

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

2

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

8

9

10 Sexual Harassment of MCPS Employees

11

12 A. PURPOSE

13

14 To ~~affirm the Montgomery County Board of Education's~~
15 ~~opposition to~~**prohibit** sexual harassment ~~in~~**on** Montgomery
16 County Public School (MCPS) **property**

17

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

22

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

25

26 B. ISSUE

27

- 28 1. The Montgomery County Board of Education (Board) does
29 not tolerate sexual harassment of any kind of, or by,
30 employees, **students, or third parties, as defined below,**
31 ~~in the MCPS work environment, on MCPS property,~~ under
32 any circumstances. **For the purposes of this policy,**
33 **MCPS property means any school or other facility**
34 **including grounds owned or operated by MCPS, MCPS buses,**
35 **and other MCPS vehicles and the facility and/or grounds**
36 **of any MCPS-sponsored program or activity, which**
37 **includes locations, events, or circumstances over which**
38 **MCPS exercises substantial control over the individuals**
39 **involved and the context in which alleged harassment**
40 **occurred.**
- 41
- 42 2. **Employees, students, and third parties have a right to**
43 **be free from sexual harassment.** The Board is committed
44 to the creation and maintenance of an ~~working~~
45 **educational** environment in which all persons are free ~~to~~
46 ~~work in an atmosphere free from all forms of sexual~~
47 ~~harassment, and to . It is the intention of the Board~~
48 ~~to take whatever action may be needed to~~ **the prevention,**
49 **correction, and discipline of** behavior which violates
50 this policy. **Actions by the Board to enforce this policy**
51 **will be consistent with Board policies, MCPS**
52 **regulations, and state and federal laws.**
- 53
- 54
- 55 3. Sexual harassment is a violation of Title VII of the
56 Civil Rights Act of 1964, amended in 1972 and 1991, **and**
57 **some forms of sexual harassment of employees, students,**
58 **and third parties may be in violation of Title IX of the**

59 **Educational Amendments of 1972 (Title IX)**. Some forms
60 of sexual harassment may also constitute criminal
61 conduct resulting in criminal penalties.

62

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

66

67 ~~4.a)~~ **Sexual harassment is actionable as employment**
68 **discrimination if an individual experiences** ~~means~~
69 unwelcome sexual advances, requests for sexual
70 favors, and other verbal or physical conduct of a
71 sexual nature. **Such conduct** constitutes sexual
72 harassment when -

73

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

78

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

83

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

88

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

93
94 ~~e~~(1) A MCPS employee conditioning the
95 provision of an aid, benefit, or service of
96 MCPS on an individual's participation in
97 unwelcome sexual conduct, or

98 ~~d~~(2) Unwelcome conduct determined by a
99 reasonable person to be so severe, pervasive,
100 and objectively offensive that it effectively
101 denies an individual equal access to a MCPS
102 education program or activity, defined in
103 Title IX regulations as locations, events, or
104 circumstances over which MCPS exercised
105 substantial control over both a complainant
106 and a respondent and the context in which
107 sexual harassment occurred; or

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

111
112 5. A third party is any person, other than a MCPS employee
113 or student, who participates in MCPS activities or is
114 present on MCPS property and is under the authority or
115 control of MCPS, and may include, but is not limited to,
116 parents/guardians, mentors, volunteers, vendors,
117 contractors, coaches, and others with whom employees
118 and/or students interact on MCPS property.

119

120 C. POSITION

121

122 1. The superintendent of schools is directed to make every
123 effort to make certain that everyone affected by this
124 policy shall be informed of its provisions and also
125 informed that infractions of the policy may be in
126 violation of state or federal civil and/or criminal
127 laws, **resulting in criminal penalties.**

128

129 2. This policy applies to all incidents of sexual
130 harassment of a MCPS employee **or third party.** It
131 addresses incidents committed by ~~staff~~**employees**, third
132 parties, or students.

133

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

136

137 4. **A report of sexual harassment involving an employee or**
138 **third party may be made by anyone, including a person**
139 **who has experienced sexual misconduct, or a third party**
140 **or bystander who has information that sexual misconduct**
141 **may have occurred. The report may be made in-person, by**
142 **telephone, or by email to** ~~Employees, or their coworkers,~~
143 ~~experiencing or witnessing sexual harassment should~~
144 ~~report the matter to their~~**an employee's** supervisor who
145 will guide them in the reporting and investigation
146 process as well as other supportive measures available
147 from the Employee Assistance Program (EAP), **to the**
148 **Office of Employee Engagement and Labor Relations**

149 (OEELR), or to the sexual harassment reporting email
150 drop box at COS-TitleIX@mcpsmd.org.
151

152 a) If the subject of the complaint is the
153 complainant's supervisor or is in a position of
154 authority in relation to the complainant, the
155 employee may submit the complaint to the OEELR
156 Department of Compliance and Investigations. The
157 report should be made using the administrative
158 complaint process set forth in MCPS Regulation GKA-
159 RA, *Administrative Complaint*.

