

TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS

I. Application of Policy

While all forms of sex-based discrimination are prohibited in the District, the purpose of this policy is to address, and only to address, *sexual harassment as defined in Title IX and in this Policy* below, that occurs within the educational programs and activities of the District, and to provide a grievance process (Title IX Grievance Process) for investigating and reaching a final determination of responsibility for a formal complaint of sexual harassment. While the District must respond to all “reports” it receives of sexual harassment, the Title IX Grievance Process is initiated only with the filing of a formal complaint.

For harassing conduct which does not meet the definition of sexual harassment under Title IX and this Policy, the District’s response will be governed under other applicable laws, policies of the District, including Policy JB-SD, and the Student Code of Conduct and the Mississippi Educator Code of Ethics and Standards of Conduct.

This policy does not give any third party a right to due process or other proceedings to which student and employee respondents are entitled under this policy. Volunteers and visitors who engage in sexual harassment will be directed to leave school property and/or be reported to law enforcement, and/or the applicable state agencies, as appropriate. A third party under the supervision and control of the school system will be subject to termination of contracts/agreements, restricted from access to school property, and/or subject to other consequences, as appropriate.

II. District Responsibilities

The District has specific obligations in responding to the notice of sexual harassment. Each of the procedural requirements set forth in the amended Title IX regulations are to ensure a fair process for both parties. The District must respond promptly to *actual knowledge* of sexual harassment in an education program or activity and respond in a manner that is *not deliberately indifferent*. The District must treat complainants and respondents equitably by offering supportive measures to a complainant and following a grievance process before imposing any disciplinary sanctions on a respondent.

III. Title IX Coordinator

A. The District’s Title IX Coordinator is:

Selma Wells
Federal Programs Coordinator

P. O. Box 605

41 First Street
Meadville, MS 39653
601-384-2340
swells@fcsd.k12.ms.us

The District's Alternate Title IX Coordinator is:

Sheila Dillon
Special Services Director
P.O. Box 666
340 Edison Street South
Meadville, MS 39653
601-384-2133
sdillon@fcsd.k12.ms.us

B. The Title IX Coordinator is the person authorized by the District to coordinate the District's Title IX compliance program. The Title IX Coordinator shall respond promptly to all general reports as well as formal complaints of sexual harassment. The Title IX Coordinator shall receive general and specific reports of sexual harassment, and coordinate the District's responses to both reports and formal complaints of sexual harassment so that the same are prompt and equitable. In addition to any other specific responsibilities assigned under this Policy, or as assigned by the Superintendent, the Title IX Coordinator will be responsible for the following duties:

1. meeting with a complainant, and informing the parent/guardian once the Title IX Coordinator becomes aware of allegations of conduct that could constitute sexual harassment as defined in this Policy;
2. identification and implementation of supportive measures;
3. receiving formal complaints of sexual harassment and, in some cases, signing the complaint of sexual harassment;
4. engaging with the parents/guardians of parties to any formal complaint of sexual harassment;
5. coordinating with District and school-level personnel to facilitate and assure implementation of investigations, and remedies, and helping to assure that the District otherwise meets its obligations associated with reports and complaints of sexual harassment;
6. monitoring the formal complaint progress to make sure the correct notices are provided and the steps are in the required order.
7. setting the timeframes to ensure the District promptly addresses sexual harassment allegations that fall under Title IX;
8. determining, in emergency situations, whether an individualized safety and risk analysis is required with regard to a respondent;

9. informing the Superintendent of any employee respondents so that the Superintendent can make any necessary reports to Mississippi Department of Education in compliance with applicable statutes administrative regulations, and the Mississippi Educator Code of Ethics and Standards of Conduct.
10. coordinating with the Superintendent with respect to assignment of persons to fulfill the District's obligations, both general and case specific, relative to this Policy (e.g., investigator, decision makers, etc.; this may involve the retention of third party personnel.);
11. coordinating with District and school-level personnel to assure appropriate training and professional development of employees and others in accordance with the training requirements in the Title IX amended regulations; and
12. working to develop and implement systems to maintain sexual harassment records and data for a period of seven years.

In cases where the Title IX Coordinator is unavailable, including unavailability due to a conflict of interest or other disqualifying reason, the Superintendent shall assure that another person with the appropriate training and qualifications is appointed as acting Title IX Coordinator for that case. In such instances "Title IX Coordinator" shall include the acting Title IX Coordinator.

