

REGULATION MONTGOMERY COUNTY PUBLIC SCHOOLS

Related Entries: ACA, ACA-RA, ACI, ACH, ACH-RA, GKA-RA
Responsible Office: Office of District Operations; Office of Human Resources and Development

Investigation of Title IX Sexual Harassment of MCPS Employees

I. PURPOSE

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

II. BACKGROUND

Sexual harassment is a violation of Title VII of the Civil Rights Act of 1964, amended in 1972 and 1991, and may be actionable as employment discrimination. Allegations of employment discrimination, including sexual harassment, should be reported as set forth in Regulation ACA-RA, *Nondiscrimination, Equity, and Cultural Proficiency*.

While Title IX is commonly understood as applicable to students, under certain circumstances set forth in this regulation, sexual harassment of employees may be actionable under Title IX, as interpreted by the U.S. Department of Education. In 2020, the U.S. Department of Education specified response and investigation protocols for Title IX complaints of sexual harassment that differ from response and investigation protocols for Title VII allegations of discrimination. Title IX protocols are set forth in this regulation.

Some forms of sexual harassment may also constitute criminal conduct, resulting in criminal penalties.

Employees, including supervisors, are advised to seek guidance, support, and/or information related to sexual harassment or inappropriate behavior of a sexual nature from the Employee Assistance Program (EAP); the Office of Human Resources and Development (OHRD), Department of Compliance and Investigations (DCI); or the Title IX coordinator in the Office of District Operations, Student Welfare and Compliance.

III. DEFINITIONS

- A. *Sexual harassment* is a violation of Title VII of the Civil Rights Act of 1964, amended in 1972 and 1991, and/or Title IX of the Education Amendments Act of 1972, as follows:
1. *Sexual harassment is actionable as employment discrimination under Title VII* if an individual experiences unwelcome sexual advances; requests for sexual favors; and other inappropriate verbal, written, or physical conduct of a sexual nature. Such conduct constitutes sexual harassment when—
 - a) submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment; or
 - b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; and/or
 - c) 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.
 2. *Sexual harassment is actionable as sex discrimination under Title IX*, as interpreted by the U.S. Department of Education, if an individual experiences one or more of the following:
 - a) An MCPS employee conditioning the provision of an aid, benefit, or service of MCPS on an individual’s participation in unwelcome sexual conduct.
 - b) 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 occurred.
 - c) “Sexual assault,” “dating violence,” “domestic violence,” or “stalking,” as defined under the U.S. Violence Against Women Act.

3. A *third party* is any person, other than an 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, vendors, contractors, coaches, volunteers, mentors, and others with whom employees and/or students interact on MCPS property.

III. PROCEDURES

A. Application to Employees

1. Board Policy ACI, *Sexual Harassment of MCPS Employees*; MCPS Regulation ACA-RA, *Nondiscrimination, Equity, and Cultural Proficiency*; and this regulation apply to sexual harassment incidents involving MCPS employees, committed by a person of either sex against a person of the opposite or same sex. It is against the law, Board policy, and MCPS regulations for MCPS employees to commit acts of sexual harassment.
2. It is the responsibility of supervisory staff to recognize acts of sexual harassment and take prompt necessary action.

B. Sexual Harassment Complaint

1. MCPS employees who believe that they have been subjected to sexual harassment should report the incident promptly. A third party may also make a report of sexual harassment.
2. The report can be made verbally or in writing.
3. MCPS will maintain the confidentiality of investigations, including claims by employees and third parties of sexual harassment, consistent with applicable laws and MCPS's responsibility to investigate and address such complaints.
4. There will be no adverse action against an individual for reporting an incident or participating in or cooperating with an investigation of an alleged incident.

C. Investigation of a Title VII Sexual Harassment Complaint

1. A sexual harassment complaint under Title VII may be reported by an employee or third party by completing Form 230-39, *Complaint of Discrimination or Workplace Bullying*; contacting DCI directly by emailing DCI@mcpsmd.org; or consulting with EAP or their principal/supervisor, as appropriate, who will refer the issue to DCI.

2. The investigation of a sexual harassment complaint under Title VII will follow the process in MCPS Regulation ACA-RA, *Nondiscrimination, Equity, and Cultural Proficiency*.

D. Investigation of a Title IX Sexual Harassment Complaint

1. To request an investigation of a complaint of Title IX sexual harassment, the employee must complete MCPS Form 0109.22 EGPS, *Title IX Discrimination Formal Complaint*, and submit it to the Title IX coordinator at TitleIX@mcpsmd.org, who will notify DCI.
2. A formal complaint of Title IX sexual harassment is subject to the following 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 Regulation ACA-RA, *Nondiscrimination, Equity, and Cultural Proficiency*; the *MCPS Student Code of Conduct*; or the *MCPS Employee Code of Conduct*.
 - 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/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 inculpatory and exculpatory 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 the 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 DCI director will evaluate the investigative report and any written response(s) and make a recommendation to the OHRD chief, who will issue the determination of responsibility within five duty days of reviewing these documents. The determination will be sent simultaneously to the parties.
 10. The determination of whether the alleged conduct constitutes sexual harassment under Title IX will be made under the preponderance of evidence standard.

- E. Appealing a Title IX Sexual Harassment Determination
1. A determination of responsibility by the OHRD chief may be appealed by either party to the chief operating officer (COO)/designee.
 2. An appeal must be filed by the party within 10 duty days 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) Procedural irregularity that affected the outcome of the investigation.
 - b) New evidence that was not reasonably available at the time of the determination regarding responsibility or time of the dismissal that could affect the outcome of the matter.
 - 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 COO hearing officer will be assigned.
 5. If an appeal is filed, the COO 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 duty days after receiving the written complaint, the COO 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.

F. 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.

Related Sources:

Civil Rights Act of 1964, Title VII; Title IX of the *Education Amendments Act of 1972*, as amended (34 C.F.R. §§ 106.44, 106.45); Equal Employment Opportunity Commission (EEOC) *Sexual Harassment Guidelines* (29 C.F.R. § 1604.11); *Violence Against Women Act of 1994*, 34 U.S.C. § 12291; Annotated Code of Maryland, Education Article § 7-424; Memorandum of Understanding¹; MCPS *Student Code of Conduct*; MCPS *Employee Code of Conduct*

Regulation History: New Regulation, February 1, 2023.

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*)

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.