

Mississinewa Community Schools
Sexual Harassment Grievance Procedure
[ISBA Codes: 3020, 4003]

I. Policy Statement

It is the policy of the Mississinewa School Corporation to maintain a learning and working environment that is free from sexual harassment.

It shall be a violation of this policy for any employee of the School Corporation to harass another employee or student through unwelcome conduct or communications of a sexual nature as defined in Section II. It shall also be a violation of this policy for students to harass other students through unwelcome conduct or communication of a sexual nature as defined in Section II. The use of the term "employee" also includes non-employees and volunteers who work subject to the control of school authorities.

The School Corporation will promptly:

1. investigate all complaints, written or verbal, of sexual harassment taken place at school or any school-sponsored activity within the United States;
2. take appropriate action to stop any harassment;
3. take appropriate action against any student or school employees who violates this policy; and
4. take any other action reasonably calculated to end and prevent further harassment of school employees or students.

The Title IX Coordinator is the person designated by the School Board to receive complaints of harassment and oversee the investigation of those complaints as described in this policy.

The Title IX Coordinator may be contacted at:

Jill Townsend
424 East South A Street
Gas City, IN 46933

jilltownsend@olemiss.k12.in.us
765-674-8528

The School Board will prominently display the contact information for the Title IX Coordinator and this policy on its website and in each student and employee handbook.

Applicants for admission and employment, students, parents or legal guardians, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the School Board will be notified of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator. The notification must also include the School Board does not discriminate on the basis of sex in its education program or activity, it is required by Title IX not to discriminate in such a manner, the requirement not to discriminate extends to admission and employment, and inquiries about the application of Title IX may be

referred to the Title IX Coordinator, the Assistant Secretary for Civil Rights of the United States Department of Education, or both.

II. Definitions

Prohibited Conduct

Harassment Based on Sex

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

1. an employee of the School Board conditioning the provision of an aid, benefit, or service of the School Board on an individual’s participation in unwelcome sexual conduct;
2. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the School Board’s education program or activity; or
3. “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).

Types of Sexual Harassment

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other inappropriate verbal or physical conduct of a sexual nature when made by any employee to a student, when made by any employee to another employee, or when made by any student to another student when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education.
2. Submission to or rejection of such conduct by an individual is used as a basis for academic or employment decisions affecting that individual.
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or professional performance or creating an intimidating, hostile, or offensive employment or educational environment.
4. Denial of an employment or educational opportunity of others occurs directly because an employee or a student submits to unwelcome requests for sexual favors made by a supervisor or teacher which results favorably for that employee or student.
5. Such conduct is engaged in by volunteers and/or non-employees over which the school corporation has some degree of control of their behavior while on school property.

Unwelcome Conduct of a Sexual Nature

1. Conduct of a sexual nature may include verbal or physical sexual advances and/or comments regarding physical or personality characteristics of a sexual nature.
2. Verbal or physical conduct of a sexual nature constitutes sexual harassment when the allegedly harassed employee has indicated, by his or her conduct or verbal objection, that it is unwelcome.
3. In the situation involving sexual harassment by an adult of an elementary student, unwelcomeness of the harassment is presumed and is not a factor to be considered.
4. An employee who has initially welcomed such conduct by active participation must give specific notice to the alleged harasser that such conduct is no longer welcome for any such subsequent conduct to be deemed unwelcome.

Examples of Sexual Harassment

Sexual harassment may include but is not limited to the following:

1. Verbal harassment or abuse.
2. Repeated remarks to a person with sexual or demeaning implications.
3. Unwelcome touching.
4. Pressure for sexual activity.
5. Suggesting or demanding sexual involvement accompanied by implied or explicit threats concerning one's grades, job, promotion, and/or salary increase.

III. Complaint Procedures

Report

Any student or school employee who believes he or she has been the victim of sexual harassment prohibited by this policy by a student, a school employee, or a third party should report the alleged harassment to the Title IX Coordinator or any school employee. The alleged harassment should be reported as soon as possible, and the report generally should be made within fifteen (15) school days of the occurrence.

