

## Mifflin County School District

### Administrative Procedure

**Section:** 100 Programs

**Policy No.** 103.3 DRAFT

**Title:** Policy on Non-Discrimination Based on Sex

### I. Response to Incident Report

Once the District<sup>1</sup> receives a report of sexual harassment, the Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures. The Title IX Coordinator will 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 to the complainant the process for filing a formal complaint.

### II. Grievance Process

The Grievance Process is the process by which a formal complaint of sexual harassment is addressed equitably and promptly under Title IX and in a manner that ensures due process for the complainant and the respondent. The District's Title IX policy ensures the fair implementation of the grievance process, which requires the following:

1. The Title IX Coordinator, Investigator, Informal Process Facilitator and/or Decision Maker(s) involved in the grievance process are unbiased, impartial and free from conflicts of interest in executing their role in the process.
2. Complainants and respondents are treated equitably by recognizing the need for complainants to receive remedies where a respondent is determined responsible and for respondents to face disciplinary sanctions only after a fair process determines responsibility.
3. An objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
4. Notice to the Complainant, Respondent and witnesses that they do not knowingly provide false information or statements and, if so, that individual would be subject to possible disciplinary action under District policy, employee or student code of conduct.

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<sup>1</sup> This policy is designed to meet the needs of school districts, intermediate units, technical education schools, and other K-12 school entities. For simplicity's sake, the term "district" is used throughout.

5. The presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
6. Reasonably prompt time frames for the conclusion of the grievance process.
7. Informs all parties of critical information about the school's procedures including the range of remedies and disciplinary sanctions a school may impose, the standard of evidence applied by the school to all formal complaints of sexual harassment under Title IX (which must be either the preponderance of the evidence standard, or the clear and convincing evidence standard), the school's appeal procedures, and the range of supportive measures available to both parties.
8. Protects any legally recognized privilege from being pierced during a grievance process.
9. Requires written notice of the allegations to both parties, including informing the parties of the right to select an advisor of choice.
10. Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

A school's treatment of a complainant, or a respondent, could constitute sex discrimination prohibited under Title IX. Under this policy, the grievance process will ensure that complainants and respondents receive due process and are treated equitably. An investigation will begin promptly following the receipt of a formal complaint with appropriate written notice being delivered to both the Complainant and Respondent and containing all required information as outlined under Title IX (i.e. stating the allegations, what district policies are alleged to have been violated, investigator (s), and overview of what to expect in the investigation process.) The standard of proof that will be applied, analyzing all of the relevant evidence in a grievance process, is preponderance of the evidence.

Following the stated requirements in the grievance process, the school will promptly initiate an inquiry into a formal complaint in a manner that:

1. Keeps the burden of proof and burden of gathering evidence on the school while protecting every party's right to consent to the use of the party's own medical, psychological, and similar treatment records;
2. Provides the parties equal opportunity to present fact and expert witnesses and other inculpatory and exculpatory evidence;
3. Does not restrict the parties from discussing the allegations or gathering evidence;
4. Communicates that the Complainant can withdraw the formal complaint at any time prior to a final outcome determination by the decision-maker;

5. Communicates that the Complainant and Respondent are not required to participate in the grievance process;
6. Gives the parties equal opportunity in a *live hearing* to select an advisor of the party's choice (who may be, but does not need to be, an attorney);
7. Before reaching a determination regarding responsibility, required the decision-maker(s) to allow 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.

### **III. Investigation**

Following the filing of a formal complaint, a prompt investigation will be initiated unless the parties voluntarily elect to participate in an informal resolution process. In initiating an investigation, the Title IX Coordinator will provide written notification (i.e. Notice of Investigation) to both parties. The notice of investigation will include:

1. Information regarding the grievance process;
2. Information regarding the informal resolution process;
3. The nature of the allegations;
4. Any additional District policies that are applicable based on the information known at that time;
5. The name(s) of the assigned investigator;
6. Request of each party to state if there is a reason why they believe the assigned investigator cannot be fair and impartial.
7. Notice that if any participant or witness knowingly provides false information, they could be subject to disciplinary action under the District's code of conduct

If, during the course of the investigation, facts are presented that suggest a possible violation of another section under this policy or any District policy, written notice will be provided to both parties of the additional allegation and potential policy violation.

The Title IX Coordinator will do the following to ensure fairness in the investigation process:

1. Provide written notice when a party's participation is invited or expected for an interview, meeting, or hearing;
2. Provides written notice to any participant (party or witness) of the date, time, location, other participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
3. Provides both parties equal opportunity to review and respond to the evidence gathered during the investigation. Each party will have 10 instructional days to review all evidence and respond to the investigator before the completion of the investigation report;

4. Create an investigative report that fairly summarizes relevant evidence and, at least 10 instructional days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, 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.

