

**OFFICE OF CHIEF ACADEMIC OFFICER**  
**Summary of State Board of Education Agenda Items**  
**Consent Agenda**  
**May 26, 2022**

**OFFICE OF PROFESSIONAL DEVELOPMENT**

- G. Approval to revise Miss. Admin. Code 7-3: 99.1, State Board Policy 99 (State Schools), Chapter 99, Rule 99.1 – Title IX Grievance Policy  
(Has cleared the Administrative Procedures Act process without public comments)

Background Information: The Title IX Grievance Policy for the Mississippi School of the Arts, Mississippi Schools for the Deaf and the Blind, and the Mississippi School for Mathematics and Science is designated to maintain a safe and supportive learning and educational environment that is free from harassment, intimidation, bullying, and discrimination.

The purpose of this policy revision is to bring the state school policy into compliance with the current federal Title IX regulations.

The public comment period was open through 5:00 p.m. on April 20, 2022, and no public comments were received.

Recommendation: Approval

Back-up material attached

## **Part 3 Chapter 99: State Schools**

### *Rule 99.1 Title IX Grievance Policy*

#### **1. RIGHT TO EXPRESS CONCERNS, COMPLAINTS OR GRIEVANCES**

It is the policy of the SBE and the MDE to maintain a safe and supportive learning and educational environment that is free from harassment, intimidation, bullying, and discrimination.

MDE is a conduit for federal money to the local school districts and ensures the local school districts' compliance with federal financial grants. As such, MDE requires each local school district and each state school to have a grievance policy in place to address any complaints alleging discrimination under the Age Discrimination Act of 1975, Title II of the American Disability Act, Title IV of the Civil Rights Act of 1964, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Title IX of the Education Amendments of 1972. Complaints alleging discrimination by the local school district, its staff, or students should be first directed to the local school level and handled pursuant to local policy.

As specifically related to Title IX, this policy sets out the minimum steps that each state school (i.e., special school and/or district under the purview of the SBE) shall take in response to a notice of alleged discrimination based on sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, such as dating violence, domestic violence, and cyberstalking. The SBE forbids unwelcomed sexual advances, requests for sexual favors and other verbal or physical contact of a sexual nature amounting to or constituting harassment and/or discrimination against any student under its purview.

#### **2. DEFINITIONS**

##### **A. Sex Discrimination**

The practice of treating a person differently, or less favorably, than other people or groups based on sex.

##### **B. Allegation**

An assertion that someone has engaged in discrimination based on sex.

##### **C. Sexual Harassment**

Unwanted conduct based on sex. Examples of such behavior include:

- Direct or indirect threats or bribes for unwanted sexual activity
- Sexual innuendos and comments
- Asking or commenting about a person's sexual activities
- Humor or jokes about sex or females/males in general

- Making sexually suggestive remarks, gestures, or jokes, or remarks of a sexual nature about a person's appearance
- Repeated unsuccessful attempts at gaining dates or sexual behavior
- Sexual touching, pinching, brushing, or patting
- Displaying offensive sexual illustrations in the school/work place
- Insulting and belittling a person-sexual ridicule
- Letters, notes, telephone calls, or materials of a sexual nature
- Stalking a person either inside or outside the institution
- Attempt or actual sexual assault

#### D. Complainant

The person who has experienced the alleged discrimination based on sex. This person is considered a complainant regardless of whether they choose to file a formal complaint under Title IX.

#### E. Respondent

The person accused of the alleged discrimination. This person may be a student or a school employee. If the person is an employee, the school shall adhere to the process found in Miss. Code Ann. § 37-9-59.

#### F. Title IX Coordinator

The individual responsible for overseeing the school's efforts to comply with its obligations under Title IX and Title IX regulations, including, but not limited to, coordinating any investigations of complaints of sex discrimination, implementation of supportive measures, and remedies where appropriate.

### 3. ADMINISTRATIVE PROCESS

Each state school shall have a grievance policy adopted by the governing board and accessible in both the student handbook and employee handbook. The grievance policy shall include the following:

#### A. Receiving and Responding to Reports

Employees who believe or have been made aware that a student has been subject to Title IX Discrimination, shall report it to the Title IX Coordinator. Failure to make such a report may result in disciplinary action up to and including termination.