IV. Definitions Under Title IX

"Actual knowledge" is present when the Title IX Coordinator, district official with authority to institute corrective measures, or ANY EMPLOYEE (excluding respondent) in the District has notice or receives a report or information or learns of sexual harassment or allegations of sexual harassment. Any employee with actual knowledge of sexual harassment or allegations of sexual harassment is required to make a report to the Title IX Coordinator.

"Administrative leave" - The District may place an employee respondent on administrative leave during the pendency of the Title IX Grievance Process.

"Complainant" means the individual who is alleged to be the victim conduct that could constitute sexual harassment. A person may be a complainant even when no report is filed and no grievance is pending. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the educational program or activity of the District.

"Days" *in this Policy JB-SH only* is defined as weekdays. It excludes weekdays when the District administrative office is closed (e.g., holidays), or any weekday during the school year in which school where the student complaint(s) or student respondent(s) attend or where the employee respondent works is experiencing a closure that was not calendared (e.g., snow days). The Title IX Coordinator may also grant a temporary delay of the Title IX Grievance Process or limited extension of time frames for good cause with written notice to the parties of the delay or the extension and the reasons for the action. 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 or other extenuating circumstances.

“Decision-maker” means the persons tasked with the following: 1) the responsibility of making initial determinations or responsibility (also referred to as the “initial decision-maker” or 2) the responsibility to decide any appeal (also referred to as the “appeal decision-maker”) in formal complaints of sexual harassment in the Title IX grievance process.

“Deliberate indifference” is when a district’s response is clearly unreasonable in light of known circumstances.

“Determination regarding responsibility” is the formal conclusion of the initial decision-maker on each allegation of sexual harassment as to whether the respondent did or did not engage in the alleged conducted constituting sexual harassment.

“Education program or activity” was previously defined as all the “operations of a [district]. . . .” In 34 C.F.R. § 106.44(a), the definition has been enlarged to include any location, event or circumstance over which the District exercised substantial control over both the respondent and the context in which the harassment occurs.

“Formal complaint” is a document filed by a complainant, the complainant’s parent/guardian, or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegations.

“Respondent” means the individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment. A person may be a respondent even when no report is filed and no grievance is pending.

“Sexual harassment” - Conduct “on the basis of sex” that meets one or more of the following:

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

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 the District’s education program or activity; or

3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v) means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

4. “Domestic violence” as defined in 34 U.S.C. 12291(a)(8). “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.

5. "Dating violence" as defined in 34 U.S.C. 12291(a)(10) "Dating violence" means violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) 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.

6. "Stalking" as defined in 34 U.S.C. 12291(a)(30). "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) fear for his or her safety or the safety of others; or

(B) suffer substantial emotional distress.

"Supportive measures" are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to a complainant or a respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures should be designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party. Examples of supportive measures include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, campus escort programs, modifications of work or class schedules, increased monitoring or supervision, mutual contact restrictions between the parties, a combination of local interventions and supports.

V. Reports of Sexual Harassment

Any person may report sex discrimination, including sex harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination), in person, by mail, by telephone, or e-mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. **Any District employee** who knows or learns information concerning conduct related to sexual harassment or allegations of sexual harassment should immediately notify the Title IX Coordinator. Failure to report will subject the employee to discipline up to and including dismissal.

While the District strongly encourages reports of sexual harassment to be made directly to the Title IX Coordinator, the report may be made to any District staff member.

The District shall follow all state laws regarding reporting allegations of criminal misconduct (i.e. sexual assault on a student) and all state laws and regulations regarding mandatory reporting under the Educator Code of Ethics and Standards of Conduct.

VI. District Response to Report of Sexual Harassment

A. Complainant

The Title IX Coordinator will promptly contact the complainant to:

1. discuss the availability of and offer supportive measures;
2. consider the complainant's wishes with respect to supportive measures;
3. inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
4. explain to the complainant the process for filing a formal complaint.

The process for filing a formal complaint is described below in the section of the policy entitled "Formal Complaint."