**IV. Complaint Dismissal:** The Title IX Coordinator may dismiss a formal complaint in the following circumstances:

1. If the conduct alleged in the formal complaint does not meet the definition of sexual harassment as defined in this policy or did not occur in the school's education program or activity, or did not occur against a person in the United States, then the school must dismiss the formal complaint with regards to sexual harassment under Title IX. However, that alleged behavior can and will be reviewed under other District policies concerning code of conduct;
2. The school may dismiss the formal complaint or any allegations contained in the complaint, if at any time during the investigation or hearing the complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any specific allegation;
3. The respondent is no longer enrolled or employed by the school; or
4. Specific circumstances prevent the school from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. The circumstances must be documented.

When a formal complaint or allegation is dismissed, the school will promptly send written notice of the dismissal and reason(s) simultaneously to the parties along with notification about the right to appeal the decision to dismiss the complaint or an allegation. Any appeal must be filed within 10 instructional days following the issuance of the dismissal notice.

**V. Informal Resolution Process**

After a formal complaint is filed, provided that the Title IX Coordinator has provided both parties with information about allegations and explained the informal resolution process, the parties can elect to resolve the complaint through an informal resolution process if each party voluntarily agrees to do so in writing. Complaint or respondent can decide to withdraw from the informal resolution process and resume the grievance process before the conclusion of the informal resolution process. Any complaint alleging that an employee sexually harassed a student is ineligible for the informal resolution process.

**VI. Complaint Outcome Determination**

The outcome determination can be made through an administrative proceeding. Once a Final Investigation Report has been issued, after the school has sent the investigative

report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) will allow 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.

For either outcome determination process, an unbiased decision maker or decision-making panel is assigned to adjudicate the matter. Written notice and information regarding the procedures for each process will be provided to the Complainant and Respondent at least 10 instructional days prior to the scheduled date for the administrative review. Each party can pose questions in writing they have for the other party during this time to the decision maker. The decision maker will determine relevance and, if relevant, will direct the Title IX Coordinator to provide the questions to the other party for a response. For any question that a decision-maker does not allow, the decision-maker must state why the question was excluded or determined to be irrelevant.

## **VII. Outcome Determination**

A decision-maker or decision-making panel will issue a written outcome determination regarding responsibility simultaneously to the parties within 10 instructional days following the hearing/administrative review date. The Title IX Coordinator will notify the parties in writing about their right to appeal which must be filed within 10 instructional days following the issuance of the final outcome determination. The outcome determination regarding responsibility becomes final either on the date that the school 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.

## **VIII. Sanctions**

The decision maker or decision-making panel will determine the sanction if, after deliberation, the respondent is found responsible. The range of available sanctions include, but are not limited to, written admonishment to expulsion or termination and are identical to any remedies available under school district policies 247, 248, 249, 252, and 352 the Code of Conduct and application of law and regulations governing student or employee behavior. The complainant and respondent will be given the opportunity to provide a statement in writing regarding impact or mitigation to the Title IX Coordinator prior to the date for the administrative outcome or live hearing. The Title IX Coordinator will provide the impact and mitigation statements of the parties to the decision maker(s) when requested by the decision maker(s) as a part of their deliberation on sanctions. Sanctions will be determined based on the totality of the information received including consideration for the safety of the school community.

## **XI. Appeal**

**Outcome Determination:** Each party has the right to appeal the outcome determination of the decision maker or decision-making panel. The basis for an appeal is:

1. To consider new evidence that was not reasonably available that could have affected the outcome,
2. A procedural error that substantially affected the outcome, and/or
3. Bias or Conflict of Interest of the Title IX Coordinator, Investigator or Decision Maker that affected the outcome.

Both parties will receive information on their right to appeal from the Title IX Coordinator when the outcome determination letter is delivered. If a party wishes to appeal, they must notify the Title IX Coordinator in writing about their appeal request. The Title IX Coordinator will provide written notice of the appeal process and who is assigned to review the case, the basis for appeal. If an appeal is filed, an appeal decision maker or decision making panel will be assigned the matter for review. Both parties will be given an equal opportunity to submit written statements supporting or challenging the outcome. The appeal request must be made on or before 10 instructional days following the date the final outcome determination letter is issued.

### **Legal and Policy References:**

Title IX of the Educational Amendments of 1972, 20 U.S.C. §§1681-1688;  
Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a);  
EEOC Policy Guidelines on Sexual Harassment, 29 C.F.R. §1604.11;  
PA Human Relations Act, 43 Pa. Cons. Stat. Ann. § 951-960 (Purdon 1964 & Supp. 1991);

Pennsylvania Child Abuse Reporting §6311,  
<https://www.compass.state.pa.us/CWIS/Public/ReferralsLearnMore> ;

29 C.F.R. §1604.11

20 U.S.C. 1092(f)(6)(A)(v)

34 U.S.C. 12291(a)(10)

34 U.S.C. 12291(a)(8)

34 U.S.C. 12291(a)(30)

Human Relations Commission Guidelines on Sexual Harassment, 11 Pa. Bulletin No. 5 (Jan. 31, 1981).