

1 Related Entries: ACA, ~~ACB, ACE, ACF-RA,~~ **IGP-RA,** ~~GEG, JFA,~~ JFA-
2 RA, **JGA-RB, JGA-RC, JHC, JHC-RA, JHF, JHF-RA**
3

4 Responsible Offices: **Chief of Staff, Montgomery County Public**
5 **Schools - Student Welfare and Compliance**
6 **Unit;** ~~Human Relations Office of Employee~~
7 **Engagement and Labor Relations**
8
9

10 **Sexual Misconduct and Sexual Harassment of Students**
11
12

13 A. PURPOSE
14

15 To ~~affirm the Board of Education's opposition to~~ **prohibit**
16 **sexual misconduct and** sexual harassment ~~in the~~ Montgomery
17 County ~~Public School~~ **(MCPS) property system**
18

19 ~~To establish explicitly the responsibilities of all MCPS~~
20 ~~employees and students by defining conduct which constitutes~~
21 ~~prohibited and inappropriate behaviors~~
22

23 To ~~create a mandate~~ **the to development of** educational programs
24 designed to help MCPS employees and students recognize,
25 understand, ~~prevent, and~~ **report** ~~take corrective action to end~~
26 **sexual misconduct and** sexual harassment
27

28 To establish the framework for effective procedures for

29 addressing **complaints of sexual misconduct and sexual**
30 harassment ~~complaints~~

31

32 B. ISSUE

33

34 1. The Montgomery County Board of Education (Board) does
35 not tolerate sexual misconduct or sexual harassment of
36 any kind of, or by, students in its educational programs
37 and activities, or property, under any circumstances.
38 For the purposes of this policy, MCPS property means any
39 school or other facility including grounds owned or
40 operated by MCPS, MCPS buses, and other MCPS vehicles
41 and the facility and/or grounds of any MCPS-sponsored
42 program or activity, which includes locations, events,
43 or circumstances over which MCPS exercises substantial
44 control over the individuals involved and the context in
45 which alleged harassment occurred.

46

47 ~~Inappropriate sexual conduct will not be tolerated and~~
48 ~~may constitute sexual harassment.~~

49 2. Students, employees, and third parties have a right to
50 be free from sexual harassment. The Board is committed
51 to the creation and maintenance of an educational
52 environment in which all persons are free from all forms
53 of sexual misconduct and sexual harassment, and to the
54 prevention, correction, and discipline of behavior which
55 violate this policy.

56 ~~Sexual harassment is an unlawful form of discrimination on~~

57 ~~the basis of sex under Title VII of the Civil Rights Act of~~
58 ~~1964, as amended in 1972 and 1991, Title IX of the Education~~
59 ~~Amendments of 1972, and Article 49B of the Annotated Code of~~
60 ~~Maryland. Some forms of sexual harassment may also constitute~~
61 ~~criminal conduct resulting in criminal penalties as has~~
62 ~~occurred in some cases already decided. By issuing a single,~~
63 ~~comprehensive policy statement, the Board of Education seeks~~
64 ~~to clarify and reaffirm its commitment to ensuring that all~~
65 ~~MCPS employees and students are provided with a work and~~
66 ~~learning environment that is free of sexual harassment.~~
67 ~~C. POSITION It is the responsibility of every supervisor~~
68 ~~and principal to recognize acts of sexual harassment and take~~
69 ~~necessary action to ensure that such instances are addressed~~
70 ~~swiftly, fairly, and effectively. Consequently, all MCPS~~
71 ~~administrative and supervisory staff in schools, offices, and~~
72 ~~other facilities shall be cognizant of, and responsible for,~~
73 ~~effectively implementing the sexual harassment complaint~~
74 ~~resolution procedures established in this policy. MCPS does not~~
75 ~~condone or tolerate any form of sexual harassment of, or by,~~
76 ~~staff or students. MCPS is committed to the creation and~~
77 ~~maintenance of a learning and work environment in which all~~
78 ~~persons who participate in school programs and activities can~~
79 ~~do so in an atmosphere free from all forms of sexual~~
80 ~~harassment. The superintendent of schools is directed to~~
81 ~~make every effort to make certain that everyone affected by~~
82 ~~this policy shall be informed of its provisions and also that~~
83 ~~infractions of it may be in violation of Federal or Maryland~~
84 ~~civil and/or criminal laws. It is the intention of MCPS to~~