B. Respondent

The Title IX Coordinator's response to the respondent will also protect the respondent's due process rights so as not to impact the respondent's access to education prior to the grievance process and a determination regarding responsibility. However, the regulations permit the District to immediately remove a respondent from the education program or activity on an emergency basis if the District conducts an individualized safety and risk analysis and determines that an emergency removal is necessary to protect any student or other individual from an immediate threat to physical health or safety. The District must provide respondent with notice and an opportunity to challenge the decision immediately after removal. This provision does not modify any rights under IDEA, Section 504 of the Rehabilitation Act of 1973, or the ADA. The Title IX Coordinator may request the individualized safety and risk analysis.

The Superintendent may place an employee respondent on administrative leave.¹

VII. Title IX Grievance Process

The Title IX Grievance Process is implemented in response to and only after the filing of a formal complaint of sexual harassment (described below).

A. The following Provisions Govern the District's Title IX Grievance Process.²

1. The District treats complainants and respondents equitably by providing remedies to a complainant after a determination of responsibility for sexual harassment has been made against a respondent, and by following this grievance process before imposing any disciplinary sanctions

¹ 34 CFR 106.44(d).

² 34 C.F.R. § 106.45(b)(1)

or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the District's education program or activity. Remedies may include supportive measures but may also include punishing respondent.

2. The District provides an objective evaluation of all available evidence without making credibility determinations based on a party's status as complainant, respondent, or witness.
3. The District ensures that the Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal process must not have a conflict of interest or bias for or against complainant or respondent. Training is provided for these individuals on definition of sexual harassment, scope of the District's program or activity, how to conduct an investigation and grievance process, hearings, appeals and informal processes. Investigators are trained on how to prepare an investigation report. Decision-makers are trained on issues of evidence and questioning.
4. There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the grievance process.
5. The District provides reasonably prompt time frames for completing the grievance process, including a process for delays such as law enforcement involvement, absence of a witness, party, etc. with written notice to both parties explaining the reasons for the delay.
6. The District identifies possible disciplinary sanctions and remedies that may be implemented. Sanctions may include disciplinary action up to and including suspension or termination of employment if an employee. With regard to a student, the student may be subject to disciplinary action listed in the student code of conduct, up to and including suspension or expulsion if a student. Remedies involving students may also include no contact restrictions, prohibitions on participating in extra-curricular activities, scheduling changes or class reassignments, limits on future class registrations, restrictions on access to various spaces in the school buildings, etc.
7. The District adopts the clear and convincing] standard to determine responsibility.
8. The District provides an appeal option as discussed below. Either party may appeal.
9. This policy describes in the Definitions section the range of supportive measures available to complainants and respondents.
10. The District will disallow evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

B. Process for Filing a Formal Complaint of Sexual Harassment

A formal complaint may be filed by the complainant or the complainant's parent/guardian on the complainant's behalf. It must contain the name and address of the complainant and the student's parent or guardian, describe the alleged sexual harassment, request an investigation of the matter,

and be signed by the complainant or otherwise indicate that the complainant is the person filing the complaint.

If the Complainant does not file a complaint, the Title IX Coordinator may sign a formal complaint, but only if initiating the grievance process against the respondent is not clearly unreasonable in light of the known circumstances. There may be other circumstances where the Title IX Coordinator determines it would be deliberately indifferent not to proceed with a formal complaint. Even though the complaint is signed by the Title IX Coordinator, he or she is not a party to the action.

Where allegations arise out of the same facts or circumstances, formal complaints can be consolidated against more than one respondent, by more than one complainant against one of more respondents, or by one party against another party.³

C. Notice to All Parties of the Filing of a Formal Complaint⁴

The Title IX Coordinator will provide a written notice to all known parties upon receipt of a formal complaint. This notice will be provided in sufficient time for the parties to prepare to be interviewed as a part of the investigation prompted when the formal complaint is filed. The notice will include all of the following:

1. Notice of the grievance process, including any informal resolution process;
2. Notice of the allegations potentially constituting sexual harassment as defined in Title IX with sufficient details (names, dates, conduct, location, etc.) to allow the respondent to prepare a response before any initial interview;
3. A statement that the respondent is presumed not responsible for the conduct and responsibility will be determined at conclusion of grievance process;
4. Notice of the parties' right to have an advisor (may be an attorney) and to inspect and review evidence, and that
5. The code of conduct provisions which prohibit knowingly making false statements or providing false information in the grievance process.