The school shall respond whenever any school employee has been put on actual notice of improper behavior as defined in the school's policy. Such notice may be from an oral report of sexual harassment by a complainant or anyone else, a written report, through personal observation, through an anonymous report, or through various other means. When a complaint or report is made under the policy, the Title IX Coordinator shall: (1) confidentially contact the complainant

to offer supportive measures, consider the complainant's wishes with respect to supportive measures, and inform them of the availability of supportive measures with or without filing a formal complaint; (2) explain the process for how to file a formal complaint; (3) inform the complainant that any report made in good faith will not result in discipline; and (4) respect the complainant's wishes with respect to whether to investigate unless the designated staff member determines it is necessary to pursue the complaint in light of a health or safety concern for the community.

#### B. Confidentiality

The school must keep confidential the identity of any individual who has made a report or complaint of any form of prohibited sex discrimination, including any reporter, complainant, respondent, or witness, except:

1. As may be permitted by FERPA;
2. Or as required by law; or
3. To carry out the Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

The confidentiality of the reporting party will be observed providing it does not interfere with the school's ability to investigate or take corrective action. If the complainant reports rape, sexual assault, child sexual abuse, or other behaviors which constitute criminal activity, school officials shall contact appropriate law enforcement agencies and the superintendent/executive director.

#### C. Supportive Measures

Supportive measures are short-term measures that are designed to restore or preserve access to the school's education program or activity. Supportive measures are available regardless of whether the complainant chooses to pursue any action under the school's policy, including before and after the filing of a formal complaint or where no formal complaint has been filed. They are meant to restore access to education, protect student and employee safety, and/or deter future acts.

Supportive measures are available to the complainant, respondent, and as appropriate, witnesses or other impacted individuals, and these measures should be provided based on an individualized assessment of the needs of the individual. These supports are non-disciplinary and non-punitive individualized services designed to offer support without being unreasonable burdensome.

Examples of supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

#### D. Formal Complaint

A "Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging discrimination or sexual harassment against a respondent and request that the

school investigate the allegation(s). A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information provided by the school district. The complaint document, whether physical or electronic, shall contain the complainant's physical or digital signature. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not "the complainant" or otherwise considered a party but shall comply with applicable procedures.

#### E. Investigations

Once a formal complaint is filed, an investigator will be assigned and the parties will be treated equitably, including in the provision of supportive measures and remedies. Each party will receive notice of the specifics of the allegations as known, and as any arise during the investigation. The investigator will attempt to collect all relevant information and evidence. While the investigator will have the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the investigator so that they may be considered during the investigation.

The principal of the school, so long as the principal is neither the Title IX Coordinator, the investigator, or any other individual who may have a conflict of interest, shall serve as the decision-maker, and will facilitate a written question and answer period between the parties. Each party may submit written questions for the other party and witnesses to the decision-maker for review. The questions must be relevant to the case, and the decision-maker will determine if the questions submitted are relevant and will then forward the relevant questions to the other party or witnesses for a response. The decision-maker can then review all the responses, determine what is relevant or not relevant, and issue a decision as to whether the respondent is responsible for the alleged act.

#### F. Presumptions about Complainants, Respondents, and Witnesses

The school presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this school's policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith.

The respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made by the decision-maker.

#### G. Determination Regarding Responsibility

The decision-maker shall review the evidence provided by all parties and will make a final determination of responsibility after the investigation based on a preponderance of the evidence. "Preponderance of the evidence" means evidence that is of greater weight or more convincing that as asserted fact or facts occurred than evidence in opposition to such facts. It is evidence which as a whole shows that an assertion to be proven is more likely than not.

The decision-maker shall provide a final determination to the parties at the same time, with appeal rights provided. It will explain if any policies were violated, the steps and methods taken to

investigate, the findings of the investigation, conclusions about the findings, the ultimate determination and the reasons for it, any disciplinary sanctions that will be imposed on the respondent, and any remedies available to the complainant to restore or preserve equal access.

#### H. Sanctions and Remedies

The school will take reasonable steps to address any violations of the policy and to restore or preserve equal access to the school's education programs or activities. Sanctions for finding of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline for similar violations, or both.

When a respondent is found responsible for the prohibited behavior as alleged, remedies shall be provided to the complainant. Remedies are designed to maintain the complainant's equal access to education and may include supportive measures or remedies that are punitive or would pose a burden to the respondent.