85 ~~take whatever action may be needed to prevent, correct, and,~~
86 ~~if necessary, discipline behavior which violates this policy.~~

87
88 **31. Definitions**

89
90 **a) Sexual misconduct**

91
92 **(1) Sexual misconduct includes verbal, written, or**
93 **physical behavior, directed at an individual,**
94 **or against a particular group, because of that**
95 **individual's or group's actual or perceived**
96 **sex, sexual orientation, gender identity,**
97 **gender expression, marital status,**
98 **pregnancy/parenting status, and/or sex-based**
99 **stereotyping, based on conformance or**
100 **nonconformance to stereotypical notions of**
101 **masculinity or femininity, when the conduct is**
102 **unwelcome and meets the following criteria:**

103
104 **(a) Submission to or rejection of the conduct**
105 **is made either explicitly or implicitly**
106 **a term or condition of an individual's**
107 **education, or participation in a MCPS**
108 **activity or program; or**

109
110 **(b) Submission to or rejection of the conduct**
111 **is used as the basis for, or as a factor**
112 **in decisions affecting an individual's**

113 education, or participation in a MCPS
114 activity or program; or

115
116 (c) The conduct has the purpose or effect of
117 creating an intimidating, hostile, or
118 offensive environment for an
119 individual's education, or participation
120 in an MCPS activity or program; or

121
122 (d) The conduct unreasonably interferes with
123 an individual's education, or ability to
124 participate in a MCPS activity or
125 program; and

126
127 (2) The conduct is sufficiently severe or
128 pervasive that it alters the terms,
129 conditions, or privileges of an individual's
130 education, or participation in a MCPS activity
131 or program.

132
133 (3) Conduct may be verbal or nonverbal, written,
134 or electronic.

135
136 b) Sexual harassment

137
138 (1) Conduct considered sexual harassment is
139 actionable under Title IX of the Education
140 Amendments of 1972, and its implementing

141 regulations, and other civil rights laws,
142 including 42 U.S.C. Section 1983 (Title IX),
143 as interpreted by the U.S. Department of
144 Education, if a MCPS student experiences
145 defined as ~~unwelcome sexual advances, requests~~
146 ~~for sexual favors, and other inappropriate~~
147 ~~verbal, written, or physical conduct of a~~
148 ~~sexual nature that takes place under any of~~
149 ~~the following circumstances~~ **one or more of the**
150 **following:**

151
152 (a) ~~When submission to such conduct is made,~~
153 ~~explicitly or implicitly, a term or~~
154 ~~condition of employment, instruction, or~~
155 ~~participation in other school~~
156 ~~activities~~ **An MCPS employee conditioning**
157 **the provision of an MCPS aid, benefit, or**
158 **service on an individual's participation**
159 **in unwelcome sexual conduct; or**

160
161 (b) ~~When submission to or rejection of such~~
162 ~~conduct by an individual is used by the~~
163 ~~offender as the basis for making~~
164 ~~personnel or academic decisions~~
165 ~~affecting the individual subjected to~~
166 ~~sexual advances~~ **Unwelcome conduct**
167 **determined by a reasonable person to be**
168 **so severe, pervasive, and objectively**

169 offensive that it effectively denies a
170 person equal access to ~~MCPS's~~MCPS's
171 educational programs or activities; or

172
173 (c) ~~When such conduct has the effect of~~
174 ~~unreasonably interfering with the~~
175 ~~individual's work and/or academic~~
176 ~~performance or creating an intimidating,~~
177 ~~hostile, or offensive work or learning~~
178 ~~environment~~ "Sexual assault," "dating
179 violence," "domestic violence," or
180 "stalking" as defined in federal law.

