating Violence” as defined in 34 U.S.C. §12291(a)(10); “Domestic Violence” as defined in 34 U.S.C. § 12291(a)(8); or “Stalking” as defined in 34 U.S.C. § 12291(a)(30).

a. The term “sexual assault” is defined as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. The definition of “sexual assault” includes rape, fondling, incest, and statutory rape.

b. The term “dating violence” (34 U.S.C. § 12291(a)(10)) 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:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.

c. ‘‘Domestic violence’’ as defined in 34 U.S.C. § 12291(a)(8):

a. 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.

d. “Stalking’’ as defined in 34 U.S.C. § 12291(a)(30):

a. 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.

Supportive measures: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the Board’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Board’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, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Title IX Coordinator: The individual(s) the Board designates and authorizes to coordinate its efforts to comply with its responsibilities.

**Grievance Process**

The Board shall ensure that all complaints alleging sexual harassment are promptly and equitably resolved. The Board shall treat complainants and respondents equitably – offering supportive measures to the complainant and respondent as appropriate, and ensuring that no disciplinary sanctions, or actions other than supportive measures, are imposed against a respondent unless the grievance process has been followed. The following individuals shall not have a conflict of interest or bias towards or against complainants or respondents generally, or any individual complainant or respondent: Title IX Coordinator(s), investigator(s), decision-maker(s), or any individual(s) facilitating an informal resolution process.

In the event that a determination of responsibility is made against a respondent, remedies shall be provided to the complainant. Any remedies provided shall be for the purpose of restoring or preserving equal access to the Board’s education program and/or activity. Remedies provided may range from supportive measures to disciplinary or punitive measures with regard to a respondent.

Upon receipt of an allegation of actual knowledge of discrimination on the basis of sex (including sexual harassment), the Board shall respond promptly and in a manner that is not deliberately indifferent. Deliberate indifference occurs if the Board’s response to an allegation of discrimination on the basis of sex (including sexual harassment) is clearly unreasonable in light of all known circumstances.

The Board shall strive to conclude the grievance process within sixty (60) calendar days of the receipt of a formal complaint.

**Allegations of Discrimination on the Basis of Sex and/or Sexual Harassment**

Reports of discrimination on the basis of sex, which include allegations of sexual harassment, may be made by any person. Reports may be made in-person, via telephone call, via e-mail, by mail, by fax, or any other means which enable the Title IX Coordinator to receive the oral or written report. Reports may be made at any time, and can be made anonymously by leaving a message at (330) 424-7788.

Employees of the Board are considered to be mandatory reporters with regards to allegations of discrimination on the basis of sex and/or sexual harassment, and are required to promptly notify the Title IX Coordinator of any such allegations. Failure to do so may result in disciplinary action, up to and including termination. Students, Board members, and third parties are encouraged to report allegations of discrimination on the basis of sex and/or sexual harassment to either the Title IX Coordinator, or to any Board employee (who shall notify the Title IX Coordinator).

Any allegations of discrimination on the basis of sex or sexual harassment alleging that the Title IX Coordinator is either the complainant or the respondent shall be submitted to the Board’s Assistant Superintendent, who shall serve in the place of the Title IX Coordinator with regard to that specific allegation.

Nothing in this Policy prohibits an individual from filing criminal charges, filing a complaint with the United States Department of Education, or filing a complaint with the Office of Civil Rights, concurrently with filing a formal complaint with the Board.

Upon receipt of an allegation of actual knowledge of discrimination on the basis of sex (including sexual harassment, the Title IX Coordinator shall contact the complainant to discuss available supportive measures (regardless of whether the complainant files a formal complaint), respect the complainant’s requests with regard to supportive measures, and explain the process of filing a formal complaint to the complainant.

Any individual who knowingly makes false statements with regard to any allegation of discrimination the basis of sex or sexual harassment shall be in violation of this Policy, and any other applicable Board Policy or rule.