D. Dismissal⁵

After a formal complaint is filed, dismissal of the complaint is governed by the provisions below:

1. A complaint **must** be dismissed if the allegations do not constitute sexual harassment as defined, did not occur in the District's program or activity, or did not occur against a person in the United States.
2. A complaint **may** be dismissed if the complainant notifies the Title IX Coordinator at any time that he/she wishes to withdraw the complaint or allegations, if the respondent's enrollment

³ 34 C.F.R. § 106.45(b)(4)

⁴ 34 C.F.R. § 106.45(b)(2)

⁵ 34 C.F.R. § 106.45(b)(3)

or employment ends, or if specific circumstances prevent the District from gathering evidence (e.g. passage of several years between complaint and alleged conduct, non-cooperation of complainant, etc.).

3. Notice of dismissal will be provided to both parties, including the reasons for dismissal. Either party may appeal the dismissal.

The dismissal of a formal complaint under Title IX does not preclude the District from continuing any investigation or taking action under other District policies, code of conduct or administrative rules/regulations. In some cases, the District may have an obligation to continue an investigation and proceed under a different policy or mandated process.

E. Investigation⁶

The Title IX Coordinator may also conduct the investigation or assign the investigation to another person who is trained to conduct Title IX investigations. The District may also outsource the investigation. The investigator is responsible for:

1. Ensuring that the burden of proof and gathering evidence rests on the District rather than the parties (note: certain treatment records cannot be obtained without voluntary, written consent; also parent consent may be sought under FERPA if applicable);
2. Providing an equal opportunity for the party to present witnesses and evidence;
3. Not restricting either party's ability to discuss the allegations or gather and present evidence;
4. Providing the same opportunity to have others present during interviews or other proceedings, including an advisor (who may be an attorney) and ensuring that any restrictions on advisor participation apply equally to both parties;
5. Providing written notice to a party who is invited or expected to attend and includes, the date, time, participants, purpose, and location of any investigative interview or other meeting with enough time to allow the party to prepare to participate
6. Providing both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the District does not intend to rely and any exculpatory or inculpatory evidence from any source; this information will be provided prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response, which investigator will consider before completing the investigation report; and
7. Including the preparation of a written investigation report that fairly summarizes the relevant evidence. This report will be provided to the parties and their advisors at least

⁶ 34 C.F.R. § 106.45(b)(5)

10 days before a determination of responsibility for review and written response by each of the parties.

F. Hearings and written questions 34 C.F.R. § 106.45(b)(6)

No hearing is required in K-12 educational institutions. School officials may determine that hearings will be held in certain circumstances. With or without a hearing, after the District has sent the investigative report to the parties and before reaching a determination regarding responsibility the decision-maker must provide each party the opportunity to submit, written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions. The amendments provide restrictions, with limited exceptions, on certain types of questions related to the complainant.

G. Determination of Responsibility by the Initial Decision Maker

The decision-maker cannot be the investigator or the Title IX Coordinator. The decision-maker issues a written determination of responsibility that:

1. Identifies the allegations that potentially constitute sexual harassment as defined in the amendments;
2. Describes the District's procedural steps taken from the receipt of the complaint to the determination;
3. Includes findings of fact supporting the determination;
4. Includes conclusions regarding application of the code of conduct to the facts;
5. Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions imposed upon the respondent, and whether remedies to restore or preserve equal access to the District's education program or activity will be provided to the complainant; and
6. Includes procedures for appeals.
7. The decision maker shall provide the Determination of Responsibility to the Title IX Coordinator and the parties simultaneously.

H. Appeals⁷

1. Both parties have the right to appeal a determination of responsibility and the District's dismissal of a complaint or any allegations for the following:

- a. A procedural irregularity that affected the outcome;
- b. New evidence that was not reasonably available at the time of the determination regarding responsibility and could affect the outcome; or

⁷ 34 C.F.R. § 106.45(b)(8)

c. Conflict of interest on the part of the Title IX Coordinator, investigator, or decision-maker that affected the outcome

2. The District will ensure that written notice is provided to both parties of the appeal and provide both parties an equal opportunity to submit a written statement in support of, or challenging, the determination.

3. A written decision of the appeal will be provided to both parties simultaneously.

4. The decision-maker for the appeal (the appeal decision-maker) cannot be the Title IX Coordinator, the investigator or the initial decision-maker.

