

***Miller Place Union Free School District***  
*Miller Place, New York 11764*  
**Board of Education Policy**

**9010.2.E3**

**SEXUAL HARASSMENT GRIEVANCE PROCEDURE**

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The Miller Place Union Free School District (“district”) has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

*Complaints*

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the district investigate and make a determination about alleged discrimination under Title IX:

- A “complainant,” which includes:
  - a student or employee of the district who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  - a person other than a student or employee of the district who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the district’s education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- The district’s Title IX Coordinator.

A person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 CFR §106.44(f)(1)(v).

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- Any student or employee of the district; or
- Any person other than a student or employee who was participating or attempting to participate in the district’s education program or activity at the time of the alleged sex discrimination.

**Board of Education Policy**

**SEXUAL HARASSMENT GRIEVANCE PROCEDURE**

---

The district may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

*Basic Requirements of Title IX Grievance Procedures:*

The district will treat complainants and respondents equitably.

The district requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.

The district presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

The district has established the following approximate timeframes for the major stages of the grievance procedures, unless extended as described below:

1. The district will evaluate the complaint and determine whether dismissal is appropriate or an investigation is necessary within 30 days of receiving the complaint.
2. The district will promptly begin any investigation upon receiving the complaint.
3. The district will issue any determination within 30 days following receipt of the complaint, except where additional time is necessary. In such circumstance, the Title IX Coordinator will notify the complainant of the need for additional time and provide an expected time frame for completion.
4. Appeals must be submitted within 30 days following receipt of the decision/determination being appealed. Any hearing on appeal will be held within \_\_\_ business days after receipt of the appeal, unless additional information is requested, in which case, any hearing will be held within \_\_\_ business days of the receipt of responsive information. Appeals will be decided within \_\_\_ working days after the hearing concludes.

**Board of Education Policy**

**SEXUAL HARASSMENT GRIEVANCE PROCEDURE**

---

Any timeframe listed above may be reasonably extended on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay. “Good cause” for an extension of a timeframe include, but are not limited to, illness of district staff necessary to complete the Title IX grievance process, illness or absence of any party or witness, difficulty locating witnesses or evidence, the death or serious illness of an immediate family member of necessary district staff, parties or relevant witnesses, loss or destruction of pertinent records, difficulty scheduling meetings with parties or witnesses and/or school closures or holidays. The Title IX Coordinator will determine any request for an extension of timeframes and make a prompt determination on the request. If an extension is granted, the Title IX Coordinator will notify the parties in writing of the reason(s) for the delay and anticipated date of completion of any remaining stages in the grievance procedure.

The district will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

The district will objectively evaluate all evidence that is relevant and not otherwise impermissible – including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person’s status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the district to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party’s or witness’s records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the district obtains that party’s or witness’s voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant’s sexual interests or prior sexual conduct, unless evidence about the complainant’s prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant’s prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual

**Board of Education Policy**

**SEXUAL HARASSMENT GRIEVANCE PROCEDURE**

---

conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

*Notice of Allegations*

Upon initiation of the district's Title IX grievance procedures, the district will notify the parties of the following:

- The district's Title IX grievance procedures [and any informal resolution process];
- Sufficient information to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited; and
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this impermissible evidence.

The Title IX Coordinator will notify the respondent that if behavior prohibited under Title IX or another district policy has occurred, it must cease immediately.

If, in the course of an investigation, the district decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, the district will promptly notify the parties of the additional allegations.

*Dismissal of a Complaint*

The district may dismiss a complaint of sex discrimination if:

- The district is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in the district's education program or activity and is not employed by the district;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the district determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or

***Miller Place Union Free School District***  
*Miller Place, New York 11764*  
**Board of Education Policy**

**9010.2.E3**

**SEXUAL HARASSMENT GRIEVANCE PROCEDURE**

---

- The district determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the district will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the district will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the district will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

The district will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the district will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal is appealed, the district will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, the district will, at a minimum:

- Offer supportive measures to the complainant as appropriate;

**Board of Education Policy**

**SEXUAL HARASSMENT GRIEVANCE PROCEDURE**

---

- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the district's education program or activity.

