

**MONTGOMERY
COUNTY
INTERMEDIATE
UNIT #23**

SECTION: PROGRAMS

TITLE: NONDISCRIMINATION BASED
ON SEX

ADOPTED: JANUARY 27, 2021

REVISED:

102. NONDISCRIMINATION BASED ON SEX	
1. Authority	<p>The Board believes in ensuring a safe, nurturing, healthy and nondiscriminatory learning and teaching environment for all members of the Intermediate Unit community. The Board also believes in ensuring the opportunity for all members of the Intermediate Unit community to reach their full potential through access and participation in all Intermediate Unit educational activities and programs.</p> <p><u>Statement on Nondiscrimination</u></p> <p>The Intermediate Unit does not discriminate on the basis of race, color, national origin, religion, sex, sexual orientation, disability, ethnicity, national origin or age in its education programs and activities. The protection against discrimination extends to employment.</p>
2. Definitions	<p>For the purposes of this policy, the terms below have the following definitions:</p> <p><i>Complainant</i> is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.</p> <p><i>Consent</i> exists when all parties exchange mutually understandable affirmative words or actions indicating their agreement to participate voluntarily in sexual activity. Consent must be informed, voluntary, and actively given. Resistance by the complainant is not required. Consent does not exist if the sexual act was by forcible compulsion which is the use of physical, intellectual, moral, emotional or psychological force. Consent does not exist if a person is threatened, unconscious, incapacitated due to the influence of drugs and/or alcohol, or suffers from a mentally disability that makes them incapable of giving consent. Consent may be withdrawn by either party at any time. Once withdrawal of consent has been expressed through words or actions, sexual activity must cease. Pennsylvania defines the age of consent as age 16 or above. Children under age 13 cannot consent to sexual activity. Children between the ages of 13-15 cannot consent to sexual intercourse with a person four or more years older than them.</p> <p><i>Decision- Maker</i> is the person or panel of people assigned by the Title IX Coordinator to conduct a fair and impartial review of all the facts and evidence in making a determination on the responsibility or non-responsibility of a respondent on a complaint of sexual harassment or in reviewing an outcome on appeal. A decision maker or decision- making panel must be unbiased and trained on the policies and</p>

procedures under Title IX that are applicable to serving as an adjudicator.

Delays or Extensions: The overall time frame to conclude a grievance process must be “reasonably prompt”. A school can have good cause for any short-term delays or extensions, with written notice to the parties and an explanation for the delay or extension. Any delay or extension must be temporary or limited. Examples of good cause delays may include considerations such as concurrent law enforcement activity, the need for language assistance or accommodation of disabilities.

Discrimination shall mean to treat individuals differently, or to harass or victimize based on a protected classification including race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy, or handicap/disability.

Formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment against a respondent and requesting that the Intermediate Unit investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate (i.e. seeking admission or acceptance) in the education program or activity of the MCIU. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed in this policy.

Informal resolution is an option to resolve a formal complaint in a mediation or restorative justice manner. An informal resolution can only be offered as an option to the parties if a formal complaint is filed. Once a formal complaint is received, at any time prior to reaching a determination regarding responsibility the Intermediate Unit may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. The Complainant and Respondent must each agree in writing that they want to participate in an informal resolution process. The Intermediate Unit will provide to the parties a written notice disclosing: the allegations, the requirements of the informal resolution and that any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process. The informal resolution process is not available and cannot be offered to resolve any reported incident of an employee sexually harassing a student.

Informal Resolution Facilitator is the person assigned by the Title IX Coordinator to manage the Informal Resolution process. The informal resolution facilitator must be fair, impartial and trained in Title IX policy and procedures, specifically those dealing with mediation and restorative justice best practices.

Investigator is the person(s) assigned by the Title IX Coordinator to conduct a prompt fair and impartial investigation into the formal complaint. Investigator must be unbiased and trained in Title IX policy and procedures.

Respondent is an individual who has been reported to be the perpetrator of conduct

that could constitute sexual harassment.

Sexual harassment is conduct on the basis of sex that satisfies one or more of the following:

- (1) ***Quid Pro Quo*** - An employee of the Intermediate Unit conditioning the provision of an aid, benefit, or service of the Intermediate Unit on an individual's participation in unwelcome sexual conduct;
- (2) 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 Intermediate Unit's education program or activity; or
- (3) ***Sexual Assault*** is defined as an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- (4) ***Dating violence*** is violence committed by a person—
 - (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship,
 - (ii) The type of relationship, and
 - (iii) The frequency of interaction between the persons involved in the relationship.
- (5) ***Domestic violence*** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- (6) ***Stalking*** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

Standard of Proof: The Intermediate Unit shall apply the preponderance of the evidence standard of review. The same standard of proof is to be applied for matters involving students and matters involving employees.

Supportive measures shall mean nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant regardless of whether a formal complaint has been filed or to the respondent after the filing of a formal complaint.

Supportive measures are designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational

<p>3. Authority</p> <p>4. Guidelines</p>	<p>environment, or to deter sexual harassment. Supportive measures may include, but are not limited to:</p> <ol style="list-style-type: none"> 1. Counseling. 2. Extensions of deadlines or other course-related adjustments. 3. Modifications of work or class schedules. 4. Mutual restrictions on contact between the parties. 5. Changes in work or housing locations. 6. Leaves of absence. 7. Increased security. 8. Monitoring of certain areas of the Intermediate Unit. <p>The Intermediate Unit must keep confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the Intermediate Unit to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.</p> <p>Supportive measures may also include assessments or evaluations to determine eligibility for special education or related services, or the need to review an Individualized Education Program (IEP) or Section 504 Service Agreement based on a student’s behavior. This could include, but is not limited to, a manifestation determination or functional behavioral assessment (FBA), in accordance with applicable law, regulations or Board policy.</p> <p>Emergency removal. The Intermediate Unit may remove a respondent from the education program or activity on an emergency basis, provided that the MCIU undertakes an individualized safety and risk analysis, determines 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 provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.</p> <p>Administrative leave. A school can place a non-student employee respondent on administrative leave during the pendency of a grievance process. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.</p> <p>Title IX states “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal Financial Assistance.” In accordance with Title IX, the Board prohibits sexual harassment and discrimination on the basis of sex. Violations of this policy may result in disciplinary action in accordance with the Code of Student Conduct, Board policy, and applicable federal, state, and local law and regulations.</p>
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Title IX Coordinator