181
182 (2) For purposes of this policy, conduct does not
183 constitute prohibited sexual harassment in
184 violation of this policy if it occurred -

185
186 (a) outside the United States; or

187
188 (b) under circumstances in which MCPS did not
189 have substantial control over both the
190 harasser and the context in which the
191 harassment occurred.

192
193 (3) Whether conduct is sufficient to constitute
194 sexual harassment under Title IX is evaluated
195 under the totality of the circumstances,
196 including the frequency of the conduct, its

197 severity, whether it is physically threatening
198 or humiliating, or merely an offensive conduct
199 or utterance. These factors are evaluated
200 from both subjective and objective viewpoints,
201 considering not only the effect that the
202 conduct actually had on the person, but also
203 the impact it would likely have had on a
204 reasonable person in the same situation.

205
206 (4) Conduct that does not meet the elements of
207 sexual harassment, as defined in federal law,
208 may constitute sexual misconduct which is also
209 subject to investigation and discipline in
210 accordance with Board Policy JHF, *Bullying,*
211 *Harassment, or Intimidation, the Student Code*
212 *of Conduct in MCPS, and the MCPS Employee Code*
213 *of Conduct.*

214 ~~(3)~~

215
216 c) Conduct that may be considered sexual misconduct or
217 sexual harassment may include, but is not limited
218 to, offensive jokes, slurs, epithets or name
219 calling, physical assaults or threats,
220 intimidation, ridicule or mockery, insults or put-
221 downs, offensive objects or pictures.

222
223 d) A third party is any person, other than a MCPS
224 employee or student, who participates in MCPS

225 activities or is present on MCPS property and is
226 under the authority or control of MCPS, and may
227 include, but is not limited to parents/guardians,
228 mentors, volunteers, vendors, contractors,
229 coaches, and others with whom employees and/or
230 students interact on MCPS property.
231

232 C. POSITION
233

234 1. The superintendent of schools is directed to make every
235 effort to make certain that everyone affected by this
236 policy shall be informed of its provisions and also
237 informed that infractions of the policy may be in
238 violation of state or federal civil and/or criminal
239 laws, resulting in criminal penalties.
240

241 2. This policy applies to all incidents of sexual
242 harassment of a MCPS student. It addresses incidents
243 committed by students, employees, or third parties.
244

245 3. Sexual harassment can occur between any persons, as
246 single or repeated incidents.
247

248 ~~43.~~ ~~Application~~ **Reporting and Supportive Measures**

249 ~~Sexual harassment committed by students of either~~
250 ~~sex against students or staff of the opposite or~~
251 ~~same sex constitutes inappropriate behavior.~~

252 a) Students, or their parents/guardians, experiencing

253 or witnessing sexual misconduct or sexual
254 harassment of a student should report the matter to
255 their principal or other MCPS staff member who will
256 guide them in the reporting and investigation
257 process as well as other supportive measures.
258

259 b) In ~~all~~ cases of sexual misconduct or sexual
260 harassment, all involved parties ~~students~~ will be
261 notified of available supportive measures. ~~that~~
262 ~~school counselors are available for counseling.~~
263 Supportive measures include, but are not limited
264 to, counseling, extensions of deadlines or other
265 course-related adjustments, modifications of class
266 schedules, or mutual restrictions on contact
267 between the parties.

268 c) The Board prohibits retaliation against an
269 individual who reports sexual misconduct or sexual
270 harassment in either an oral or written complaint,
271 or who participates in or cooperates with an
272 investigation.
273

274
275 5. Investigations
276

277 All allegations of sexual misconduct or sexual
278 harassment committed against students by students, MCPS
279 employees, contractors, vendors, or volunteers will be
280 investigated by the principal or designee in

281 **collaboration with the Student Welfare and Compliance**
282 **Unit and in accordance with requirements of state and**
283 **federal laws.**

