

# POLICY

## BOARD OF EDUCATION OF MONTGOMERY COUNTY

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**Related Entries:** ACA, ACF-RA, GCC-RA, IGP-RA, JFA, JFA-RA, JGA-RB, JGA-RC, JHC, JHC-RA, JHF, JHF-RA

**Responsible Offices:** Chief of Districtwide Services and Supports; Human Resources and Development

### **Sexual Misconduct and Sexual Harassment of Students**

#### **A. PURPOSE**

To prohibit sexual misconduct and sexual harassment on Montgomery County Public School (MCPS) property.

To mandate the development of educational programs designed to help MCPS employees and students recognize, understand, and report sexual misconduct and sexual harassment.

To establish the framework for effective procedures for addressing complaints of sexual misconduct and sexual harassment.

#### **B. ISSUE**

1. The Montgomery County Board of Education (Board) does not tolerate sexual misconduct or sexual harassment of any kind of, or by, students in its educational programs and activities, or property, under any circumstances. For the purposes of this policy, MCPS property means any school or other facility including grounds owned or operated by MCPS, MCPS buses, and other MCPS vehicles and the facility and/or grounds of any MCPS-sponsored program or activity, which includes locations, events, or circumstances over which MCPS exercises substantial control over the individuals involved and the context in which alleged harassment occurred.
2. Students, employees, and third parties have a right to be free from sexual harassment. The Board is committed to the creation and maintenance of an educational environment in which all persons are free from all forms of sexual misconduct and sexual harassment, and to the prevention, correction, and discipline of behaviors that violate this policy.

### 3. Definitions

#### a) Sexual misconduct

(1) Sexual misconduct includes verbal, written, or physical behavior, directed at an individual, or against a particular group, because of that individual's or group's actual or perceived sex, sexual orientation, gender identity, gender expression, marital status, pregnancy/parenting status, and/or sex-based stereotyping, based on conformance or nonconformance to stereotypical notions of masculinity or femininity, when the conduct is unwelcome and meets the following criteria:

(a) Submission to or rejection of the conduct is made either explicitly or implicitly a term or condition of an individual's education, or participation in a MCPS activity or program; or

(b) Submission to or rejection of the conduct is used as the basis for, or as a factor in decisions affecting an individual's education, or participation in a MCPS activity or program; or

(c) The conduct has the purpose or effect of creating an intimidating, hostile, or offensive environment for an individual's education, or participation in an MCPS activity or program; or

(d) The conduct unreasonably interferes with an individual's education, or ability to participate in a MCPS activity or program; and

(2) The conduct is sufficiently severe or pervasive that it alters the terms, conditions, or privileges of an individual's education, or participation in a MCPS activity or program.

(3) Conduct may be verbal or nonverbal, written, or electronic.

#### b) Sexual harassment

(1) Conduct considered sexual harassment is actionable under Title IX

of the Education Amendments of 1972, and its implementing regulations, and other civil rights laws, including 42 U.S.C. Section 1983 (Title IX), as interpreted by the U.S. Department of Education, if a MCPS student experiences one or more of the following:

- (a) A MCPS employee conditioning the provision of an MCPS aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or
  - (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 MCPS's educational programs or activities; or
  - (c) "Sexual assault," "dating violence," "domestic violence," or "stalking" as defined in federal law.
- (2) For purposes of this policy, conduct does not constitute prohibited sexual harassment in violation of this policy if it occurred –
- (a) outside the United States; or
  - (b) under circumstances in which MCPS did not have substantial control over both the harasser and the context in which the harassment occurred.
- (3) Whether conduct is sufficient to constitute sexual harassment under Title IX is evaluated under the totality of the circumstances, including the frequency of the conduct, its severity, whether it is physically threatening or humiliating, or merely an offensive conduct or utterance. These factors are evaluated from both subjective and objective viewpoints, considering not only the effect that the conduct actually had on the person, but also the impact it would likely have had on a reasonable person in the same situation.
- (4) Conduct that does not meet the elements of sexual harassment, as defined in federal law, may constitute sexual misconduct which is also subject to investigation and discipline in accordance with Board Policy JHF, *Bullying, Harassment, or Intimidation*, the *Student Code of Conduct in MCPS*, and the *MCPS Employee Code of Conduct*.

- c) Conduct that may be considered sexual misconduct or sexual harassment may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures.
- d) A third party is any person, other than a MCPS employee or student, who participates in MCPS activities or is present on MCPS property and is under the authority or control of MCPS, and may include, but is not limited to parents/guardians, mentors, volunteers, vendors, contractors, coaches, and others with whom employees and/or students interact on MCPS property.

