

SECTION IX

SEXUAL HARASSMENT

The Board does not discriminate on the basis of sex in its education programs or activities it operates, nor does it tolerate sexual harassment. All inquiries, questions, or comments regarding Title IX concerns should be sent to: Bryan Hack, Human Resources Supervisor, Title IX Coordinator, 1 Magnum Pass, P.O. Box 180069, Mobile, AL 36618 (251) 221-4543, Bhack@mcps.com. In accordance with Board Policy 5.281, all complaints regarding *sexual harassment* should be filed and reviewed under the Board's student sexual harassment policy and procedures. The procedures are set forth below. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator receiving the person's verbal or written report. All other complaints under Title IX should be filed with the Title IX Coordinator and will be reviewed according to the Board's general complaint and grievance policy and procedures.

Sexual harassment, as defined in the Board Policy 5.281 and herein, in any form that is directed toward students is prohibited. Persons who violate the policy will be subject to the full range of disciplinary consequences, up to and including termination (for employees), and expulsion (for students) as dictated by the nature and severity of the violation and other relevant considerations. If appropriate, the circumstances constituting the violation may be reported to law enforcement agencies or child welfare agencies for further investigation and action. The Board reserves the right to modify these policies and procedures in order to comply with applicable law. In the event that any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of Title IX or its implementing regulations, in whole or in part, the Board's policies and procedures shall be deemed modified and/or limited to the extent necessary to comply with any applicable court, agency, commission, legislative body, or other authority's finding or order.

A. Definitions -

1. Complainant - complainant means a student who is alleged to be the victim of conduct that could constitute sexual harassment.

2. Respondent - respondent means and individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

3. Sexual harassment - For purposes of the Title IX sexual harassment policies and procedures, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- a. Sexual assault as defined in 20 U.S.C. §1092(f)(6)(A)(v), dating violence as defined in the 34 U.S.C. §12291(a)(10), domestic violence as defined in 34 U.S.C. §12991(a)(8), or stalking as defined in 34 U.S.C. §12291(a)(30).
- b. 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 recipient's education program or activity: or
- c. An employee of the Board conditioning the provision of an aid, benefit or service of the Board on and individual's participation in unwelcome sexual conduct (otherwise known as "quid pro quo").

4. Formal Complaint - Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school system investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity in the school system for which the complaint relates to.

5. Actual knowledge - Actual knowledge means notice of sexual harassment or allegations of sexual harassment to: (1) the Title IX Coordinator, (2) any official of the school system who has authority to institute corrective measures on behalf of the school system, or (3) to any other employee of the Mobile County Public School System. This standard is not met when the only official of the school system with actual knowledge is the respondent (alleged perpetrator).

6. Supportive Measures - 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, and/or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the school system's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school system's educational environment, or deter sexual harassment. Supportive measures may include, but not be limited to:

- a. counseling
- b. extensions of deadlines or other course-related adjustments;
- c. modifications of work or class schedules;
- d. campus escort services;
- e. mutual restrictions on contact between the parties;
- f. changes or modifications to student schedules;
- g. increased security and monitoring of certain areas of campus; and
- h. other similar measures.

7. Education program or activity - "Education program or activity" includes locations, events, or circumstances over which the Board exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

B. Jurisdictional issues

An administrator, campus principal, or his or her designee, may address student issues and impose discipline and/or sanctions through a separate Student Code of Conduct provision if any student acts are found to fall outside the jurisdiction of the Board's sexual harassment policy: In accordance with Title IX's implementing regulations, the following are outside the jurisdiction and scope of the sexual harassment policy:

1. **Outside educational program.** Alleged behavior that occurs off-campus, outside an educational activity or program, and only has an on-campus effect;
2. **Outside the United States.** Alleged behavior that occurs outside the United States.
3. **Outside definition of Sexual Harassment.** Alleged behavior that falls outside the definition of "sexual harassment."

C. Presumption under Title IX

Under Title IX and its implementing regulations, it is presumed that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

D. Informal Report of Sexual harassment and Response

1. Report - In accordance with Title IX of the Education Amendments of 1972, and its implementing regulations, found at 34 C.F.R. § 106.44(a), any person may report sex discrimination, including sexual harassment, (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator as identified in this Code of Conduct, 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, by using the telephone number or email address, or by mail to the office address listed for the Title IX Coordinator above.