**Emergency Removal**

Nothing in this Policy prohibits the Board from removing a student respondent from the Board’s education program or activity on an emergency basis, provided that the Board: (i) conducts an individualized analysis of safety and risk; (ii) determines that the respondent presents an immediate threat to the health or safety of another individual such that emergency removal is justified; and (iii) provides the respondent with notice and an opportunity to challenge the removal (under the deliberate indifference standard). Any emergency removal must comply with the requirements of the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and Ohio Revised Code 3313.66.

**Administrative Leave**

Nothing in this Policy prohibits the Board from placing a non-student employee on administrative leave during the pendency of the grievance process. In placing any non-student employee on administrative leave, the Board must comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

**Formal Complaint Involving Allegations of Discrimination on the Basis of Sex or Sexual Harassment**

Upon receipt of a formal complaint involving allegations of discrimination on the basis of sex or sexual harassment, the Board shall follow the grievance process and procedures set forth in this Policy. The investigator(s) shall investigate all allegations thoroughly, including a review of all relevant evidence (both inculpatory and exculpatory). Until a determination regarding responsibility is made, any alleged respondents will enjoy the benefit of a presumption that the respondent is not responsible for the conduct alleged.

After receiving a formal complaint, the Title IX Coordinator shall contact all named or known parties and inform them of:

(i) the Board’s grievance process (including the informal resolution process);

(ii) the allegations involved with sufficient details known at the time to allow the parties to prepare for an initial interview;

(iii) the presumption that the respondent is not presumed responsible for the alleged conduct and that a determination regarding responsibility will be made at the end of the grievance process;

(iv) the fact that the parties have the right to an advisor of their choice, who may be an attorney, and the fact that the parties have the right to review evidence with any advisor if they so choose;

(v) any Policy (including this Policy) that prohibits an individual from making any false statement that the individual knows to be false.

The Board may consolidate formal complaints of allegations of discrimination on the basis of sex or sexual harassment where the allegations stem from the same fact pattern or circumstances. In the event that a grievance process involves one or more complainant or one or more respondent, references in this Policy to the terms “complainant,” “respondent,” “party,” or “parties” shall include the plural, as applicable.

**Mandatory Dismissal of Formal Complaint**

The Title IX Coordinator shall dismiss a formal complaint if the conduct alleged in the formal complaint:

(i) does not meet the definition of sexual harassment under this policy or Title IX; or

(ii) did not occur in the Board’s educational program or activity; or

(iii) did not occur against a person in the United States.

If any of the above conditions are satisfied, the Title IX Coordinator will dismiss the formal complaint. However, the Board may still investigate allegations pursuant to another provision of the Board’s policy, code of conduct, or handbook. Complainants have the opportunity to appeal the Board’s decision to mandatorily dismiss a formal complaint.

**Discretionary Dismissal of Formal Complaint**

The Title IX Coordinator may dismiss a formal complaint, or allegations contained within a formal complaint, at any time, if:

(i) during the investigation, the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; or

(ii) during the investigation, the respondent is no longer employed by the Board or enrolled in the Board’s educational program; or

(iii) specific circumstances prevent the Board from gathering sufficient evidence to reach a determination.

If the Title IX Coordinator chooses to dismiss a formal complaint for any of the reasons above, the Title IX Coordinator shall send written notice of the dismissal, including any reason(s) for the dismissal to both the complainant and respondent simultaneously.

**Investigation of a Formal Complaint**

During the investigation of a formal complaint and throughout the grievance process, the Board shall ensure that the burden of gathering sufficient evidence to reach a determination regarding responsibility lies with the Board, and not the parties involved. The Board cannot access, consider, disclose, or otherwise use records from a party that are maintained by a physician, psychiatrist, psychologist, therapist, or any other professional or paraprofessional which are connected to the treatment of a party, unless the Board receives voluntary, written consent from the party (if the party is under the age of 18, written consent must be obtained from the party’s parent/guardian).

