

REGULATION MONTGOMERY COUNTY PUBLIC SCHOOLS

Related Entries: ACA, ACF, JFA, JFA-RA, JHC, JHC-RA, JHF, JHF-RA

Responsible Office: Superintendent of Schools; Deputy Superintendent; Chief Operating Officer; Chief of School Support and Well-being; Chief of District Operations

Investigation of Title IX Sexual Harassment of MCPS Students

I. PURPOSE

To provide procedures for responding promptly to complaints of Title IX sexual harassment of MCPS students

II. DEFINITIONS

- A. The terms “sexual misconduct” and “sexual harassment” shall have the meanings defined in Montgomery County Board of Education Policy ACF, *Sexual Misconduct and Sexual Harassment of Students*.
- B. *Workday* means a day, other than a Saturday, Sunday, or legal holiday, on which the central offices of MCPS are open for the transaction of business.

III. PROCEDURES

- A. Sexual misconduct and sexual harassment are inappropriate and violate Montgomery County Board of Education Policy ACF, *Sexual Misconduct and Sexual Harassment of Students*, regardless of whether such conduct is committed by students of either sex against students or staff of the opposite or same sex.
- B. School staff and staff members in the Office of District Operations, Student Welfare and Compliance Unit, are available to provide guidance, support, and/or advocacy to students and families in addressing matters related to sexual misconduct or sexual harassment.
- C. Student Welfare and Compliance will coordinate the implementation of this

regulation as follows:

1. Disseminate information on supportive measures available to students and reporting and investigation procedures regarding sexual misconduct and sexual harassment.
2. Support the development of training programs and guidelines for investigating and resolving allegations of sexual misconduct and sexual harassment.
3. Support the development of curricula and student-facing materials to increase student recognition of sexual misconduct and sexual harassment; health literacy skills (e.g., interpersonal communication, self-management, and advocacy for self or others); and age-appropriate instruction in strategies for personal body safety.
4. Facilitate the investigation, documentation, and notification to the superintendent of schools of student sexual misconduct and sexual harassment complaints in MCPS.
5. Monitor the complaints of sexual misconduct and sexual harassment.
6. Maintain a record-keeping system of reports, complaints, and subsequent management action, in conformance with privacy requirements.
7. Prepare a quarterly report to the Board on sexual misconduct and sexual harassment reports, which will include—
 - a) number and type of incidents;
 - b) complaint and resolution-process evaluations and improvements;
 - c) training statistics and schedules;
 - d) ongoing evaluation of work environments in all MCPS schools, offices, and work locations; and
 - e) other activities being planned or carried out by MCPS that are relevant to the successful implementation of Board Policy ACF, *Sexual Misconduct and Sexual Harassment of Students*, and Board Policy ACI, *Sexual Harassment of Employees*.

IV. REPORTING PROCEDURES

- A. MCPS students who experience or witness sexual misconduct and/or sexual harassment, or their parents/guardians, should report such conduct promptly to their principal or other MCPS staff member, who will guide them in the reporting and investigation processes and inform them of supportive measures available.
1. The report can be made verbally or in writing to any staff member. The staff member will assist the student, parent, or guardian in reporting to the principal or designee or completing MCPS Form 230-35, *Bullying, Harassment, or Intimidation Reporting Form*.
 2. MCPS Form 230-35 may be completed by a student; the parent, guardian, or close relative of a student; or school staff member. Once completed, the form is submitted to the school principal or designee or the Student Welfare and Compliance Unit drop box at SWC@mcpsmd.org.
 3. A report of Title IX sexual harassment also may be made to the Title IX sexual harassment drop box at Title IX@mcpsmd.org.
 4. When a report of sexual harassment is made to a staff member, the staff member will offer to assist the student in making a formal complaint of sexual harassment on MCPS Form 0109.22 EGPS, *Title IX Discrimination Formal Complaint*.
- B. There will be no adverse action against an individual for reporting an incident or participating in or cooperating with the investigation of an alleged incident.
- C. MCPS will maintain the confidentiality of the investigation, consistent with applicable laws and MCPS's responsibility to investigate and address such complaints.