Students are also permitted to report allegations of suspected sex discrimination, including sexual harassment to any other administrator, teacher, counselor, or any other Board employee. All Board employees have a duty to promptly refer such allegations to the building principal, so long as the building principal is not the Respondent and/or not alleged to be involved with the report of sexual harassment, and/or the Title IX Coordinator, or his or her designee. If the report involves the campus principal, the report shall be made or filed directly with the Title IX Coordinator by the reporting party or complainant. If a Board employee fails to forward any sexual harassment report or complaint as provided herein, such failure may result in disciplinary action against the Board employee.

Upon receipt of any informal report of sexual harassment from any complainant and/or Board employee, the principal should also notify the Title IX Coordinator of the report. The Title IX Coordinator will make a determination as to whether the principal should review and investigate the concerns, and/or whether the Title IX Coordinator, or his or her designee will review and investigate.

2. Supportive Measures - Upon receiving a informal report, or a copy of a report of sexual harassment, the Title IX Coordinator, or his or her designee, should 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 filing of a formal complaint, and explain the process of filing a formal complaint.

3. Response - Upon receiving an informal report of sexual harassment, the principal, Title IX Coordinator, or his or her designee, should respond promptly and in a manner that is not deliberately indifferent. A deliberately indifferent response is a response that is clearly unreasonable in light of known circumstances. The principal, Title IX Coordinator, or his or her designee should take steps to investigate the allegations using various procedures and investigating techniques, including but not limited to interviews, phone contact, data reviews, and witness reports.

4. Determination - Following a review and investigation of the allegations, the principal, Title IX Coordinator, or his or her designee should make a determination of whether the allegations have been substantiated as factual based on the preponderance of the evidence and whether the actions appear to be violations of this policy. If the allegations are determined to be true, and a finding is made that the Respondent engaged in sexual harassment, supportive measures may also be offered to the Respondent. In addition, if Respondent is found to have engaged in sexual harassment, responsive actions or recommendations may include any sanctions as listed in the Student Code of Conduct. *Before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent can be imposed, however, the formal complaint and grievance process outlined below must be initiated and followed.*

E. Formal Complaint and Grievance Process

All formal complaints of sexual harassment should comply with the requirements of 34 C.F.R. § 106.45. The formal complaint process should be investigated and findings made with reasonable promptness. Temporary delays of any of the grievance processes, and/or limited extensions of time frames, will be allowed for (1) good cause, with (2) written notice to the complainant and the respondent of the delay or extension, and (3) the reasons for such action. Good cause may include but not be limited to, considerations such as the absence of a party, a party's advisor, a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.

In accordance with the requirements of 34 C.F.R. § 106.45, the following procedures will apply to the formal complaint process.

1. Filing the Formal Complaint

A complainant or the Title IX Coordinator may file a formal complaint of sexual harassment. Such complaints should be submitted on the Board's "Sexual Harassment Complaint Form." (attached) A complainant may file a formal complaint with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed herein. The complainant should sign the document or provide their name if submitting the Sexual Harassment Complaint Form by e-mail. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under 34 C.F.R. part 106 or under 34 C.F.R. § 106.45 See 34 C.F.R. § 106.30(a).

2. Notice.

Upon receipt of a formal complaint, the Title IX Coordinator, or his or her designee, shall provide written notice to the parties (complainant and respondent). The Written notice shall contain the following:

- a. Notice of the Board's grievance process as outlined below, including any available informal resolution process;
- b. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined and including sufficient details known at the time. Sufficient details should 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.
- c. A statement that 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.
- d. A statement informing the parties that they may have an advisor, of their choice, who may be, but is not required to be, an attorney.
- e. A statement informing the parties that they may inspect and review evidence gathered as a result of the formal complaint process.
- f. A statement informing the parties that the Board's sexual harassment policies and procedures prohibit knowingly making false statements or knowingly submitting false information during the grievance process.