Both parties shall be provided an equal opportunity to present witnesses and relevant evidence. Neither party shall be restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence. Both parties shall have the same opportunities to have others present during any grievance proceeding, including any advisor. The Board may establish parameters with regard to the extent that any advisor may participate in proceedings, and these parameters shall be applied to both parties equally. Both parties shall be provided an equal opportunity to inspect and review any evidence obtained during the course of the investigation and be provided sufficient time to respond to the evidence prior to the conclusion of the investigation.

The investigator(s) shall create an investigative report summarizing all relevant evidence and shall send the investigative report to each party (and the party’s advisor, if applicable), for review and written response. Prior to the issuance of the investigative report, the parties (and any advisors) must be given the evidence subject to inspection and review, and the parties shall have 10 calendar days to submit a written response, which the investigator shall review and consider prior to the conclusion of the investigative report.

The investigator(s) shall provide written notice to any relevant individual of any investigative interviews or other meetings, and such written notice shall provide sufficient time for the party to prepare for any investigative interview or other meeting.

**Determination Regarding Responsibility**

The decision-maker, who shall not be the same person as the Title IX Coordinator or the investigator(s), shall issue a written determination regarding responsibility. In reaching this determination, the decision-maker(s) shall apply the preponderance of the evidence standard.

The written determination regarding responsibility will include:

The identification of the relevant allegations which may constitute sexual harassment;

The procedural steps taken by the Board since the time that the formal complaint was received through the determination – including notifications to parties, interviews, site visits, and/or other methods used to gather evidence;

Findings of fact to support the written determination;

An analysis of the facts under the Board’s Code of Conduct;

A statement in support of, and the rationale behind the result of each allegation, including a determination regarding responsibility;

Any disciplinary sanctions imposed upon the respondent, and a description of whether any remedies to restore or preserve equal access to the Board’s education program or activity will be provided by the Board to the complainant;

The procedures and permissible bases for the appeal of the determination by either the complainant or the respondent.

Disciplinary sanctions imposed upon a student respondent may include sanctions up to and including a permanent exclusion from the Board’s education program or activity. Disciplinary sanctions imposed upon an employee respondent may include sanctions up to and including termination.

**Appeals**

Appeals must be made in writing within sixty (60) days of the determination of responsibility or dismissal of a formal complaint or allegations contained in a formal complaint. The Board shall strive to conclude the appeal process within thirty (30) calendar days of the receipt of the appeal of the Board’s determination of responsibility or dismissal or all or part of a formal complaint. Parties have the right to appeal the Board’s determination regarding responsibility, or from the dismissal of all or part of a formal complaint.

Appeals may be based one of the following:

A procedural irregularity that impacted the outcome of the matter;

New evidence that was unavailable at the time of a determination regarding responsibility or dismissal was made, that has the potential of impacting the outcome of the matter;

A conflict of interest or bias on the part of the Title IX Coordinator, investigator(s), or decision-maker(s) towards respondents and complainants generally, or towards the specific complainant and respondent involved in an investigation;

The Board may offer both parties equally the opportunity to appeal on an additional basis.

Once an appeal is received, the Title IX Coordinator shall notify the other party in writing and implement appeal procedures equally to both parties. The decision-maker for any appeal shall not be: the same person who served as the decision-maker(s) for the original determination of responsibility or dismissal, the Title IX Coordinator(s), or the investigator(s).

Both parties will be given a reasonable, equal opportunity to submit written statements in support of, or challenging, the outcome. A written decision detailing the result of the appeal and the justification for the result shall be shared with both parties simultaneously.

**Informal Resolution**

No individual shall be required to participate in the informal resolution process. No complainant shall be required to waive the right to an investigation and adjudication with regard to a formal complaint involving discrimination on the basis of sex or sexual harassment as a condition of enrollment, continued enrollment, employment, continued employment, or enjoyment of any other right. The informal resolution process shall not be offered unless a formal complaint has been filed and can be used at any time prior to the decision-maker concluding the determination regarding responsibility. The Title IX Coordinator must obtain voluntary written consent from both parties prior to engaging in the informal resolution process.