V. INVESTIGATION

- A. Investigation of a Sexual Misconduct Complaint
1. The investigation of a sexual misconduct complaint will be conducted in accordance with MCPS Regulation JHF-RA, *Bullying, Harassment, or Intimidation*, using MCPS Form 230-36, *Bullying, Harassment, or Intimidation Incident School Investigation Form*.
 2. Findings and appropriate action will be rendered in as timely a manner as practicable and reported to the Student Welfare and Compliance Unit.

B. Investigation of a Title IX Sexual Harassment Complaint

U.S. Department of Education 2020 guidance established federally proscribed investigation procedures for formal complaints of sexual harassment under Title IX.

1. To request an investigation of a complaint of Title IX sexual harassment, the student, or the student's parent/guardian, must complete MCPS Form 0109.22 EGPS, *Title IX Discrimination Formal Complaint*, and submit it to the Title IX coordinator at TitleIX@mcpsmd.org.
2. A formal complaint of Title IX sexual harassment is subject to the following federally proscribed mandatory and permissive dismissals:
 - a) Mandatory dismissal of a formal complaint
 - (1) The Title IX coordinator must dismiss the formal complaint if –
 - (a) the alleged conduct in the formal complaint does not meet the definition of Title IX sexual harassment, even if the conduct is proved; or
 - (b) the conduct did not occur within the scope of MCPS's education programs/activities.
 - (2) A mandatory dismissal of a formal complaint does not preclude action under MCPS Regulation JHF-RA, *Bullying, Harassment, or Intimidation*, the *MCPS Student Code of Conduct*, or other applicable rules.
 - B. Discretionary dismissal of a formal complaint
 - (1) The Title IX coordinator may dismiss the formal complaint if –
 - (a) the complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint; or
 - (b) the respondent is no longer enrolled in or employed by MCPS; or

- (c) specific circumstances prevent MCPS from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- 3. Upon receipt and review of a formal complaint, the Title IX coordinator or designee will provide a written notice of allegations to the known parties and assign an investigator.
- 4. The investigator will gather evidence to reach a determination regarding responsibility. Parties will have an equal opportunity to provide evidence to the investigator, including statements, witnesses, and other evidence.
- 5. There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the investigation.
- 6. Prior to completion of the investigative report, there must be an evidentiary review period, during which the investigator sends each party and the party's advisor the evidence directly related to the allegations. The parties will have 10 calendar days to submit a written response.
- 7. After the evidentiary review period, the investigator will review the written responses and draft an investigative report.
- 8. Upon completion of the investigative report, each party and the party's advisor will have 10 calendar days to review the report and provide a written response.
- 9. After the investigative report review period, the principal or designee will evaluate the investigative report and any written response(s) and make a recommendation to the Title IX coordinator, who will issue the determination of responsibility within five workdays of reviewing these documents. The determination will be sent to the parties simultaneously.
- 10. The determination of whether the alleged conduct constitutes sexual harassment under Title IX will be made using the preponderance of evidence standard.

C. Informal Resolution of a Title IX Sexual Harassment Complaint

- 1. Any time prior to reaching a determination regarding responsibility, any party may request informal resolution of the formal complaint.

2. Participation in informal resolution is voluntary. Both parties must give voluntary, written consent to the informal resolution process.
3. The informal resolution process cannot be used to resolve a formal complaint of allegations that an employee sexually harassed a student.

VI. RESPONSIVE MEASURES

- A. Some forms of sexual harassment may also constitute criminal conduct, resulting in criminal penalties or child abuse, and therefore require reporting according to MCPS Regulation JHC-RA, *Reporting and Investigating Child Abuse and Neglect*, and/or the terms of the Memorandum of Understanding with law enforcement authorities.¹ MCPS must conduct any internal investigations in a manner that is fully cooperative with the external law enforcement agencies that are investigating, and that does not interfere with or jeopardize the external investigation.

