

SEXUAL HARASSMENT - PROCEDURES

Employees and students in the Jackson Public School District (“JPSD” or the “District”) are protected from sexual discrimination, including sexual harassment, by Title IX of the Education Amendment of 1972 to the Civil Rights Act. It is the intent of the Board to maintain an environment free from sexual harassment of any kind. Therefore, unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature amounting to or constituting harassment are prohibited.

Each employee in the District is a mandatory reporter of child abuse. Additionally, each employee in the District is an Official with Authority and responsible for reporting violation of the Sexual Harassment Policy to the Title IX Coordinator. The District will respond whenever any employee has notice of sexual harassment, including allegations of sexual harassment.

The District will ensure reasonable prompt timeframes are met for the completion of the grievance process, this includes filing and resolving appeals while accounting for delays such as law enforcement involvement, absence of a witness, party, etc. with written notice to both parties explaining the reasons for delay.

SECTION 1: GENERAL RESPONSE

The District will respond promptly to actual knowledge of sexual harassment in an educational program or activity in a manner that is not deliberately indifferent. The records should reflect that the District’s response was not deliberately indifferent and that measures were taken to restore or preserve equal access to the educational program or activity. The District will treat complainants and respondents equitably.

1.1 Reporting to Title IX Coordinator: Reports of Sexual Harassment may be made to the Title IX Coordinator in any of the following ways, by anyone, at any time: email, phone, online form, mail. Reports may be made to the Title IX Coordinator in person at the Office of the General Counsel located at 662 President Street, Jackson, MS 39201. After Title IX Sexual Harassment has been reported to the Title IX Coordinator, the Title IX Coordinator will promptly offer supportive measures to the Complainant, regardless of whether the Complainant was the reporter of the Sexual Harassment.

1.2 Reporting to Employees of Jackson Public School District: If employees of the District are notified of Sexual Harassment, they shall promptly report such Sexual Harassment to the Title IX Coordinator who will take immediate action under this Policy.

1.3 Reporting to Law Enforcement: Reports may be filed with local law enforcement agencies. The Title IX Coordinator can assist with contacting law enforcement agencies. Law enforcement investigations are separate and distinct from Jackson Public School District investigations.

1.4 Time Limits on Reporting. There are no time limits on reporting Sexual Harassment to the Title IX Coordinator or the District. If the Respondent is no longer subject to the Jackson Public School District’s Education Program or Activity or significant time has passed, the District will have limited ability to investigate, respond and/or provide disciplinary Remedies and Sanctions.

1.4 Initial Response to Reported Sexual Harassment: Upon receipt of a report of Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant, regardless of whether the Complainant was the individual who initiated the report and regardless of whether a Formal Complaint has been or will be filed. During the initial contact with the Complainant, the Title IX Coordinator will:

- Provide the Complainant with notice of their option to have an advisor;
- Explain the process for filing a Formal Complaint;
- Explain the Grievance Process;
- Discuss the availability of Supportive Measures regardless of whether a Formal Complaint is filed;
- Consider the Complainant’s wishes with respect to Supportive Measures.

SECTION 2: FORMAL COMPLIANT PROCESS

The District will investigate all allegations of Sexual Harassment in a Formal Complaint.

2.1 Filing a Formal Complaint: A Formal Complaint must:

- (1) Contain an allegation of Sexual Harassment against a Respondent;
- (2) Request that the District investigate the allegation; and
- (3) Be signed by the Complainant (or parent or guardian of the Complainant)¹ or the Title IX Coordinator.

In limited circumstances, if a Complainant does not sign a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint. In determining whether to sign a Formal Complaint, the Title IX Coordinator will consider factors that include but are not limited to:

- Whether there have been other reports of Sexual Harassment or other relevant misconduct concerning the same Respondent whether or not the incidents occurred while the Respondent was a JPSD student or employee;
- Whether the Respondent threatened further Sexual Harassment or other misconduct against the Complainant or others;
- Whether the alleged Sexual Harassment was committed by multiple perpetrators;
- The nature and scope of the alleged Sexual Harassment including whether the Sexual Harassment was perpetrated with a weapon;
- The ages and roles of the Complainant and the Respondent;
- Whether the Jackson Public School District can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged Sexual Harassment such as security cameras or physical evidence);
- Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group.