Whatever the outcome of the investigation or appeal, the complainant and respondent may request ongoing or additional supportive measures. Ongoing supportive measures that do not unreasonably burden a party may be considered and provided even if the respondent is found not responsible.

#### I. Informal Resolution

Informal resolution is available only after a formal complaint has been filed involving parties of the same status (e.g., student-student or employee-employee), prior to a determination of responsibility, and if the complainant and respondent voluntarily consent to the process in writing. Informal resolution is not available in cases which an employee is alleged to have sexually harassed a student.

#### J. Parent and Guardian Rights

Consistent with the applicable laws of the State of Mississippi and absent a court order or other legal requirement to the contrary, a student's parent or guardian shall be permitted to exercise the rights granted to their child under the school's policy, whether such rights involve requesting supportive measures, filing a formal complaint, or participating in a grievance process. A student's parent or guardian shall also be permitted to accompany the student to meetings, interviews, and hearings, if applicable, during a grievance process to exercise rights on behalf of the student. The student may have an advisor of choice who is a different person from the parent or guardian.

### 4. APPEALS

Appeals are available after a complaint dismissal or after a final determination is made. Appeals may be made due to procedural irregularities in the investigation affecting the outcome, new evidence becoming available, or due to bias or a conflict of interest by the personnel that may have affected the outcome. The school should set a reasonable time frame to submit an appeal, but not less than 10 days nor more than 30 days. Or, if there is no administrative response to the

student/parent/guardian grievance by the school, the grievance should be made to the superintendent of the school or the superintendent's designee.

Parties shall be given an opportunity to submit a written statement in support of or in opposition to the final determination. A new decision-maker shall issue a final decision at the same time to each party.

The following procedures shall be followed when submitted student/parent/guardian grievances regarding administrative decisions:

Level 1: An aggrieved party should express his or her concern to the school level administration for resolution or file a formal grievance with the school superintendent/executive director. The superintendent/executive director shall investigate allegations as soon as circumstances allow, but not later than five (5) business days from submission of the original written grievance. The administrator shall provide a written response to the aggrieved party no later than ten (10) business days after receipt of the original written grievance. If there is no administrative response to the aggrieved party within the ten (10) business days, or if the response is unsatisfactory, the aggrieved party may elevate to Level 2.

Level 2: If any party deems the resolution unsatisfactory, the party may appeal the decision by submitting a copy of the grievance and decision to the Mississippi Department of Education's Associate Superintendent responsible for oversight of the state school, along with a written statement detailing the reasons for the dissatisfaction. The Associate Superintendent shall investigate and review the matter. After review, the Associate Superintendent shall provide a written response to the parties postmarked no later than ten (10) business days following receipt of the appeal.

If there is no response by the Associate Superintendent to the appealing party within the ten (10) business days, or if the response is unsatisfactory to either party, the aggrieved party may advance the grievance to Level 3.

Level 3: The aggrieved party, after review of the written response from the Associate Superintendent, may appeal that response to the State Superintendent or the State's Superintendent's designee no later than ten (10) business days after receipt of the written communication at Level 2. The State Superintendent or his/her designee shall review the grievance and shall provide the parties a written response postmarked within ten (10) business days following the receipt of the appeal.

Level 4: The aggrieved party may appeal the response from the State Superintendent to the State Board of Education by submitting a written request for appeal to the State Board of Education along with all documentation from Levels 1-3 no later than ten (10) business days after receipt of the State Superintendent's written

response at Level 3. The State Board of Education shall review the grievance and shall provide the parties an opportunity to appear at the next regularly scheduled Board meeting to present his or her grievance and response in accordance with the Family Education Right and Privacy Act (FERPA) 20 U.S.C. 1232g, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) 20 U.S.C. 1400 *et. seq.* implementing regulations, and other federal and state laws that govern the protection of student information. If the party or parties elect not to appear personally, the parties may request the Board's review of the written documentation only. The decision of the State Board of Education shall be final.