The Title IX Coordinator is responsible for ensuring the prompt, equitable and supportive response to all reports received under this policy. Specifically, the Title IX Coordinator responsibility includes, but is not limited to:

1. Monitoring the Intermediate Unit’s compliance with Title IX, which includes explaining and providing supportive measures (to one or both parties);
2. Providing ongoing education and training on Title IX;
3. Overseeing, managing and directing the response to a reported complaint and, if applicable, investigation into any complaint that is covered under Title IX; and
4. Taking appropriate action to eliminate the harassing behavior, prevent its recurrence, and remedy its effect.

Any questions regarding Title IX or the application of this policy can be directed to the Title IX Coordinator. The Board designates the Director of Community and Government Relations as the Intermediate Unit’s Title IX Coordinator. The Title IX Coordinator can be contacted at:

Valentina G. Viletto, Esq.
Title IX Coordinator
2 West Lafayette Street
Norristown, PA 19401
610-755-9305
tviletto@mciu.org

Reporting

Any report of sex based discrimination or harassment will be taken seriously, addressed promptly and with sensitivity.

A student may report an incident of sexual discrimination or harassment verbally or in writing to any Intermediate Unit employee. All reports shall be directed *immediately* to the Title IX Coordinator. All non-students can report any incident of sex based harassment to the Title IX Coordinator. Reports can be made at any time by phone, email, or by completing and submitting the Discrimination/Harassment Incident Reporting Form as referenced on the Intermediate Unit’s publically accessible website.

Additionally, if the person who received a complaint of sexual harassment is a mandated reporter and has reasonable cause to suspect that a student is the victim of child abuse, the incident should immediately be reported to the appropriate agency as directed by state law. This mandated reporting obligation is *in addition* to a report being made to the Title IX Coordinator.

Retaliation

This policy prohibits retaliation against an individual who files a complaint in response to conduct that s/he reasonably believes violates this policy, or against an individual who participates or cooperates with an investigation, as provided by both Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964. Anyone who experiences retaliation should report it to the Title IX Coordinator. Such retaliation, if founded, will result in the same disciplinary action applicable to one who engages in harassment. Reporting harassment will not affect the reporting individual's status with respect to either an employee's future employment or work assignments or a student's future academic opportunity, progress or record.

Confidentiality

Confidentiality will be maintained to the extent possible to effectively respond to a reported incident of sexual harassment. If a request for confidentiality is received, the Intermediate Unit will evaluate any confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. A request for confidentiality may limit the Intermediate Unit's ability to respond. All efforts shall be made to maintain the confidentiality of any person initiating or involved in a reported incident of sex-based harassment to protect the privacy of all parties, consistent with the District's responsibility to promptly address and investigate such complaints based on applicable state and federal laws.

Based on the content of what is reported to the Intermediate Unit, all incidents that are required by law to be reported to law enforcement and/or ChildLine via its publically accessible website or by calling ChildLine at 1-800-932-0313.

Scope of Title IX

Title IX covers those reported incidents of sexual harassment that take place in the United States and in the context of an education program or activity which includes locations, event or circumstances over which the Intermediate Unit/school exercised substantial control over both the Respondent and the context in which the sexual harassment occurs.

If a reported incident does not fall under the scope of Title IX, the reported incident will be reviewed and appropriate steps taken under other applicable Intermediate Unit policies.

This Title IX policy runs concurrently with and parallel to all applicable laws, regulations and existing Intermediate Unit policies and procedures to the extent allowable under the law.

Resources

The Intermediate Unit is committed to providing an educational environment that

5. Delegation of Authority	<p>promotes safety and wellness for the entire Intermediate Unit community. Any student or employee is encouraged to seek the assistance of available school-based and community resources to provide support and/or emergency assistance. Below are examples of such resources:</p> <ul style="list-style-type: none"> • School Counselor or Social Worker • School Psychologist • Local Counseling and Psychological Services • Employee Assistance Program Information (for employees] • Local Law Enforcement • Local Victim Services <p>The Board directs the Executive Director or designee to develop administrative regulations to implement this policy. The Executive Director shall publish this policy to students, employees, and the community through posting on the Intermediate Unit’s website, newsletters, and other appropriate means.</p> <p><u>Legal References</u></p> <p>Title IX of the Educational Amendments of 1972, 20 U.S.C. §§1681-1688; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a); EEOC Policy Guidelines on Sexual Harassment, 29 C.F.R. §1604.11; PA Human Relations Act, 43 Pa. Cons. Stat. Ann. § 951-960 (Purdon 1964 & Supp. 1991); Pennsylvania Child Abuse Reporting §6311, https://www.compass.state.pa.us/CWIS/Public/ReferralsLearnMore ; 29 C.F.R. §1604.11 20 U.S.C. 1092(f)(6)(A)(v) 34 U.S.C. 12291(a)(10) 34 U.S.C. 12291(a)(8) 34 U.S.C. 12291(a)(30) Human Relations Commission Guidelines on Sexual Harassment, 11 Pa. Bulletin No. 5 (Jan. 31, 1981).</p> <p>Board Policies 103, 104</p>
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