¹ 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 Jackson Public School District; however, this requirement does not preclude the Title IX Coordinator’s ability to sign a Formal Complaint when the Complaint is not participating in or attempting to participate in the Jackson Public School District’s Education Program or Activity. In determining whether to sign a Formal Complaint in these circumstances, the Title IX Coordinator will consider the factors listed in Section 5.1 of this Policy.

2.2 Dismissal of a Formal Complaint.

2.2.1 Required Dismissal: The Title IX Coordinator will dismiss a Formal Complaint for purposes of Sexual Harassment if:

- (1) The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in this Policy even if proved;
- (2) The conduct alleged did not occur in the District Education Program or Activity; or
- (3) The Conduct alleged in the Formal Complaint did not occur against a person in the United States.

Dismissal of a Formal Complaint does not preclude action under other provisions of the Jackson Public School District's policies and procedures. If a Formal Complaint is dismissed under the matter will be reviewed to determine whether the matter will be pursued under the Jackson Public School District student or employee Code of Conduct.

2.2.2 Permissive Dismissal: The Title IX Coordinator may dismiss a Formal Complaint or any allegations within the Formal Complaint, if at any time during the investigation or hearing:

- (1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint,
- (2) The Respondent is no longer enrolled or employed by the District , or
- (3) Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations within the Formal Complaint.

2.2.3 Appeal of Dismissal: Either party may appeal the dismissal of a Formal Complaint or any allegations therein. See Section 9 for bases and process for appeals.

2.3 Consolidation of Formal Complaints: The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent or by more than one Complainant against one or more Respondents where the allegations arise out of the same facts or circumstances.

SECTION 3: GRIEVANCE PROCESS:

The grievance process within this Policy is designed to treat Complainants and Respondents equitably. Remedies are provided to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent and Disciplinary Sanctions are not imposed against a Respondent prior to the completion of the grievance process.

3.1 Burden of Proof and Burden of Gathering Evidence: All investigations and proceedings, including hearings, relating to Sexual Harassment will be conducted using a "preponderance of the evidence" (more likely than not) standard. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibly rest on the District, not the parties.

3.2 Presumption of Not Responsible: The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.

3.3 Time Frames for Grievance Process: JPSD strives to complete the grievance process within one hundred and twenty (120) Business Days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include but are not limited to 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.

3.4 Medical Records: JPSD will not access, consider, disclose, or otherwise use party's records that are that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless JPSD obtains that party's voluntary, written permission to do so for the grievance process within the Policy.

3.5 Privileged Information: JPSD will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.

3.6 Range of Disciplinary Sanctions: Sanctions that may be required if an individual is found responsible for violating this policy include, but are not limited to: warning, required education/training, suspension, termination, dismissal, expulsion.

3.7 Notice of Meetings, Interviews, and Hearings: Parties and witnesses will be provided notice of any meeting, interview, and/or hearing with sufficient time to prepare to participate. This notice will include the date, time, location, participants and purposes of the meeting, interview and/or hearing.

3.8 Notice of Allegations: Upon receipt of a Formal Complaint, the investigator or Title IX Coordinator will provide Notice of Allegations to the parties who are known.

The Notice of Allegations will include:

- (1) Notice of the party's rights and options
- (2) Notice of Jackson Public School District's grievance process
- (3) Notice of Jackson Public School District's informal resolution process and options
- (4) Notice of the allegations of Sexual Harassment including:
 - The identities of the parties involved in the incident, if known,
 - The conduct allegedly constituting Sexual Harassment, and
 - The date and location of the incident, if known.
- (5) Notice that the Respondent is presumed not responsible of the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- (6) Notice that the parties may have an advisor of their choice, who may be, but is not required to be an attorney, and that the advisor may inspect and review evidence.