Source: Title IX of the Education Amendments of 1972; 34 C.F.R. § 106; Miss. Code Ann. § 37-1-3 (Revised 3/2022)

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~~Complaints alleging discrimination or harassment must be handled in accordance with the procedures set forth in the *Title IX Grievance Policy* and accompanying *Title IX Grievance Forms*. Mississippi schools and school districts under the governance of the Mississippi Department of Education's Board are committed to maintaining a school community which recognizes and values the inherent worth and dignity for every person; fosters tolerance, sensitivity, understanding, and mutual respect among its members; and encourages each individual to strive to reach his or her own potential.~~

~~It is the policy of the Mississippi Board of Education and the Mississippi Department of Education to maintain a safe and supportive learning and educational environment that is free from harassment, initiation, bullying, and discrimination.~~

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#### E. Investigations

Once a formal complaint is filed, an investigator will be assigned and the parties will be treated equitably, including in the provision of supportive measures and remedies. Each party will receive notice of the specifics of the allegations as known, and as any arise during the investigation. The investigator will attempt to collect all relevant information and evidence. While the investigator will have the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the investigator so that they may be considered during the investigation.

The principal of the school, so long as the principal is neither the Title IX Coordinator, the investigator, or any other individual who may have a conflict of interest, shall serve as the decision-maker, and will facilitate a written question and answer period between the parties. Each party may submit written questions for the other party and witnesses to the decision-maker for review. The questions must be relevant to the case, and the decision-maker will determine if the questions submitted are relevant and will then forward the relevant questions to the other party or witnesses for a response. The decision-maker can then review all the responses, determine what is relevant or not relevant, and issue a decision as to whether the respondent is responsible for the alleged act.

#### F. Presumptions about Complainants, Respondents, and Witnesses

The school presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this school’s policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith.

The respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made by the decision-maker.

### G. Determination Regarding Responsibility

The decision-maker shall review the evidence provided by all parties and will make a final determination of responsibility after the investigation based on a preponderance of the evidence. “Preponderance of the evidence” means evidence that is of greater weight or more convincing than as asserted fact or facts occurred than evidence in opposition to such facts. It is evidence which as a whole shows that an assertion to be proven is more likely than not.

The decision-maker shall provide a final determination to the parties at the same time, with appeal rights provided. It will explain if any policies were violated, the steps and methods taken to investigate, the findings of the investigation, conclusions about the findings, the ultimate determination and the reasons for it, any disciplinary sanctions that will be imposed on the respondent, and any remedies available to the complainant to restore or preserve equal access.

### H. Sanctions and Remedies

The school will take reasonable steps to address any violations of the policy and to restore or preserve equal access to the school’s education programs or activities. Sanctions for finding of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline for similar violations, or both.

When a respondent is found responsible for the prohibited behavior as alleged, remedies shall be provided to the complainant. Remedies are designed to maintain the complainant’s equal access to education and may include supportive measures or remedies that are punitive or would pose a burden to the respondent.

Whatever the outcome of the investigation or appeal, the complainant and respondent may request ongoing or additional supportive measures. Ongoing supportive measures that do not unreasonably burden a party may be considered and provided even if the respondent is found not responsible.

### I. Informal Resolution

Informal resolution is available only after a formal complaint has been filed involving parties of the same status (e.g., student-student or employee-employee), prior to a determination of responsibility, and if the complainant and respondent voluntarily consent to the process in writing. Informal resolution is not available in cases which an employee is alleged to have sexually harassed a student.

### J. Parent and Guardian Rights

Consistent with the applicable laws of the State of Mississippi and absent a court order or other legal requirement to the contrary, a student’s parent or guardian shall be permitted to exercise the rights granted to their child under the school’s policy, whether such rights involve requesting supportive measures, filing a formal complaint, or participating in a grievance process. A student’s parent or guardian shall also be permitted to accompany the student to meetings, interviews, and

hearings, if applicable, during a grievance process to exercise rights on behalf of the student. The student may have an advisor of choice who is a different person from the parent or guardian.

#### 4. APPEALS

Appeals are available after a complaint dismissal or after a final determination is made. Appeals may be made due to procedural irregularities in the investigation affecting the outcome, new evidence becoming available, or due to bias or a conflict of interest by the personnel that may have affected the outcome. The school should set a reasonable time frame to submit an appeal, but not less than 10 days nor more than 30 days. Or, if there is no administrative response to the student/parent/guardian grievance by the school, the grievance should be made to the Superintendent of the school or the Superintendent's designee.

Parties shall be given an opportunity to submit a written statement in support of or in opposition to the final determination. A new decision-maker shall issue a final decision at the same time to each party.