3. Dismissal of Formal complaint.

A formal complaint shall, or may, be dismissed in the following situations:

- a. Mandatory Dismissal. If the conduct alleged in the formal complaint (1) would not constitute sexual harassment even if proved, (2) did not occur in the Board's education program or activity, or (3) did not occur against a person in the United States, then the Title IX Coordinator, or his or her designee, must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. Such a dismissal does not preclude action against the respondent under another provision of the Student Code of Conduct.
- b. Permissive Dismissal. The Title IX Coordinator may dismiss a formal complaint, or any allegations therein, if at any time during the investigation or grievance process:
 - i. The respondent is no longer enrolled in the school system and/or the respondent is no longer employed by the school system; or
 - ii. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - iii. Certain circumstances prevent the Title IX Coordinator, or his or her designee, from gathering evidence sufficient to reach a

determination as to the formal complaint or allegations therein (e.g., passage of time, lack of cooperation by the complainant).

c. Written notice of dismissal. Upon a required and/or permitted dismissal pursuant to the above paragraphs of this section, the Title IX Coordinator, or his or her designee, must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

4. Investigation process and Written Report.

By authority of the Board, the Title IX Coordinator, or his or her designee, upon receipt of an formal complaint alleging sexual harassment, shall promptly undertake or authorize an investigation (individual investigating is hereinafter “the appointed investigator”). The Title IX Coordinator may be the appointed investigator, or the Title IX Coordinator may choose to have the principal serve as the appointed investigator, so long as the principal is not the alleged respondent and/or so long as the formal complaint does not involve the principal. The appointed investigator may also be another Board official, or a third party as deemed appropriate under the circumstances. The appointed investigator shall conduct a formal investigation to discover and examine the facts related to the allegation(s).

The investigation process should be conducted in accordance with 34 C.F.R. 106.45(b)(5). During the investigation, the Complainant and the Respondent will have an equal opportunity to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions to be asked of the other party. Questions for the other party will be asked by and at the discretion of the appointed investigator. The appointed investigator will meet separately with the complainant, the respondent, and any witnesses, and will gather other relevant and available evidence and information. To the extent possible, the investigation will be conducted in a manner that protects the privacy of all parties involved. While the Board cannot guarantee complete privacy, information collected during the investigation will be communicated only to the parties and those with a need to know in order to fulfill the purposes of Board’s policies and to comply with applicable laws.

5. Written Report.

The investigation should be completed as soon as practicable. The appointed investigator should prepare a written report which fairly summarizes the relevant evidence. The appointed investigator may draw conclusions as to whether, based on the preponderance of the evidence, an allegation is substantiated, unsubstantiated, or that there is insufficient information to substantiate. The appointed investigator may also draw conclusions as to whether or not any other Student Code of Conduct provisions or policies were violated. To the extent allowed by laws that apply to matters of confidentiality, the written investigative report should be provided to the parties and their advisors in draft form prior to the appointed investigator supplying the final investigative report to the designated administrator who will make the determination of responsibility. The draft investigation report should be redacted in accordance with state and/or federal law (e.g. FERPA) before the parties’ review.

After the Title IX Coordinator, or his or her appointed investigator, has sent the complainant and respondent the draft investigative report, the complainant and respondent

will have ten (10) days to prepare a written response to the draft report. The appointed investigator will consider the response(s) provided, if any, prior to completing the investigation report. The complainant and respondent's response should also contain any written, relevant questions that a party wants asked of any party or witness. Each party will then have an opportunity to provide answers, and an opportunity for any 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 concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The appointed investigator should inform the party proposing questions regarding any decision to exclude a question as not relevant. Ultimately, the appointed investigator has the sole discretion to determine the relevance of evidence, and whether it should be included in, or excluded, from the investigation report. Once the investigative report is complete, the appointed investigator should send the complainant and respondent a written copy of the Final Investigation Report. Both parties will be provided ten (10) days to review the Final Investigation Report and provide a written response if they desire. The Final Investigation Report will be redacted in accordance with state and/or federal law (e.g. FERPA) before the parties' review. The appointed investigator shall then submit the written report, and any responses thereto, to the designated administrator.

6. Determination regarding responsibility.

The Superintendent's designee shall be responsible for making a determination regarding responsibility, (hereinafter referred to as the "designated administrator"). The designated administrator, however, cannot be the same person as the Title IX Coordinator or the Title IX Coordinator's appointed investigator. The designated administrator must issue a written determination regarding responsibility. The Respondent is presumed to not have engaged in prohibited conduct until the designated administrator finds that there is sufficient evidence based on a preponderance of the evidence that the respondent has violated the Board's sexual harassment policy.