VII. APPEALS

- A. The appeal of a decision regarding sexual misconduct may be filed in accordance with the procedures of MCPS Regulation KLA-RA, *Responding to Inquiries and Complaints from the Public*.
- B. Appealing a Title IX Sexual Harassment Determination
 1. A determination of responsibility by the principal or designee may be appealed by either party to the Title IX coordinator.
 2. An appeal must be filed by the party within 10 workdays of the issuance of the determination.
 3. Either party can appeal the determination regarding responsibility, or the dismissal of a formal complaint, on the following bases:
 - a) A procedural irregularity affected the outcome of the investigation;
 - b) New evidence is presented that could affect the outcome of the matter regarding responsibility that was not reasonably available at the time of the determination or at the time of the dismissal of the

¹ Full title: Reporting protocols for incidents that involve law enforcement are set forth in the *Memorandum of Understanding Between the Montgomery County Police Department and Montgomery County Public Schools and Other Agencies Regarding the Community Engagement Officer Program and Other Law Enforcement Responses to School-based Incidents*, April 4, 2022. (*Memorandum of Understanding*)

formal complaint; or

- c) The Title IX coordinator, investigator, or decision maker(s) had a conflict of interest or bias that affected the outcome of the matter.
4. A trained hearing officer will be assigned.
 5. If an appeal is filed, the hearing officer will notify the other party in writing.
 6. Both parties will be given an opportunity to submit a written statement regarding the determination.
 7. Within 10 workdays after receiving the written complaint, the hearing officer will –
 - a) review investigation documents and any arguments submitted in writing by the parties;
 - b) render a written determination describing the result of the appeal and the rationale for the result, which will be sent simultaneously to the parties; and
 - c) notify the parties of the determination and their right under Board Policy BLB, *Rules of Procedure in Appeals and Hearings*, and state law to appeal the decision to the Board within 30 calendar days.

VIII. COMMUNICATION AND DISSEMINATION OF INFORMATION

Information will be published and disseminated to all MCPS students informing them of the Board policies and MCPS regulations and rules that address sexual misconduct and sexual harassment, how sexual misconduct and sexual harassment are defined, what the individual can do if they experience sexual misconduct or sexual harassment, the contact information of the Title IX coordinator, and who to contact for help.

Information will be disseminated in a variety of ways, including but not limited to—

- A. training workshops and/or online modules,
- B. brochures,
- C. bulletins,

- D. applications,
- E. announcements, and/or
- F. other communications, as appropriate.

IX. TITLE IX TRAINING

- A. The Title IX coordinator, investigators, decision makers, and any person who facilitates an informal resolution of formal complaints of sexual harassment will receive training.
- B. Training will include the following topics: the definition of sexual harassment; the scope of MCPS education programs or activities; how to conduct a Title IX investigation, including hearings, appeals, and informal resolution processes, as applicable; and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- C. Training materials will not rely on sex stereotypes. Training materials will promote impartial investigations and adjudications of formal complaints of sexual harassment.
- D. Training materials are publicly available on the MCPS website.

Related Sources:

Title IX of the *Education Amendments Act of 1972*, as amended; Annotated Code of Maryland, Education Article §7-424; Memorandum of Understanding²; MCPS *Student Code of Conduct*

Regulation History: New Regulation, February 17, 1993; revised February 22, 2006; revised July 31, 2017; revised February 1, 2023.