284 ~~using the guidelines of Section E of this policy.~~

285
286 ~~2. Application to Employees~~

287
288 ~~This policy applies to all sexual harassment incidents~~
289 ~~involving MCPS employees. It addresses incidents~~
290 ~~committed by a person of either sex against a person of~~
291 ~~the opposite or same sex. It also establishes that it~~
292 ~~is against policy and recognizes that it is unlawful for~~
293 ~~MCPS employees to commit acts of sexual harassment.~~
294 ~~Depending on the severity of the offense, any MCPS~~
295 ~~employee who violates this policy shall be subject to~~
296 ~~appropriate disciplinary action. These may include but~~
297 ~~are not limited to oral or written reprimand,~~
298 ~~reassignment, demotion, suspension, or termination. In~~
299 ~~all cases, parties will be notified that the Employee~~
300 ~~Assistance Program is available for them.~~

301
302 ~~b) Dating or sexual relationships between employees~~
303 ~~and students or adult volunteers and students is~~
304 ~~prohibited.~~

305
306 ~~4. Application to Others~~

307
308 ~~Employees and students also have a right to be free from~~

309 ~~sexual harassment by others, including, but not limited~~
310 ~~to contractors, vendors, and volunteers. The supervisor~~
311 ~~or principal **or designee** is responsible for~~
312 ~~investigating and taking or recommending appropriate~~
313 ~~action to address complaints of sexual harassment~~
314 ~~committed by others.~~

315

316 D. DESIRED OUTCOMES

317

318 1. All MCPS employees and students are ~~being~~ educated to
319 recognize inappropriate sexual ~~behavior~~ **conduct** in all
320 ~~its forms~~ **that** ~~which~~ may constitute **sexual misconduct or**
321 sexual harassment. ~~and~~

322

323 2. **All students and employees** are enabled to ~~respond with~~
324 ~~actions to prevent, correct, and/or eliminate these~~
325 ~~offensive behaviors~~ **report sexual misconduct or sexual**
326 **harassment.** ~~from the MCPS system.~~

327

328 3. **Effective and legally compliant measures for reporting,**
329 **investigating, responding, and providing supportive**
330 **measures are established and implemented.**

331

332 4. **MCPS students, employees, and third parties shall learn**
333 **and work in an environment free of sexual harassment.**

334

335 E. ~~IMPLEMENTATION PRINCIPLES AND GUIDELINES AND STRATEGIES~~

336

337 ~~1. Principles and Guidelines~~

338 ~~a) Any MCPS employee or student who believes that he/she has~~
339 ~~been subjected to sexual harassment has the right to file a~~
340 ~~complaint and to receive prompt and appropriate handling of her/his~~
341 ~~complaint. In all phases of the complaint resolution process,~~
342 ~~every reasonable effort shall be made to maintain the~~
343 ~~confidentiality and protect the privacy of all parties, consistent~~
344 ~~with MCPS' responsibility to investigate and address such~~
345 ~~complaints.~~

346 ~~b) b) Any MCPS employee or student who believes that he/she~~
347 ~~has been subjected to sexual harassment should report such conduct~~
348 ~~promptly, orally or in writing, , to the immediate~~
349 ~~supervisor/principal , designated representative, or in a case~~
350 ~~involving an employee, directly to the Equal Employment~~
351 ~~Opportunity (EEO) Officer or Title IX compliance officer in the~~
352 ~~Department of Human Relations. The supervisor/principal will~~
353 ~~report to the EEO officer or Title IX compliance officer, any~~
354 ~~complaint received regarding sexual harassment involving~~
355 ~~employees. If the complaint involves MCPS employees, the~~
356 ~~investigation will be conducted by the supervisor/principal or the~~
357 ~~Department of Personnel Services through the Office of the~~
358 ~~Associate Superintendent for Supportive Services in coordination~~
359 ~~with the EEO Officer or Title IX compliance officer. If the~~
360 ~~complaint involves only students, the investigation will be~~
361 ~~carried out in accordance with the provisions in Regulation JFA-~~
362 ~~RA: *Implementation of Student Rights and Responsibilities* for~~
363 ~~allegations of misconduct.~~