Any student who has knowledge of conduct which may constitute sexual harassment should report such conduct to the Title IX Coordinator or any school employee. Any school employee who has notice that a student or a school employee may have been a victim of sexual harassment shall immediately report the alleged harassment to the Title IX Coordinator. Any complaint that involves the Title IX Coordinator should be reported to the superintendent. Oral or written reports are acceptable.

The complaint, the identity of the person allegedly harassed, and the alleged harasser will be disclosed only to the extent necessary to fully investigate the complaint and only when such disclosure is required or permitted by law. Additionally, a person allegedly harassed who wishes to remain anonymous shall be advised that such confidentiality may limit the School Corporation's ability to fully respond to the complaint.

After receiving a complaint, the Title IX Coordinator makes an initial determination whether the allegations may be sexual harassment prohibited by this policy. If the allegations are deemed as such, the Title IX Grievance Process below must be followed.

Definitions

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment prohibited by this policy to the Title IX Coordinator or any school official who has authority to institute corrective measures or to any school employee.

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment prohibited by this policy.

“Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment prohibited by this policy and requesting the allegation be investigated. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. When the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a party to the formal complaint. The allegations in a formal complaint must be investigated. In response to a formal complaint, the Title IX Grievance Process set out in this policy must be followed.

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment prohibited by this policy.

“Supportive measures” means 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 School Board’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the 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, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security or monitoring of school property, and other similar measures. Any supportive measures provided are confidential, to the extent that maintaining such confidentiality does not impair the ability to provide supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Title IX Grievance Process

Any person may report sexual harassment (whether or not the person reporting is the victim of conduct that could constitute sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed 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 non-business hours, by using the telephone number or electronic mail address, or by mail to the address listed for the Title IX Coordinator.

The Title IX Coordinator will promptly contact the complainant 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 complaint, and explain the process for filing a formal complaint.

Complainants and respondents will be treated equitably by offering supportive measures to a complainant and by following this grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

This process does not preclude a respondent from being removed from the education program or activity on an emergency basis, provided that 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 that the respondent is provided with notice and an opportunity to challenge the decision immediately following the removal.

This process does not preclude an employee who is a respondent from being placed on administrative leave during the grievance process.

This grievance process treats complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following this process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies are designed to restore or preserve equal access to education programs or activities.

The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

All relevant evidence is evaluated objectively. Credibility determinations are not based on a person's status as a complainant, respondent, or witness.

Any Title IX Coordinator, investigator, or decision makers may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

Title IX Coordinators, investigators, and decision makers must receive training on the definition of sexual harassment, the scope of the School Board's education program or activity, how to conduct an investigation and grievance process including appeals, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Decision makers are required to receive training on 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. Investigators are required to receive training on issues of relevance in order to create investigative reports that fairly summarize relevant evidence.

A finding of responsibility may result in any disciplinary action up to and including expulsion for students or dismissal of employees.

The standard of evidence used to determine responsibility is a preponderance of the evidence.

This grievance process does not 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.

Notice of Allegations

On receipt of a formal complaint, the Title IX coordinator gives the following written notice to the parties:

1. notice of the grievance process, and
2. notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time. Sufficient details shall include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. This notice must be given with sufficient time to prepare a response before any initial interview.

The written notice must also include:

1. a statement 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;
2. information the parties may have an advisor of their choice, and may inspect and review evidence; and
3. information about any provisions in the School Board's code of conduct or other policies that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the investigator decides to investigate allegations about the complainant or respondent that are not included in the notice previously provided, notice of the additional allegations must be provided to the parties whose identities are known.

Dismissal of Formal Complaint

A formal complaint or any allegations therein must be dismissed if the conduct alleged in the complaint

1. would not constitute sexual harassment prohibited by this policy even if proved,
2. did not occur in the School Board's education program or activity, or
3. did not occur against a person in the United States.

Such a dismissal does not preclude action under another provision of the School Board's code of conduct or policy.

A formal complaint or any allegations therein may be dismissed if at any time during the investigation:

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

Investigation of Formal Complaint

When investigating a formal complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is on the School Corporation and not the parties. A party's records that are made or maintained by a physician, 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 will not be accessed, considered, disclosed or otherwise used without the voluntary, written consent of the party's parent, or the party if the party is an eligible student, to do so for this grievance procedure if such records are required as part of the investigation or determination of responsibility.

The parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and any inculpatory and exculpatory evidence.

The ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence is not restricted.

The parties have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be an attorney. The choice or presence of advisor for either the complainant or respondent is not limited in any meeting or grievance proceeding.

Any party whose participation is invited or expected is provided 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 provide both parties 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 complaint, including the evidence which will not be relied 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 the completion of the investigative report, the investigator must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator must consider prior to completion of the investigative report.

The investigator shall write an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the time a determination regarding responsibility is made, 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.

The investigative report will be provided to the parties and the decision maker within 35 days from the date the formal complaint is filed.

After the investigator has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision maker must afford each party the opportunity to submit written, relevant questions the party wants to be 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 are not 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 must explain to the party proposing the question of any decision to exclude a question as not relevant.

Determination Regarding Responsibility

The decision maker, who is not the same person as the Title IX Coordinator or the investigator, must issue a written determination regarding responsibility.

The written determination must include the following:

1. identification of the allegations potentially constituting sexual harassment prohibited by this policy;
2. 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;
3. findings of fact supporting the determination;
4. conclusions regarding the application of the School Board's code of conduct or other policy provisions to the facts;
5. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary actions recommended against the respondent, and whether remedies designed to restore or preserve equal access to the School Board's education program or activity will be provided to the complainant; and

6. the procedures and permissible bases for the complainant and respondent to appeal.

A determination of responsibility decision will be issued within 10 working days from the date the investigative report is submitted to the decision maker.

The decision maker must provide the written determination regarding responsibility to the parties simultaneously.

The Title IX Coordinator is responsible for the effective implementation of any remedies.

Appeals

Either party may appeal within 5 working days from the date the written determination regarding responsibility is given to the parties.

Either party may appeal from a determination regarding responsibility or a dismissal of a formal complaint or any allegations therein, on the following bases:

1. procedural irregularity that affected the outcome of the matter;
2. 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
3. the Title IX Coordinator, investigator, or decision-maker 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.

Notification of appeal must be given in writing to the Title IX Coordinator.

For all appeals, the Title IX Coordinator will

1. notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. ensure the decision maker for the appeal is not the same person as the decision maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator; and
3. ensure the decision maker for the appeal complies with the standards outlined in this policy.

The appeal decision maker will

1. give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
2. review the evidence gathered by the investigator, the investigator's report, and the decision maker's written decision;
3. issue a written decision describing the result of the appeal and the rationale for the result; and

4. provide the written decision simultaneously to both parties and the Title IX Coordinator.

Any appeal will be resolved with 15 calendar days from the filing of the appeal.

The determination regarding responsibility becomes final if an appeal is filed on the date the parties are provided with the written determination of the result of the appeal or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Temporary delays 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 are permitted. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; disciplinary processes required by law or School Board policy; or the need for language assistance or an accommodation of disabilities.

Recordkeeping

The School Board will maintain for a period of seven years records of:

1. each investigation of allegations of sexual harassment prohibited by this policy including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to School Board's education program or activity;
2. any appeal and the result of the appeal; and
3. all materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process. These materials will also be made available on the School Corporation's website.

For each response required under this policy and federal law, the School Board must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment prohibited by this policy. In each instance, the School Board will document the basis for its conclusion that its response was not deliberately indifferent, and document it has taken measures designed to restore or preserve equal access to its education program or activity. If the School Board does not provide a complainant with supportive measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

IV. Retaliation

Retaliation against students or school employees who report harassment or participate in any related proceedings is prohibited. The school corporation shall take appropriate action against students or school employees who retaliate against any student or school employee who reports alleged harassment or participates in related proceedings. The Title IX Coordinator will inform persons who make complaints, who are the subject of complaints, and who participate in investigations of how to report any subsequent retaliatory actions.

V. False Charges

Students or school employees who knowingly make false charges of harassment shall be subject to disciplinary action as well as any civil or criminal legal proceedings.

Legal Refs: 20 U.S.C. §§ 1681-1688.
42 U.S.C. §§ 2000d-2000d-7.
42 U.S.C. §§ 2000e-2000e-17.
42 U.S.C. § 2000ff-1.
34 C.F.R. 106.2, 106.8, 106.9, 106.30, 106.44, 106.45, 106.71.