*Investigation*

The district will provide for the adequate, reliable, and impartial investigation of complaints. The burden is on the district – not on the parties – to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

The district will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible. The district will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

The district will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- The district will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. (If the district provides a description of the evidence, the district will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party);
- The district will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- The district will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures.
- Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

*Questioning the Parties and Witnesses*

The decisionmaker will adequately assess the credibility of parties and witnesses, where credibility is both in dispute and relevant to evaluating the allegation(s) of sex discrimination. If the decisionmaker serves as the investigator, they will evaluate the credibility of parties and witnesses while questioning the parties and witnesses during the investigation. If the

**Miller Place Union Free School District**  
*Miller Place, New York 11764*  
**Board of Education Policy**

**9010.2.E3**

**SEXUAL HARASSMENT GRIEVANCE PROCEDURE**

---

decisionmaker does not serve as the investigator, the Title IX Coordinator will coordinate interviews of parties and witnesses for the decisionmaker to assess their credibility.”

*Determination Whether Sex Discrimination Occurred*

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the district will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. This requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded by a preponderance of the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
- Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - Coordinate the provision and implementation of remedies to a complainant and other people the district identifies as having had equal access to the district’s education program or activity limited or denied by sex discrimination;
  - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the district’s education program or activity.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

*Appeal of Determinations*

The district offers the following process for appeals from a determination whether sex discrimination occurred:

**Board of Education Policy**

**SEXUAL HARASSMENT GRIEVANCE PROCEDURE**

---

- Appeals must be made in writing to the Superintendent within 30 days and must state the basis for the request, including any material or information that supports the claims made on appeal.
- The other party will be informed in writing that an appeal has been made.
- The Superintendent will determine whether the basis for the appeal is one allowed by this grievance procedure as set forth above. If the appeal is for a permissible basis, the appeal request will be provided to the other party, who will have five (5) business days to submit any response statement.
-  The Superintendent may elect to conduct a new hearing, conduct additional interviews or additional investigation(s), or may elect to hear the appeal based solely upon the papers.
- The Superintendent will sustain or modify the decision of the Title IX Coordinator in a writing that sets forth the basis for the decision. The decision of the Superintendent will be provided to both parties within five (5) business days of the conclusion of the review.
- The Superintendent's decision is final.

This appeal process will be, at a minimum, the same as the district offers in all other comparable proceedings, including proceedings relating to other discrimination complaints.

 *Informal Resolution*

In lieu of resolving a complaint through the district's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. The district does not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

*Supportive Measures*

The district will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the district's education program or activity or provide support during the district's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include, but are not limited to: counseling, extensions of deadlines and other course-related adjustments, escorts while on school grounds or activities, increased security and monitoring of certain areas within the district; restrictions on contact applied to one or more parties, leaves of absence, changes in class, work, or extracurricular activities or any other activity,

**Miller Place Union Free School District**  
*Miller Place, New York 11764*  
**Board of Education Policy**

**9010.2.E3**

**SEXUAL HARASSMENT GRIEVANCE PROCEDURE**

---

regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment or discrimination.

*Disciplinary Sanctions and Remedies*

Following a determination that sex-based harassment occurred, the district may impose disciplinary sanctions, which may include, but is not limited to:

- For Student respondents: warnings, reprimands, detention, in-school suspension, suspension from school or extracurricular activities, to be imposed consistent with the district's Code of Conduct and applicable law;
- For Employee respondents: warnings, reprimands, mandatory counseling, re-assignment, demotion, suspension and termination, to be imposed consistent with all applicable contractual and statutory rights;
- For Volunteer respondents: warnings, reprimands, loss of volunteer assignments and removal from future volunteer opportunities;
- For Vendor respondents: warnings, removal from school property, denial of future access to school property and denial of future business with the district;
- For other respondents; warnings, removal from school property and denial of future access to school property.

The Title IX Coordinator will facilitate the transfer of information and determinations from the Title IX complaint process to the appropriate administrator, to aid in the imposition of any disciplinary consequences.

The district may also provide remedies, which may include:

- Training of entire departments, classes or groups;
- Peer support groups;
- Letters of apology;
- Separation of the parties;
- Additional supervision or mentoring for the respondent; and
- Restitution and restoration.

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