Related Entries: ACA, ACF, ACH, ACH-RA, GKA-RA

Responsible Office: Chief of Staff, Montgomery County Public Schools – Student Welfare and Compliance Unit; Office of Employee Engagement and Labor Relations; Office of Human Resources and Development

Sexual Harassment of MCPS Employees

A. PURPOSE

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

To mandate the development of professional learning and educational programs designed to help MCPS employees recognize, understand, prevent, and take corrective action to end sexual harassment

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

B. ISSUE

1. The Montgomery County Board of Education (Board) does not tolerate sexual harassment of any kind of, or by,

employees, students, or third parties, as defined below, on MCPS 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. Employees, students, 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 harassment, and to the prevention, correction, and discipline of behavior that violates this policy. Actions by the Board to enforce this policy will be consistent with Board policies, MCPS regulations, and state and federal laws.

3. Sexual harassment is a violation of Title VII of the Civil Rights Act of 1964, amended in 1972 and 1991, and some forms of sexual harassment of employees, students, and third parties may be in violation of Title IX of the Educational Amendments of 1972 (Title IX). Some forms of sexual harassment may also constitute criminal conduct resulting in criminal penalties.

4. Sexual harassment against an individual may be actionable under either one or both of the legal standards set forth below:

a) Sexual harassment is actionable as employment discrimination if an individual experiences unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Such conduct constitutes sexual harassment when –

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment (i.e., quid pro quo sexual harassment); or

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; and/or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

b) Sexual harassment is actionable under Title IX, as interpreted by the U.S. Department of Education, if an individual experiences one or more of the following:

(1) A MCPS employee conditioning the provision of an aid, benefit, or service of MCPS on an individual's participation in unwelcome sexual conduct, or

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to a MCPS education program or activity, defined in Title IX regulations as locations, events, or circumstances over which MCPS exercised substantial control over both a complainant and a respondent and the context in which sexual harassment occured; or

(3) Sexual assault, dating violence, domestic violence, or stalking as defined under the U.S. Violence Against Women Act.

5. 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 employee or third party. It addresses incidents committed by employees, third parties, or students.

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

4. A report of sexual harassment involving an employee or third party may be made by anyone, including a person who has experienced sexual misconduct, or a third party or bystander who has information that sexual misconduct may have occurred. The report may be made in-person, by telephone, or by email to an employee's supervisor who will guide them in the reporting and investigation process as well as other supportive measures available from the Employee Assistance Program (EAP), to the Office of Employee Engagement and Labor Relations (OEELR), or to the sexual harassment reporting email drop box at COS-TitleIX@mcpsmd.org.

   a) If the subject of the complaint is the complainant's supervisor or is in a position of

authority in relation to the complainant, the employee may submit the complaint to the OEELR Department of Compliance and Investigations. The report should be made using the administrative complaint process set forth in MCPS Regulation GKA-RA, *Administrative Complaint*.

b) Filing of a complaint or otherwise reporting sexual harassment will not reflect upon an employee's status nor will it affect the employee's future employment opportunities, unless the complaint or report was knowingly false.

c) Retaliatory action shall not be taken against an employee or third party for filing a complaint of, or otherwise reporting, sexual harassment.

d) Further, any person who attempts to interfere, restrain, coerce, intimidate, harass, or discriminate against an employee who files a complaint, or any person who participates in the investigative process, will be subject to disciplinary action.

5. Allegations of sexual harassment committed against employees and/or third parties by employees, third parties, and/or students will be investigated by the Office of Employee Engagement and Labor Relations, with support as appropriate by the Student Welfare and Compliance Unit and in accordance with requirements of state and federal laws.

a) MCPS will make reasonable efforts to maintain the confidentiality of investigations, including claims by employees and third parties of sexual harassment. MCPS shall review all reports of sexual harassment, even when the complainant has made an anonymous report, and take appropriate action, including requesting a formal complaint, investigating complaints, and offering supportive measures.

b) MCPS also will respect and make reasonable efforts to maintain the confidentiality of the complainant, witnesses, and the individual against whom the complaint is filed, consistent with MCPS' legal obligations and the necessity to investigate allegations of sexual harassment and to take disciplinary actions when sexual harassment occurs.

6. In determining whether alleged conduct constitutes sexual harassment, MCPS will look at the record as a whole and at the totality of the circumstances, including the type and frequency of the conduct, the context in which the alleged incidents occurred, the severity of the conduct, whether it is physically threatening or humiliating, or merely an offensive act or utterance. These factors are evaluated from both subjective and objective viewpoints, considering not only the effect that the conduct actually had on the complainant, but also the impact it would likely have had on a reasonable person in the same situation. The

determination will be made from the facts, on a case by case basis under the preponderance of evidence standard.

7. Employees should be aware that they are responsible for their conduct even if the conduct was not specifically intended to harass or discriminate.

   a) Offensive conduct 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, and interference with work or school performance.

   b) Even if the conduct does not meet the definition of sexual harassment as defined in this policy, it may violate other laws, Board policies, as well as the *Montgomery County Public Schools Employee Code of Conduct* and other established standards of conduct, and will be treated accordingly. Nothing in this policy is intended to limit discipline for violation of other Board policies or MCPS regulations, when appropriate and consistent with the law.

   c) It is prohibited for any MCPS employee to engage or attempt to engage in a romantic or sexual relationship with a MCPS student, regardless of the age of the student, or engage in any conduct designed to promote such a relationship. Prohibited behaviors include, but are not limited

to, examples of unethical conduct set forth in the *Montgomery County Public Schools Employee Code of Conduct*.

8. MCPS employees should seek guidance, support, and/or advocacy in addressing matters related to sexual harassment. OEELR and Employee Assistance Program (EAP) are available for these services.

D. DESIRED OUTCOME

1. All students and employees are educated and enabled to report sexual harassment.

2. Effective and legally compliant measures for reporting, investigating, responding, and providing supportive measures are established and implemented.

3. MCPS employees, students, and third parties shall work and learn in an environment free of sexual harassment.

E. IMPLEMENTATION STRATEGIES

1. The superintendent of schools will –

a) appoint a Title VII Equal Employment Opportunity officer and a Title IX coordinator to coordinate implementation of this policy and related federal and state laws and regulations;

b) develop regulations for the implementation of this policy in compliance with Title VII and 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) 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.

2. Any MCPS employee who violates this policy shall be subject to appropriate disciplinary action responsive to the offense in accordance with appropriate negotiated agreements. Disciplinary action may include, but is not limited to, oral or written reprimand, reassignment, demotion, suspension, or termination.

3. 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*.

4. At any time, an employee alleging a violation of Title VII, including but not limited to sexual harassment, may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC). An employee is not required to file a complaint with MCPS before or after making a complaint with the EEOC.

U.S. Equal Employment Opportunity Commission
EEOC Public Portal (https://publicportal.eeoc.gov/); or
Baltimore Field Office
GH Fallon Federal Building
31 Hopkins Plaza, Suite 1432
Baltimore, MD 21201

5. At any time, an employee alleging a violation of Title IX may file a complaint with the U.S. Department of Education, Office of Civil Rights (OCR).

U.S. Department of Education, Office of Civil Rights
OCR Electronic Complaint Form (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

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

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

F. REVIEW AND REPORTING

1. The superintendent will report quarterly to the Board on reported sexual harassment 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, §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; Student Code of Conduct in MCPS; MCPS Employee Code of Conduct; MCPS Guidelines for Student Gender Identity

Policy History: New policy, adopted .