160
161 a)b) Filing of a complaint or otherwise reporting sexual
162 harassment will not reflect upon an employee's
163 status nor will it affect the employee's future
164 employment opportunities, unless the complaint or
165 report was knowingly false.
166

167 ~~b)c) Nor shall~~ Retaliatory action **shall not** be taken
168 against an employee or third party for filing a
169 complaint of, or otherwise reporting, sexual
170 harassment.
171

172 e)d) Further, any person who attempts to interfere,
173 restrain, coerce, intimidate, harass, or
174 discriminate against an employee who files a
175 complaint, or any person who participates in the
176 investigative process, will be subject to
177 disciplinary action.
178

179 5. ~~All~~**Allegations** of sexual harassment committed against
180 employees **and/or third parties** by employees,
181 ~~contractors, vendors, volunteers~~**third parties, and/or**
182 students will be investigated by the Office of Employee
183 Engagement and Labor Relations, with support as
184 appropriate by the Student Welfare and Compliance Unit
185 and in accordance with requirements of state and federal
186 laws.

187
188 a) MCPS will make reasonable efforts to maintain the
189 confidentiality of investigations, including
190 claims by employees and third parties of sexual
191 harassment. MCPS shall **review all** ~~investigate any~~
192 reports of sexual harassment, even when the
193 complainant has made an anonymous report, **and take**
194 **appropriate action, including requesting a formal**
195 **complaint, investigating complaints, and offering**
196 **supportive measures.**

197
198 b) MCPS also will respect and make reasonable efforts
199 to maintain the confidentiality of the complainant,
200 witnesses, and the individual against whom the
201 complaint is filed, consistent with MCPS' legal
202 obligations and the necessity to investigate
203 allegations of sexual harassment and to take
204 disciplinary actions when sexual harassment occurs.

205 ~~e) In determining whether alleged conduct constitutes~~
206 ~~sexual harassment, MCPS will look at the record as~~
207 ~~a whole and at the totality of the circumstances,~~
208 ~~such as the nature of the sexual advances and the~~
209 ~~context in which the alleged incidents occurred.~~

210 ~~The determination of the legality of a particular~~
211 ~~action will be made from the facts, on a case by~~
212 ~~case basis.~~

213

214 6. **In determining whether alleged** ~~conduct is sufficient to~~
215 ~~constitutes~~ **sexual harassment, MCPS will look at the**
216 **record as a whole and at** ~~is evaluated under the~~ totality
217 of the circumstances, including the **type and** frequency
218 of the conduct, **the context in which the alleged**
219 **incidents occurred, its** ~~the~~ **severity of the conduct,**
220 whether it is physically threatening or humiliating, or
221 merely an offensive act or utterance. These factors are
222 evaluated from both subjective and objective viewpoints,
223 considering not only the effect that the conduct
224 actually had on the complainant, but also the impact it
225 would likely have had on a reasonable person in the same
226 situation. **The determination will be made from the**
227 **facts, on a case by case basis under the preponderance**
228 **of evidence standard.**

229

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

233

234 a) Offensive conduct may include, but is not limited
235 to, offensive jokes, slurs, epithets or name
236 calling, physical assaults or threats,
237 intimidation, ridicule or mockery, insults or put-
238 downs, offensive objects or pictures, and
239 interference with work or school performance.

240

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

251
252 c) **It is prohibited for any MCPS employee to engage or**
253 **attempt to engage in a romantic or sexual**
254 **relationship with a MCPS student, regardless of the**
255 **age of the student, or engage in any conduct**
256 **designed to promote such a relationship.**
257 **Prohibited behaviors include, but are not limited**
258 **to, examples of unethical conduct set forth in the**
259 **Montgomery County Public Schools Employee Code of**
260 **Conduct.** ~~Dating and sexual relationships between~~
261 ~~employees and students is prohibited regardless of~~
262 ~~the student's age.~~

263
264 8. MCPS employees should seek guidance, support, and/or
265 advocacy in addressing matters related to sexual
266 harassment. OEELR and Employee Assistance Program (EAP)
267 are available for these services.