The designated administrator should review the investigation report, the documentary evidence, and any other relevant information to render a written decision based on the preponderance of the evidence as to 1) whether the conduct alleged occurred; and 2) whether each allegation has been substantiated, unsubstantiated, or that there is insufficient information to substantiate that respondent violated the Board's sexual harassment policy. The designated administrator may also render a written decision as to whether other provisions of the Student Code of Conduct, policies, and/or rules were violated. If violation(s) are found, the designated administrator may issue and/or recommend sanctions to the appropriate campus principal. The designated administrator should not render a written determination until both parties have been provided ten (10) days to review the above Final investigation report.

Both parties should then be provided a copy of the written determination. The written determination will be redacted in accordance with state and/or federal law before the parties' review. The written determination must include:

- a. identification of the allegations potentially constituting sexual harassment;

- b. a description of the procedural steps taken from the receipt of the formal complaint through the determination;
- c. findings of fact supporting the determination;
- d. conclusions regarding the application of the Board's Student Code of Conduct to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the designated administrator recommends being imposed on the respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided by the school system to the complainant; and
- f. The procedures and permissible bases for the complainant and respondent to appeal.

The determination regarding responsibility becomes final either (1) on the date that the school system provides the parties with the written determination of the result of the appeal, if an appeal is filed, or (2) if an appeal is not filed, the date on which an appeal would no longer be considered timely.

A decision by the designated administrator regarding a determination of responsibility does not constitute an employment action with respect to respondent employee(s). Any sanction imposed on an employee as a result of the determination of responsibility shall be done in accordance with Board Policy and applicable state and federal law.

Any recommended sanction(s) imposed on a student respondent shall be done in accordance with the Student Code of Conduct.

7. Appeals.

a. Right to an appeal.

Should the complainant or the respondent disagree with the designated administrator's finding of responsibility and/or disagree with the Title IX Coordinator's, or his or her designee's, dismissal of a formal complaint or any allegations therein, such party shall submit a written notice of appeal within five (5) days of receiving the written determination of responsibility or dismissal of the formal complaint. The written notice of appeal should include a statement outlining the bases for appeal and any evidence which supports the appeal. The following reasons are those in which a party may appeal:

- i. A procedural irregularity affected the outcome of the matter;
- ii. New evidence was not reasonably available at the time the determination regarding responsibility or dismissal was made, and such evidence could affect the outcome of the matter; or
- iii. The Title IX Coordinator, appointed investigator(s), or designated administrator had a conflict of interest or bias for or against complainants or respondents generally, or the individual

complainant or respondent specifically, that affected the outcome of the matter.

b. Appeal process.:

- i. Upon receiving the written notice of appeal, as soon as practicable, the Title IX Coordinator, must notify the other party in writing when an appeal is filed;
- ii. After receiving the notice of appeal from the Title IX Coordinator, each party will be provided five (5) days to submit a written statement in support of, or challenging, the determination.
- iii. The Superintendent, or his or her designee, will hear appeals of decisions based on student-on-student sexual harassment. (appeal authority)
- iv. The Superintendent will hear appeals of decisions based upon actions by Board employees. (appeal authority)
- v. If (1) no appeal is filed within five (5) days of the receipt of the notice of the designated administrator's written determination; or, 2) if the appeal authority determines that the appeal does not identify one of the bases for appeal listed above, then the appeal authority will provide simultaneous notice to the parties that no valid appeal was filed and that the decision of the designated administrator is final and the case is closed.
- vi. Upon receiving the notice of appeal, the Title IX Coordinator will forward the appeal, and any supporting information or evidence, to the appropriate appeal authority. The appeal authority will review the appeal documents, the written determination of responsibility by the designated administrator, any new evidence submitted by the parties, and the investigation report and exhibits. The appeal authority will render a written decision which includes a rationale for the decision as to each of the grounds appealed. The appeal authority will forward the decision to Title IX Coordinator within fourteen (14) days from the date of receipt of the appeal, unless circumstances require additional time. The decision of the appeal authority will be final.