I. Informal Resolution⁸

At any point during the formal complaint process, the District may offer to facilitate an informal process that does not require a full investigation as long as both parties receive written notice of their rights and the parties provide written, voluntary consent. The District cannot require the waiver of the right to an investigation and adjudication of formal complaints as a condition of employment, continuing employment, enrollment or continuing enrollment. At any point prior to agreeing to an informal final resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

The District cannot offer to facilitate an informal resolution process unless a formal complaint has been filed. Informal resolution is not available where a complaint alleges that an employee harassed a student.

J. Confidentiality

The District will maintain the confidentiality of the complainant and the respondent except as necessary to complete a thorough and effective investigation and grievance process under this policy and as required by law/Board policy. Throughout the Title IX process, information may need to be disclosed to appropriate individuals or authorities. All disclosures shall be consistent with the District's legal obligations and the necessity to investigate allegations of harassment and take disciplinary action. Further, while the District may not restrict the parties' ability to discuss the allegations under investigation, or to gather and present relevant evidence,⁹ this right does not preclude the District from warning the parties not to discuss or disseminate the allegations in a manner that constitutes retaliation or unlawful tortious conduct.¹⁰ Examples of required disclosure include:

1. information to either party to the extent necessary to provide the parties due process during the Title IX Grievance Process;

⁸ 34 C.F.R. § 106.45(b)(9)

⁹ 34 CFR 106.45(b)(5)(iii).

¹⁰ Preamble, p. 951.

2. information to individuals who are responsible for completing a thorough and effective investigation and to individuals who are responsible for the determination of responsibility to the extent necessary to complete the District's grievance process;
3. mandatory reports of child abuse or neglect to the appropriate state agency or local law enforcement;
4. information to the complainant's and the respondent's parent/guardian as required under this Policy and or the Family Educational Rights and Privacy Act ("FERPA"); and
5. reports to the Mississippi Department of Education as required under Mississippi law regarding violations of the Mississippi Educator Code of Ethics and Standards of Conduct.

Additionally, any supportive measures offered to the complainant or the respondent shall remain confidential to the extent that maintaining such confidentiality would not impair the ability of the school district to provide the supportive measures.

Except as specified above, the District shall keep confidential the identity of (1) 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; (2) any complainant; (3) any individual who has been reported to be the perpetrator of sex discrimination; (4) any respondent; and (5) any witness.¹¹

VIII. Retaliation Prohibited¹²

Retaliation, threats, intimidation, coercion or discrimination against any person who makes a report or complaint, or against any person who assists, participates, or refuses to participate in any investigation of an act alleged in this Policy is prohibited.¹³ Actions taken in response to materially false statements made in bad faith, or to submitting materially false information in bad faith, as part of a report or during the Title IX Grievance Process do not constitute retaliation.¹⁴ A finding of responsibility alone is insufficient to conclude that a person made a materially false statement in bad faith. Complaints of retaliation with respect to reports or formal complaints of sexual harassment may be filed under this Title IX Grievance Process.

IX. Record Keeping¹⁵

- A. The District will keep records related to reports of sexual harassment for a minimum of seven (7) years, including investigation records, disciplinary sanctions, remedies, appeals and records of any action taken, including supportive measures.
- B. Records will reflect that the District's response was not deliberately indifferent and that measures were taken to restore or preserve equal access to the education program or activity.

¹¹ 34 CFR 106.71 (a).

¹² 34 C.F.R. § 106.71

¹³ 34 CFR 106.71 (a).

¹⁴ Preamble p. 216

¹⁵ 34 C.F.R. § 106.45(b)(10)

C. If the District does not provide a complainant with supportive measures, the District will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

D. The District will also retain for seven (7) years any materials used to train Title IX Coordinators, investigators, decision-makers and any employee designated to facilitate an informal process.

E. The District will post training materials on district website.

X. This policy shall be effective retroactive to August 14, 2020

References:

2020 Amended Regulations to the Title IX Education Act of 1972

37-11-35 - [Penalties for failure to file reports pursuant to Section 37-11-29 or 97-5-24.](#)

97-29-3 - [Adultery and fornication; between teacher and pupil.](#)

97-5-24 - [Sexual involvement of school employee with student; duty to report; penalties for failure to report; immunity from civil liability for report made in good faith.](#)

[Mississippi Educator Code of Ethics and Sandards of Conduct](#)

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