364 ~~e) The full circumstances of the situation will be considered in~~

365 ~~the investigation of possible harassment incidents. In~~
366 ~~determining whether the alleged conduct constitutes sexual~~
367 ~~harassment, consideration shall be given to the record of the~~
368 ~~incident as a whole and to the totality of the circumstances,~~
369 ~~including the context in which the alleged incidents occurred.~~
370 ~~Employees and students should be aware that they are responsible~~
371 ~~for their conduct even if the conduct was not specifically intended~~
372 ~~to harass.~~

373 ~~d) Retaliation against an individual who either orally reports~~
374 ~~or files a written complaint regarding sexual harassment or who~~
375 ~~participates in or cooperates with an investigation is prohibited.~~
376 ~~The right to confidentiality, both of the complainant and the~~
377 ~~accused, shall be preserved consistent with applicable laws and~~
378 ~~MCPS' responsibility to investigate and address such complaints.~~

379 ~~e) MCPS employees and students should seek guidance, support,~~
380 ~~and/or advocacy in addressing matters related to sexual harassment~~
381 ~~or inappropriate behavior of a sexual nature. Employees of the~~
382 ~~Department of Human Relations, Employee Assistance, and the Office~~
383 ~~of Student Affairs are to be available for these services.~~

384 ~~2. Strategies~~

385
386 1. The superintendent **of schools** will - ~~direct the EEO~~
387 ~~officer to coordinate the implementation of this policy.~~
388 ~~Implementation activities will include, but not be~~
389 ~~limited to:~~

390
391 a) **appoint a Title IX Coordinator to coordinate the**
392 **implementation of this policy and related federal**

393 **and state laws and regulations;**

394

395 b) ~~a)~~ **develop regulations to implement this policy**
396 **in compliance with Title IX, including**
397 **investigative procedures that lead to the prompt**
398 **and equitable resolution of a complaint and the**
399 **provision of supportive measures as appropriate;**

400

401 c) ~~e~~**Educate** ~~ion~~ **of all staff** ~~and~~ **students and**
402 **parents/guardians** about this policy and associated
403 federal and state laws prohibiting **sexual**
404 **misconduct or** sexual harassment **and how a student**
405 **may file a complaint, or receive assistance,** by
406 widely disseminating information in documents such
407 as announcements, bulletins, brochures,
408 applications, contracts, and other communications;

409

410 ~~b) Publication and dissemination of information~~
411 ~~to all MCPS employees and students that will inform~~
412 ~~them of this policy, what sexual harassment is,~~
413 ~~what the individual can do, and where to go for~~
414 ~~help~~

415

416 d) ~~e)~~ **conduct professional development to support**
417 **MCPS employees in implementing this policy, and**
418 **provide -**

419

420 **(1) annual** ~~Development~~ **of** mandatory training

421 ~~seminars and in-service programs for all~~
422 ~~principals, supervisors, and administrators~~
423 ~~to **all employees to** ensure the appropriate~~
424 ~~implementation of this policy. These training~~
425 ~~programs shall be designed to:~~; and

426
427 **(2) ~~(1) a code of conduct and other guidance for~~**
428 **~~students, employees and others on MCPS~~**
429 **~~property with clear standards for responsible~~**
430 **~~behavior and appropriate conduct; and~~**

431 ~~Inform them of their duties, responsibilities,~~
432 ~~and potential liabilities as workplace~~
433 ~~managers when dealing with incidents involving~~
434 ~~sexual harassment~~

435 ~~(2) Assist them in developing training programs~~
436 ~~for MCPS employees dealing with sexual~~
437 ~~harassment to inform them of the policy, what~~
438 ~~sexual harassment is, what the individual can~~
439 ~~do, and where to go for help. The aim of such~~
440 ~~training is to ensure increased awareness of~~
441 ~~inappropriate behaviors prohibited by this~~
442 ~~policy and other state and federal laws on~~
443 ~~sexual harassment.~~

444 ~~(3) Provide clear guidelines and assistance for~~
445 ~~handling appropriately all incidents of sexual~~
446 ~~harassment in MCPS.~~

447
448 **ed) Implement the Comprehensive Health Education**

449 **instructional program for all students as required**
450 **by Maryland law; and**