F. Informal Resolution

The Board does not require, as a condition of enrollment, continuing enrollment, and/or enjoyment of any other right, that a complainant or respondent waive his or her right to an investigation and/or adjudication of formal complaints of sexual harassment consistent with this section. Similarly, the Board does not require the parties participate in an informal resolution process under this section, and the Board will not offer an informal resolution process unless a formal complaint is filed. However, if at any time prior to reaching a determination regarding responsibility under the **formal complaint** process, the Board reserves the right to facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. Should the Title IX

Coordinator, or his or her designee, believe that an informal resolution process may be appropriate, the Title IX Coordinator, or his or her designee, shall:

1. Notice.

Provide to the parties a written notice disclosing:

- i. the allegations;
- ii. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
- iii. provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
- iv. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and

2. Consent.

Obtain the parties' voluntary, written consent to the informal resolution process;

3. Student-on-Student Harassment.

The informal resolution process will only be utilized in student-on-student complaints, and it will not be utilized to resolve allegations that an employee sexually harassed a student.

G. Confidentiality

All Board employees must keep confidential the identity of a person who complains or reports sexual harassment, including parties and witnesses, except as permitted by law and to carry out the purpose of these procedures.

Board employees should also work to maintain the confidentiality of supportive measures that are provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the school to provide the supportive measures.

H. No Retaliation

The Board will discipline or take appropriate action against any student, teacher, administrator or other school personnel who retaliates against any person who reports sexual discrimination-including sexual harassment or violence- or any person who assists or participates in an investigation, or who assists or participates in the formal grievance process relating to such harassment or violence.

Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section. Charging an individual with a Student Code of Conduct violation for making a materially false statement in bad faith in the course of the complaint procedure section under this part does not constitute retaliation prohibited under this section, provided, however, that a negative

determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

I. Harassment or Violence as Abuse

Under certain circumstances, alleged harassment or violence may also be possible abuse under Alabama Law. If so, duties of mandatory reporting under Ala. Code §16-1-24 and Ala. Code §26-14-1 may be applicable.

J. Emergency removal/administrative leave

In addition to offering supportive measures to the complainant, the school system may need to initiate an emergency removal of the respondent from campus. In accordance with 34 C.F.R. 106.44, the Title IX formal complaint and grievance process does not prevent a principal from immediately removing a student respondent from the educational program or activity on an emergency basis, provided that the principal: (1) informs the Title IX Coordinator of the alleged act, and (2) conducts an individualized safety and risk analysis and determines that emergency removal is necessary in order to protect a complainant or other student or individual from an immediate threat to physical health or safety. In the event that an emergency removal of a student respondent is necessary, the principal should comply with the Student Code of Conduct provisions regarding suspension and expulsion of students in order to provide respondent with the appropriate notice and opportunity to challenge the decision.

Emergency removal does not modify any rights under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

K. False Statements and Allegations

The Board's sexual harassment policies and procedures prohibit anyone from knowingly making false statements or knowingly submitting false information during the sexual harassment complaint procedures. A student who deliberately, recklessly, and falsely accuses another student and/or employee of a violation of this policy will be subject to disciplinary sanctions as outlined in the Code of Student Conduct.

L. Record-keeping

All records shall be maintained in accordance with 34 C.F.R. § 106.45(b)(10). Specifically, the school system will keep records related to reports of alleged 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. If supportive measures are not offered in response to a report, the records retained should document why supportive measures were not offered.

Student Sexual Harassment Complaint Form

This form may be used by a student, a student's parent or guardian, or an individual acting on a student's behalf who believes the student is a victim of sexual harassment to submit a complaint regarding sexual harassment (Board Policy 5.281 Student Sexual Harassment). This form should be submitted to the principal of the school. However, if the complaint concerns the principal, the complaint may be made directly to the Title IX Coordinator or the Superintendent.

Student's Name: _____ School: _____

Grade: _____

Name of Person Completing the Form (if not the student) _____

Your Home Phone: _____

Your Home Address: _____

Describe the sexual harassment, including all pertinent facts supporting the complaint.

(Attach additional paper, if needed.)

When did this happen (over what time period if continuing or more than once):

(Attach additional paper, if needed.)

Identify the person(s) whose actions led to the filing of the complaint, and all witnesses or other persons having information that is relevant to the complaint.

(Attach additional paper, if needed.)

Do you have suggestions for resolving this situation? If so, list them here:

(Attach additional paper, if needed.)

Attach copies of documents or other evidence that is relevant to the complaint.

I affirm that to the best of my knowledge, the foregoing information is true, accurate, and complete.

Signature: _____ Date: _____