(7) Notice of the JPSD Code of Conduct provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Notice of Allegations will be updated and written notice provided to the parties if at any time during the investigation, the JPSD decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Allegations.

SECTION 4: INVESTIGATION OF FORMAL COMPLAINT:

The JPSD will investigate following a Formal Complaint and Notice of Allegations. During all meetings and interviews the parties may be accompanied by an advisor of their choice, which can be, but is not required to be an attorney. The advisor's role is limited to assisting, advising, and/ or supporting a Complainant or Respondent. An advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent.

4.1 Opportunity to Provide Information and Present Witnesses: Each party will be provided an equal opportunity to provide information to the investigator and present witnesses for the investigator to interview. The information provided by the parties can include inculpatory and exculpatory evidence. The witnesses can include both fact's witnesses and expert witnesses.

4.2 Opportunity to Inspect and Review Evidence: Each party will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which the District does not intend to rely upon in reaching a determination regarding responsibility. This review includes inculpatory and exculpatory evidence that is obtained by a party, witness, or other source. Each party and their advisor (if any) will be provided an electronic copy of the evidence for inspection and review. The parties will have ten (10) business days to review submit a written response to the investigator. The investigator will consider the written responses prior to completing an investigative report. All evidence provided during the inspection and review phase will be available at any hearing for the parties to use during the hearing, including for purposes of cross examination.

4.3 Investigative Report: Following the opportunity to inspect and review evidence directly related to the allegations raised in the Formal Complaint, the investigator will create an investigative report that fairly summarizes relevant evidence obtained during the investigation.

4.4 Review of the Investigative Report: At least ten (10) Business Days prior to the determination of responsibility the investigator will provide each party and the party's advisor (if any) an electronic copy of the investigative report for their review and written response.

4.5 Investigation Timeframe: The investigation of a Formal Complaint will be concluded within ninety (90) Business Days of the filing of a Formal Complaint. The parties will be provided updates on the progress of the investigation, as needed.

SECTION 5: QUESTION AND ANSWER PERIOD:

After the investigation, JPSD will assign a decision-maker who will afford each party the opportunity to:

1. submit written, relevant questions that a party wants asked of any party or witness;

2. provide each party with the answers; and
3. allow for additional, limited follow-up questions from each party.

5.1 Evidence and Questions Excluded: The decision-maker will decide relevancy prior to sending questions to parties or witnesses. The following questions and evidence are considered not relevant:

- **Sexual Predisposition or Prior Sexual Behavior of the Complainant:** 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.
- **Privileged Information:** No person will be required to disclose information protected under a legally recognized privilege. The decision-maker must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
- **Medical Records:** Evidence or records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, are not permitted to be used during a hearing unless the party provides voluntary, written permission to do so for the grievance process within this Policy.

SECTION 6: DETERMINATION REGARDING RESPONSIBILITY:

After the question and answer period, the decision-maker will provide the Complainant and the Respondent with a written determination simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The written notice will include:

- Identification of the allegations potentially constituting Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of this Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions that the District imposes on the Respondent, and whether remedies designed to restore or preserve equal access to Jackson

- Public School District's education program or activity will be provided by the Jackson Public School District to the Complainant²; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

SECTION 7: INFORMAL RESOLUTION

7.1 Informal Resolution Process. At any time after a Formal Complaint has been signed and before a determination regarding responsibility has been reached, the parties may voluntarily agree to participate in an informal resolution facilitated by the District, that does not involve a full investigation and adjudication. Types of informal resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, and restorative justice and resolution by agreement of the parties.