268
269 D. DESIRED OUTCOME

270
271 1. All ~~MCPS employees and students~~ **and employees** are

272 educated **and enabled** to **report** ~~recognize inappropriate~~
273 ~~sexual conduct in all its forms which may constitute~~
274 ~~sexual misconduct or sexual harassment.~~

275 ~~1. All MCPS students and employees are enabled to respond~~
276 ~~with actions to prevent, correct, and/or eliminate~~
277 ~~sexual misconduct or sexual harassment from occurring in~~
278 ~~MCPS.~~

279
280 **2.** Effective and legally compliant measures for **reporting,**
281 **investigating, responding, and providing supportive**
282 **measures are established and implemented.**

283
284 ~~2-3.~~ **MCPS employees, students, and third parties shall work**
285 **and learn in an environment free of sexual harassment.**

286
287 E. IMPLEMENTATION STRATEGIES

288
289 1. The superintendent of schools will -

290
291 a) appoint a Title VII Equal Employment Opportunity
292 officer **and a Title IX coordinator** to coordinate
293 implementation of this policy and related federal
294 and state laws and regulations;

295
296 b) develop regulations for the implementation of this
297 policy in compliance with Title VII **and Title IX,**
298 including investigative procedures that lead to the
299 prompt and equitable resolution of ~~athe~~ complaint
300 **and the provision of supportive measures as**
301 **appropriate;**

302

303 c) conduct professional development to support MCPS
304 employees in implementing this policy, and provide
305 -

306
307 (1) annual mandatory training to all employees to
308 ensure the appropriate implementation of this
309 policy; and

310
311 (2) a code of conduct and other guidance for
312 students, employees and others on MCPS
313 property with clear standards for responsible
314 behavior and appropriate conduct.

315
316 2. Any MCPS employee who violates this policy shall be
317 subject to appropriate disciplinary action responsive to
318 the offense **in accordance with appropriate negotiated**
319 **agreements**. Disciplinary action may include, but is not
320 limited to, oral or written reprimand, reassignment,
321 demotion, suspension, or termination.

322
323 3. Any student who violates this policy shall be subject to
324 appropriate disciplinary action responsive to the
325 offense in accordance with the *MCPS Student Code of*
326 *Conduct*.

327
328 4. At any time, an employee alleging a violation of Title
329 VII, including but not limited to sexual harassment, may
330 file a complaint with the U.S. Equal Employment
331 Opportunity Commission (EEOC). An employee is not

332 required to file a complaint with MCPS before or after
333 making a complaint with the EEOC.

334
335 U.S. Equal Employment Opportunity Commission
336 **EEOC Public Portal (<https://publicportal.eeoc.gov/>); or**
337 **Baltimore Field Office**
338 **GH Fallon Federal Building**
339 **31 Hopkins Plaza, Suite 1432**
340 **Baltimore, MD 21201**

341 ~~[Field offices are not accepting reports at this time;~~
342 ~~must use online portal; will further research most~~
343 ~~appropriate contact information]~~

344
345 **5. At any time, an employee alleging a violation of Title**
346 **IX may file a complaint with the U.S. Department of**
347 **Education, Office of Civil Rights (OCR).**

348
349 U.S. Department of Education, Office of Civil
350 Rights
351 OCR Electronic Complaint Form
352 ([http://www.ed.gov/about/offices/list/ocr/complai](http://www.ed.gov/about/offices/list/ocr/complaintintro.html)
353 [ntintro.html](http://www.ed.gov/about/offices/list/ocr/complaintintro.html)); or
354 U.S. Department of Education, Office for Civil
355 Rights
356 Lyndon Baines Johnson Department of Education
357 Building
358 400 Maryland Avenue, SW
359 Washington, DC 20202-1100

360

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

364

365 Montgomery County Policy Department

366 ~~Sexual~~**Special** Victims Investigation Division

367 100 Edison Park Drive

368 Gaithersburg, MD 20878

369

370 F. REVIEW AND REPORTING

371

372 1. The superintendent will report quarterly to the Board on
373 reported sexual harassment incidents and other
374 compliance efforts as required in this policy. The
375 incident reports shall include aggregated incident data
376 from the preceding quarter. The compliance report shall
377 include complaint and resolution process evaluations and
378 improvements; training statistics and schedules; ongoing
379 evaluation of work environments in all MCPS schools,
380 offices, and work locations; and, any other activities
381 being planned or carried out by MCPS that are relevant
382 to the successful implementation of this policy.

383

384 2. This policy will be reviewed on an ongoing basis in
385 accordance with the Board policy review process.

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387

388

389 Related Sources: Title VII of the Civil Rights Act of 1964, as
390 amended, 42 U.S.C. §2000e et seq; Title IX of
391 the Education Amendments of 1972, 20 U.S.C.

392 §1681 et seq; 29 C.F.R. §1604,11; 34 C.F.R.
393 106.30(a); Annotated Code of Maryland,
394 Education Article, §6-104, §7-303.1, §7-424,
395 §7-424.1, §7-424.3, and §11-60; Annotated Code
396 of Maryland, State Government Article, Title
397 20, Human Relations; Student Code of Conduct
398 in MCPS; MCPS Employee Code of Conduct; MCPS
399 Guidelines for Student Gender Identity

400

401 Policy History: New policy, adopted .