At any time prior to the determination of responsibility, the Title IX Coordinator may offer an informal resolution process to both parties. If both parties are in mutual agreement to engage in an informal resolution process, the Title IX Coordinator may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and/or adjudication. The informal resolution process is not available for allegations involving a Board employee sexually harassing a student, or allegations involving sexual assault between a student complainant and a student respondent.

The Title IX Coordinator shall provide both parties written notice disclosing: allegations surrounding the formal complaint; requirements of the informal resolution process, including any circumstances under which the parties are precluded from resuming a formal complaint stemming from the same allegations; and any consequences which may result from the informal resolution process, including records that will be maintained or could be shared.

Parties have the right to withdraw from the informal resolution process and resume the grievance process at any time prior to agreeing to a resolution.

**Records**

The Board shall maintain, for a period of seven (7) years, all records involving:

Any sexual harassment investigation, determinations regarding responsibility, disciplinary sanctions imposed on a respondent, and remedies provided to the complainant;

Any actions, including any supportive measures, which were taken in response to a formal complaint of sexual harassment;

For all complaints, the basis for any conclusion that the Board’s response was not deliberately indifferent, and the basis for why the Board’s decision not to provide a complainant with supportive measures was not deliberately indifferent;

Any appeals and the results of any appeals; and

Any informal resolution and the results of any informal resolution.

**Retaliation**

The Board prohibits any form of retaliation against an individual who files a complaint in response to conduct that the individual reasonably believes violates this Policy, or against any individual who participates or cooperates with regards to an investigation, as required by Title IX of the Education Amendment Act of 1972 and Title VII of the Civil Rights Act of 1964.

Any individual who experiences retaliation should immediately report it to the Title IX Coordinator. Retaliation, if founded, may result in the same discipline applicable to one who engages in discrimination on the basis of sex or sexual harassment. The reporting of retaliation shall have no impact on any employee’s employment with the Board, nor shall it have any detrimental impact on any student with regard to the student’s participation in the Board’s program or activity.

**Confidentiality**

The Board shall maintain confidentiality to the extent possible to effectively respond to a report of discrimination on the basis of sex or sexual harassment. The Board shall keep confidential the identities of any individuals who have made a report or complaint of discrimination on the basis of sex or sexual harassment, any complainant, any respondent, any witness, any individual has been alleged to be a complainant or respondent, and any supportive measures provided to the complainant or respondent, except as may be permitted by the Family Educational Rights and Privacy Act (“FERPA”), as required by law, or as necessary to conduct the grievance process or provide supportive measures.

**Training**

The Board shall provide training to the Board’s Title IX Coordinator, any investigator(s), any decision-maker(s), or individuals designated to facilitate the informal resolution process, in the following areas:

(i) the definition of sexual harassment under Title IX and under this Policy;

(ii) the scope of the Board’s education program and/or activity;

(iii) how to conduct an investigation, the grievance process, appeals, and informal resolutions;

(iv) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

**Legal Citations**

Title IX of the Education Amendments Act of 1972 – 20 U.S.C. §§ 1681 – 1688;

The Individuals with Disabilities Education Amendment Act – 20 U.S.C. §1400;

Section 504 of the Rehabilitation Act of 1973 – 29 U.S.C. § 701;

Title VII of the Civil Rights Act of 1964 - §7, 42 U.S.C. §200e;

The Family Educational Rights and Privacy Act (“FERPA”) – 20 U.S.C. § 1232g and 34 C.F.R. §99;

The Americans with Disabilities Act of 1990 – 42 U.S.C. § 12101;

20 U.S.C. § 1092;

34 U.S.C. § 12291;

O.R.C. 3313.66