#### ~~2. ADMINISTRATIVE DECISIONS~~

The following procedures ~~are to~~ shall be followed when submitted student/parent/guardian grievances regarding administrative decisions: ~~Prior to submitting a formal grievance, a student/parent/guardian will express his or her concern to the school level administrator for resolution.~~

Level 1: ~~If the student/parent/guardian deems the resolution unsatisfactory, the student/parent/guardian shall submit his or her initial written grievance to the student's principal. In the event that the grievance is alleged against a school administrator other than the Principal, the Principal shall investigate allegations as soon as circumstances allow, but not later than five (5) work days of submission of the original written grievance. The Principal shall discuss with the student/parent/guardian the nature of the grievance and any action that the Principal believes should be taken to resolve the concern of the student/parent/guardian. An aggrieved party should express his or her concern to the school level administration for resolution or file a formal grievance with the school superintendent/executive director. The superintendent/executive director shall investigate allegations as soon as circumstances allow, but not later than five (5) business days from submission of the original written grievance. The administrator Principal shall provide a written response to the student/parent/guardian aggrieved party no later than ten (10) work-business days after receipt of the original written grievance. If there is no administrative response to the student/parent/guardian-aggrieved party within the ten (10)-work business days, or if the response is unsatisfactory, the grievance is-aggrieved party may elevated to Level 2.~~

In the event that the grievance is alleged against the Principal or the Principal deems the matters outside the scope of his or her authority, the student/parent/guardian may proceed directly to Level 2.

Level 2: If the student/parent/guardian **any party** desires further review of his or her grievance, then the student/parent/guardian must submit a copy of the grievance to the Superintendent of the school or the Superintendent's designee, along with a written statement detailing the student/parent/guardian's reasons for dissatisfaction with the decision of the Principal. The Superintendent of the Superintendent's designee shall investigate and review the matter. The investigation shall include the original written complaint and the Principal's response. After review, the Superintendent or the Superintendent's designee shall provide a written response to the student/parent/guardian postmarked ten (10) work days following receipt of the grievance form. If the resolution is unsatisfactory, the party may appeal the decision by submitting a copy of the grievance and decision to the Mississippi Department of Education's Associate Superintendent **responsible for oversight of the state school**, along with a written statement detailing the reasons for the dissatisfaction. The Associate Superintendent shall investigate and review the matter. After review, the Associate Superintendent shall provide a written response to the parties postmarked no later than ten (10) business days following receipt of the appeal.

If there is no response by the **Associate** Superintendent of the school or the Superintendent's designee to the student/parent/guardian **appealing party** within the ten (10) work **business** days, or if the response is unsatisfactory to the student/parent/guardian **either party**, the student/parent/guardian **aggrieved party** may advance the grievance to Level 3.

Level 3: The student/parent/guardian **aggrieved party**, after review of the written response from the **Associate** Superintendent or State Superintendent's designee, may appeal that response to the State Superintendent or the State Superintendent's designee no later than ten (10) work **business** days after receipt of the written communication at Level 2. The State Superintendent or his/her the State Superintendent's designee shall review the grievance and shall provide the student/parent/guardian **parties** a written response postmarked within ten (10) work **business** days following the receipt of the appeal.

Level 4: The student/parent/guardian **aggrieved party** may appeal the response from the State Superintendent to the State Board of Education by submitting a written request for appeal to the State Board of Education along with all documentation from Levels 1-3 no later than ten (10) work **business** days after receipt of the State Superintendent's written response at Level 3. The State Board of Education shall review the grievance and shall provide the student/parent/guardian **parties** an opportunity to appear at the next regularly scheduled Board meeting to present his or her grievance **and response** in accordance with the Family Education Rights and Privacy Act (FERPA) 20 U.S.C. 1232g, the Individuals with Disabilities

Education Improvement Act of 2004 (IDEA) 20 U.S.C. 1400 *et. seq.* implementing regulations, and other federal and state laws that govern the protection of student information. If the ~~student/parent/guardian~~ party or parties elect not to appear personally, the ~~student/parent/guardian~~ parties may request the Board's review of the written documentation only. The decision of the State Board of Education shall be final.

Source: ~~Federal 20 U.S.C. § 1681~~; Title IX of the Education Amendments of 1972; 34 C.F.R. § 106; Miss. Code Ann. § 37-1-3 (Adopted 8/2016; Revised 3/2022)