² Full title: Reporting protocols for incidents that involve law enforcement are set forth in the *Memorandum of Understanding Between the Montgomery County Police Department and the Montgomery County Public Schools and Other Agencies Regarding the Community Engagement Officer Program and Other Law Enforcement Responses to School-based Incidents*, April 4, 2022. (*Memorandum of Understanding*)

MCPS NONDISCRIMINATION STATEMENT

Montgomery County Public Schools (MCPS) prohibits illegal discrimination based on race, ethnicity, color, ancestry, national origin, nationality, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family structure/parental status, marital status, age, ability (cognitive, social/emotional, and physical), poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations. Discrimination undermines our community's long-standing efforts to create, foster, and promote equity, inclusion, and acceptance for all. The Board prohibits the use of language and/or the display of images and symbols that promote hate and can be reasonably expected to cause substantial disruption to school or district operations or activities. For more information, please review Montgomery County Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*. This Policy affirms the Board's belief that each and every student matters, and in particular, that educational outcomes should never be predictable by any individual's actual or perceived personal characteristics. The Policy also recognizes that equity requires proactive steps to identify and redress implicit biases, practices that have an unjustified disparate impact, and structural and institutional barriers that impede equality of educational or employment opportunities. MCPS also provides equal access to the Boy/Girl Scouts and other designated youth groups.**

For inquiries or complaints about discrimination against MCPS students*	For inquiries or complaints about discrimination against MCPS staff*
Director of Student Welfare and Compliance Office of District Operations Student Welfare and Compliance 850 Hungerford Drive, Room 55, Rockville, MD 20850 240-740-3215 SWC@mcpsmd.org	Human Resource Compliance Officer Office of Human Resources and Development Department of Compliance and Investigations 45 West Gude Drive, Suite 2500, Rockville, MD 20850 240-740-2888 DCI@mcpsmd.org
For student requests for accommodations under Section 504 of the Rehabilitation Act of 1973	For staff requests for accommodations under the Americans with Disabilities Act
Section 504 Coordinator Office of Academic Officer Resolution and Compliance Unit 850 Hungerford Drive, Room 208, Rockville, MD 20850 240-740-3230 RACU@mcpsmd.org	ADA Compliance Coordinator Office of Human Resources and Development Department of Compliance and Investigations 45 West Gude Drive, Suite 2500, Rockville, MD 20850 240-740-2888 DCI@mcpsmd.org
For inquiries or complaints about sex discrimination under Title IX, including sexual harassment, against students or staff*	
Title IX Coordinator Office of District Operations Student Welfare and Compliance 850 Hungerford Drive, Room 55, Rockville, MD 20850 240-740-3215 TitleIX@mcpsmd.org	

**Discrimination complaints may be filed with other agencies, such as the following: U.S. Equal Employment Opportunity Commission (EEOC), Baltimore Field Office, GH Fallon Federal Building, 31 Hopkins Plaza, Suite 1432, Baltimore, MD 21201, 1-800-669-4000, 1-800-669-6820 (TTY); Maryland Commission on Civil Rights (MCCR), William Donald Schaefer Tower, 6 Saint Paul Street, Suite 900, Baltimore, MD 21202, 410-767-8600, 1-800-637-6247, mCCR@maryland.gov; or U.S. Department of Education, Office for Civil Rights (OCR), The Wanamaker Building, 100 Penn Square East, Suite 515, Philadelphia, PA 19107, 1-800-421-3481, 1-800-877-8339 (TDD), OCR@ed.gov, or www2.ed.gov/about/offices/list/ocr/complaintintro.html.*

***This notification complies with the federal Elementary and Secondary Education Act, as amended.*

This document is available, upon request, in languages other than English and in an alternate format under the *Americans with Disabilities Act*, by contacting the MCPS Office of Communications at 240-740-2837, 1-800-735-2258 (Maryland Relay), or PIO@mcpsmd.org. Individuals who need sign language interpretation or cued speech transliteration may contact the MCPS Office of Interpreting Services at 240-740-1800, 301-637-2958 (VP) mcpsinterpretingservices@mcpsmd.org, or MCPSInterpretingServices@mcpsmd.org.