**C. POSITION**

1. The superintendent of schools is directed to make every effort to make certain that everyone affected by this policy shall be informed of its provisions and also informed that infractions of the policy may be in violation of state or federal civil and/or criminal laws, resulting in criminal penalties.
2. This policy applies to all incidents of sexual harassment of a MCPS student. It addresses incidents committed by students, employees, or third parties.
3. Sexual harassment can occur between any persons, as single or repeated incidents.
4. Reporting and Supportive Measures
  - a) Students, or their parents/guardians, experiencing or witnessing sexual misconduct or sexual harassment of a student should report the matter to their principal or other MCPS staff member who will guide them in the reporting and investigation process as well as other supportive measures available. A report also may be made to the Title IX sexual harassment reporting email drop box at [TitleIX@mcpsmd.org](mailto:TitleIX@mcpsmd.org).
  - b) In cases of sexual misconduct or sexual harassment, all involved parties will be notified of available supportive measures. Supportive measures include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of class schedules, or mutual restrictions on contact between the parties.
  - c) The Board prohibits retaliation against an individual who reports sexual misconduct or sexual harassment in either an oral or written complaint, or who participates in or cooperates with an investigation.

5. Investigations

All allegations of sexual misconduct or sexual harassment committed against students by students, MCPS employees, contractors, vendors, or volunteers will be investigated by the principal or designee in collaboration with Student Welfare and Compliance and in accordance with requirements of state and federal laws.

**D. DESIRED OUTCOMES**

1. All MCPS employees and students are educated to recognize inappropriate sexual conduct in all forms that may constitute sexual misconduct or sexual harassment.
2. All students and employees are enabled to report sexual misconduct or sexual harassment.
3. Effective and legally compliant measures for reporting, investigating, responding, and providing supportive measures are established and implemented.
4. MCPS students, employees, and third parties shall learn and work in an environment free of sexual harassment.

**E. IMPLEMENTATION STRATEGIES**

1. The superintendent of schools will –
  - a) appoint a Title IX Coordinator to coordinate the implementation of this policy and related federal and state laws and regulations;
  - b) develop regulations to implement this policy in compliance with Title IX, including investigative procedures that lead to the prompt and equitable resolution of a complaint and the provision of supportive measures as appropriate;
  - c) educate all students and parents/guardians about this policy and associated federal and state laws prohibiting sexual misconduct or sexual harassment, and how a student may file a complaint, or receive assistance, by widely disseminating information in documents such as announcements, bulletins, brochures, applications, contracts, and other communications;
  - d) conduct professional development to support MCPS employees in implementing this policy, and provide –

- (1) annual mandatory training to all employees to ensure the appropriate implementation of this policy; and
  - (2) a code of conduct and other guidance for students, employees and others on MCPS property with clear standards for responsible behavior and appropriate conduct; and
- e) implement the Comprehensive Health Education instructional program for all students as required by Maryland law; and
  - f) utilize other opportunities as appropriate to educate students about matters related to sexual misconduct and sexual harassment in order to develop behaviors and attitudes that mitigate against inappropriate sexual overtures and pressures in school, work, and social settings.
2. Any student who violates this policy shall be subject to appropriate disciplinary action responsive to the offense in accordance with the *MCPS Student Code of Conduct*.
  3. At any time, a student alleging a violation of Title IX, including but not limited to sexual harassment, may file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). A student is not required to file a complaint with MCPS before or after making a complaint with the U.S. Department of Education's Office for Civil Rights.

U.S. Department of Education, Office of Civil Rights  
OCR [Electronic Complaint Form](http://www.ed.gov/about/offices/list/ocr/complaintintro.html)  
(<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>); or  
U.S. Department of Education, Office for Civil Rights  
Lyndon Baines Johnson Department of Education Building  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

4. At any time, a student alleging crimes of a sexual nature may report or file a complaint directly with law enforcement:

Montgomery County Police Department  
Special Victims Investigation Division  
100 Edison Park Drive  
Gaithersburg, MD 20878

Or, the Safe Schools Maryland Tip Line 1-833-MD-B-SAFE

**F. REVIEW AND REPORTING**

1. The superintendent of schools will report quarterly to the Board on reported sexual harassment and sexual misconduct incidents and other compliance efforts as required in this policy. The incident reports shall include aggregated incident data from the preceding quarter. The compliance report shall include complaint and resolution process evaluations and improvements; training statistics and schedules; ongoing evaluation of work environments in all MCPS schools, offices, and work locations; and, any other activities being planned or carried out by MCPS that are relevant to the successful implementation of this policy.
2. This policy will be reviewed on an ongoing basis in accordance with the Board policy review process.

**Related Sources:** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq; Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq; 29 C.F.R. §1604,11; 34 C.F.R 106.30(a); Annotated Code of Maryland, Education Article, §6-104, §6-113, §6-113.2, §7-303.1, §7-424, §7-424.1, §7-424.3, and §11-60; Annotated Code of Maryland, State Government Article, Title 20, Human Relations; Code of Maryland Regulations §13A.12.05.02; Student Code of Conduct in MCPS; MCPS Employee Code of Conduct; MCPS Guidelines for Student Gender Identity

*Policy History:* Adopted by Resolution No. 837-92, November 23, 1992; amended by Resolution No. 466-96, June 24, 1996; amended by Resolution No. 322-21, June 29, 2021.