451
452 **f) utilize other** ~~Appropriate~~ **opportunities as**
453 **appropriate** to educate students about matters
454 related to **sexual misconduct and** sexual harassment
455 in order to develop behaviors and attitudes that
456 mitigate against inappropriate sexual overtures and
457 pressures in school, work, and social settings.
458 ~~Programs and curricula such as the Comprehensive~~
459 ~~Guidance and Counseling Program, which already~~
460 ~~include related competencies or objectives, should~~
461 ~~include student materials regarding sexual~~
462 ~~harassment. K-12 curricular modifications that~~
463 ~~integrate activities and skill building to help~~
464 ~~students understand and overcome sexual harassment~~
465 ~~problems should be introduced as soon as possible.~~

466
467 **2. Any student who violates this policy shall be subject to**
468 **appropriate disciplinary action responsive to the**
469 **offense in accordance with the *MCPS Student Code of***
470 ***Conduct*.**

471
472 **3. ~~Depending on the severity of the offense, appropriate~~**
473 ~~disciplinary action, from a conference to suspension or~~
474 ~~expulsion, can be taken using the discipline policies~~
475 ~~adopted by the Board of Education.~~**At any time, a student**
476 **alleging a violation of Title IX, including but not**

477 limited to sexual harassment, may file a complaint with
478 the U.S. Department of Education's Office for Civil
479 Rights (OCR). A student is not required to file a
480 complaint with MCPS before or after making a complaint
481 with the U.S. Department of Education's Office for Civil
482 Rights:

483
484 U.S. Department of Education, Office of Civil
485 Rights
486 OCR Electronic Complaint Form
487 ([http://www.ed.gov/about/offices/list/ocr/complai](http://www.ed.gov/about/offices/list/ocr/complaintintro.html)
488 [ntintro.html](http://www.ed.gov/about/offices/list/ocr/complaintintro.html)); or

489 U.S. Department of Education, Office for Civil
490 Rights
491 Lyndon Baines Johnson Department of Education
492 Building
493 400 Maryland Avenue, SW
494 Washington, DC 20202-1100

495
496 4. At any time, a student alleging crimes of a sexual nature
497 may report or file a complaint directly with law
498 enforcement:

499
500 Montgomery County Police Department
501 Special Victims Investigation Division
502 100 Edison Park Drive
503 Gaithersburg, MD 20878

504

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

507
508

509 F. REVIEW AND REPORTING

510

511 1. The superintendent **of schools** will report quarterly to
512 the Board ~~of Education~~ on reported sexual harassment **and**
513 **sexual misconduct** incidents **and other compliance efforts**
514 **as required in this policy. The incident .**—Reports
515 shall include ~~quantitative as well as qualitative~~
516 ~~monthly incident~~ **aggregated incident** data **from the**
517 **preceding quarter. The compliance report shall include**
518 ~~for both MCPS staff and students;~~ complaint and
519 resolution process evaluations and improvements;
520 training statistics and schedules; —ongoing evaluation
521 of work environments in all MCPS schools, offices, and
522 work locations; and, any other activities being planned
523 or carried out by MCPS that are relevant to the
524 successful implementation of this policy.

525

526 2. This policy will be reviewed on an on-going basis in
527 accordance with the Board ~~of Education~~ policy review
528 process.

529

530

531

532 **Related Sources: Title VII of the Civil Rights Act of 1964, as**

533 amended, 42 U.S.C. §2000e et seq; Title IX of
534 the Education Amendments of 1972, 20 U.S.C.
535 §1681 et seq; 29 C.F.R. §1604,11; 34 C.F.R.
536 106.30(a); Annotated Code of Maryland,
537 Education Article, §6-104, §7-303.1,§7-424,
538 §7-424.1, §7-424.3, and §11-60; Annotated Code
539 of Maryland, State Government Article, Title
540 20, Human Relations; Student Code of Conduct
541 in MCPS; MCPS Employee Code of Conduct; MCPS
542 Guidelines for Student Gender Identity

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