7.2 Informal Resolution Notice: Prior to entering the informal resolution process, the Jackson Public School District will provide the parties a written notice disclosing:

- (1) The allegations;
- (2) The requirements of the informal resolution process, including the right of any party to withdraw from the informal resolution process and resume the grievance process and the circumstances which preclude parties from resuming a Formal Complaint arising from the same allegations;
- (3) Consequences resulting from the informal resolution process, including that the records will be maintained for a period of seven (7) years but will not be used by investigators or decision-makers if the formal grievance process resumes.

7.3 Informal Resolution Agreement: Prior to entering the informal resolution process, the parties must voluntarily agree, in writing to the use of the informal resolution process.

7.4 Informal Resolution Availability: The informal resolution process is not permitted to resolve allegations that an employee committed Sexual Harassment against a student.

7.5 Informal Resolution Timeframe: Informal resolutions of a Formal Complaint will be concluded within 45 days of notice to the District that both parties wish to proceed with the informal resolution process. Such notice that the parties wish to proceed with an informal resolution process will "pause" the counting of the timeframe to conclude the Grievance Process of this Policy, should the informal resolution process fail and the parties continue with the Grievance Process.

7.6 Informal Resolution Documentation. Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven (7) years. However, no recording of the informal resolution process will be made and all statements made during the informal resolution process will not be used for or against either party (and the decision-maker and/or appellate decision-maker may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.

SECTION 8: APPEAL

Either party may appeal the determination regarding responsibility, or the dismissal of a Formal Complaint

² The Title IX Coordinator is responsible for the implementation of any remedies.

or any allegations therein within three (3) Business Days of the receipt of the determination regarding responsibility or dismissal. The appeals must be made in writing and delivered to the Title IX Coordinator.

8.1 Bases for Appeal: Appeals of the determination of responsibility or the dismissal of a Formal Complaint may be made on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- 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.

8.2 Appeal Procedures: If an appeal is submitted, JPSD will:

(1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.

(2) Ensure that 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.

(3) Provide the non-appealing party with five (5) Business Days from receipt of the notification of appeal to submit a written statement in support of the outcome of the determination or dismissal.

(4) Issue a written decision describing the result of the appeal and the rationale for the result which can be one of the following:

- Affirm the decision-maker's determination regarding the Respondent's responsibility and affirm the disciplinary sanctions and remedies, if applicable;
- Affirm the decision-maker's determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;
- Remand the process back to the question and answer stage for the decision-maker to remedy any procedural irregularity or consider any new evidence;
- Reverse the decision-maker's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
- Affirm or amend the sanctions and/or remedies outlined in the determination issued under this Policy.

(5) Provide the written decision simultaneously to both parties.

8.3 Appeal Timeframe: The appellate decision-maker will release the written decision within twenty (20) Business Days of receiving the appeal.

SECTION 9: EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE:

9.1 Emergency Removal: At any time after the Title IX Coordinator is on notice of Sexual Harassment, the

JPSD may remove a Respondent on an emergency basis. The District will only conduct an emergency removal after:

- (1) Undertaking and individualized safety and risk analysis,
- (2) Determining 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
- (3) Providing the Respondent with notice and an opportunity to challenge the decision to the Title IX Coordinator, within two (2) Business Days following the removal.

9.2 Administrative Leave: The District may place an employee Respondent on administrative leave during the pendency of the grievance process in this Policy.

SECTION 10: ADDITIONAL CONDUCT VIOLATIONS RELATED TO THIS POLICY:

Alleged violations of the terms in this section will be sent to the appropriate Assistant Superintendent for student Respondents or the Director of Human Resources for employee Respondents for investigation and adjudication under the District’s student or employee Code of Conduct.

- a. False Information
- b. Interference with Grievance Process
- c. No Contact Directive Violations

SOURCE: Jackson Public School District, Jackson, Mississippi
DATE: November 10, 2020
LEGAL REF: 1972 Education Amendments Title VII and Title IX, Violence Against Women Act, 34 U.S.C. 12291(a)
CROSS REF: Policies GAAF – Equal Opportunity Employment
GAE – Complaint Policy/Line and Staff Relations