

PRINCE GEORGE’S COUNTY PUBLIC SCHOOLS
Board of Education
Upper Marlboro, Maryland

0104
Policy No.

BOARD OF EDUCATION POLICY

BASIC COMMITMENTS

Title IX - Discrimination and Harassment on the Basis of Sex

I. POLICY STATEMENT

- A. The Prince George’s County Board of Education (“Board”) affirms its responsibility to provide safe and supportive learning and work environments that accept diversity and promote equity. The Board is committed to being in compliance with all anti-discrimination laws including Title IX of the Educational Amendments of 1972, which provides: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal Financial Assistance.
- B. The Board is also committed to being in compliance Title IX’s prohibition of disparate treatment of pregnant and parenting students on the basis of pregnancy, childbirth, false pregnancy, termination of a pregnancy, or recovery from any of these conditions.
- C. Prince George’s County Public Schools (“PGCPS”) does not tolerate discrimination or harassment on the basis of sex in its work environment, and the education program and activities against students, employees, applicants or third parties.

II. PURPOSE

- A. To prohibit sexual harassment, and discrimination on the basis of sex, and retaliation on PGCPS property and PGCPS activities against students, employees, applicants, or third parties for either.
- B. To establish a framework for effective procedures for addressing complaints of sexual harassment and/or discrimination based on sex.
- C. To mandate the development of educational professional development programs designed to help PGCPS employees and students recognize, understand, and report sexual harassment and/or discrimination based on sex.

III. **DEFINITIONS¹**

- A. *Actual knowledge* – Includes notice to any elementary or secondary school employee, or a report by the alleged victim or any third party to the Title IX Coordinator in person, or by email, phone or mail, of sexual harassment or allegations of sexual harassment.
- B. *Consent* –
 - 1. Consent is the unambiguous and voluntary agreement between all participants in each physical act within the course of interpersonal relationships, including respect for personal boundaries. Consent must be informed, voluntary, and mutual, and it can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, and/or duress are used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.
 - 2. Silence, absence of resistance, or a symptom of physical arousal does not imply consent. Past consent to sexual activity with a person does not imply ongoing future consent with that same person, or consent to that same sexual activity with another person.
 - 3. If a person is mentally or physically incapacitated or impaired such that the person is substantially incapable of understanding the fact, nature, or extent of the sexual situation, there is nonconsent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard or being asleep or unconscious.
 - 4. Under Maryland state law, a person under the age of sixteen is not capable of consenting to sexual activity, although criminal charges may vary based on the age differences between the participants.
- C. *Education program or activity* – includes locations, events, or circumstances over which the school exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, whether such programs or activities occurred on or off school property.
- D. *Parents* - Any one of the following individuals who are legally responsible for a student:
 - 1. Biological parent – a natural parent whose parental rights have not been terminated.
 - 2. Adoptive parent – a person who has legally adopted the student and whose parental rights have not been terminated.
 - 3. Custodian – a person or agency appointed by a court as the legal custodian of the student and granted parental rights and privileges.
 - 4. Guardian – a person who has been placed by a court in charge of the affairs of the student and granted parental rights and privileges.
 - 5. Caregiver – an adult resident of Prince George’s County who exercises care, custody or control over the student, but who is neither the biological parent nor legal guardian.

¹ The 2020 Title IX Regulations provide the terminology used for definitions in this policy and require their use in school policies and procedures when addressing Title IX matters.

E. *Parties*

1. *Complainant* – A student, employee, applicant or third party who is alleged to have been subjected to conduct that may constitute sex-based discrimination, including sex-based harassment or retaliation; or any other person who is alleged to have been subjected to conduct that may constitute sex-based discrimination, and who was participating or attempting to participate in a PGCPs' education program or activity at the time of the alleged sex-based discrimination.
2. *Respondent* – An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or discrimination based on sex.

F. *Retaliation* – Adverse action against an individual because they have made a protected disclosure or have participated in an investigation, proceeding or hearing involving a report or formal complaint of sexual harassment and discrimination, for the purpose of interfering with any right or privilege secured by Title IX. Adverse action includes actual or attempted acts of reprisal, threats, coercion, intimidation, interference, or similar improper acts.

G. *Sex-Based Discrimination* – Includes the sexual harassment definitions below, but is not limited to: failure to provide equal opportunities in athletics; discrimination in a school's science, technology, engineering, and math (STEM) courses and programs, and discrimination based on pregnancy, childbirth, related medical conditions, breastfeeding, or reproductive health decisions.

H. *Sexual Harassment* – Conduct on the basis of sex, which satisfies one of the following:

1. *Hostile Environment* – Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to PGCPs' education program or activity or denies an employee equal access to employment.
 2. *Quid Pro Quo* – Explicitly or implicitly conditioning the receipt of PGCPs program, activity, aid, benefit, or service on an individual's participation in or acceptance of unwelcome sexual conduct.
 3. *Single Instance of Sexual Harassment* – A single instance of sufficiently severe harassment on the basis of sex, including but not limited to a single instance of sexual assault, dating violence, or stalking, may have the systemic effect of denying the victim equal access to an education program or activity.
- J. *Sexual Assault* – An offense classified as a forcible or non-forcible sex offense under the Uniform Crime Reporting [UCR] system of the Federal Bureau of Investigation [FBI], including: rape, sodomy, sexual assault with an object, fondling, incest, statutory rape.

1. *Rape* – The carnal knowledge of a person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
2. *Sodomy* – The oral or anal sexual intercourse with another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
3. *Sexual Assault with an Object* – The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
4. *Statutory Rape* – Non-forcible sexual intercourse with a person who is under the statutory age of consent. Under Maryland law, the age of consent is 16 years of age, so long as the age of the participants is within three (3) years of each other.
5. *Fondling* – The touching underneath the clothing, of the private body parts (genitalia, buttock, or breast) of another person for the purpose of sexual gratification without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
6. *Incest* – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law including: (i) grandparent and grandchild; (ii) parent and child/stepchild/legally adopted child; (iii) siblings of half or full blood; or (iv) uncle or aunt and nephew or niece.
7. *Dating Violence* – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the duration of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:
 - a. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - b. Dating violence does not include acts covered under the definition of domestic violence²

² Maryland law defines “abuse” as when someone with whom you have a specific relationship commits one of the following against you: assault in the 1st or 2nd degree; an act that places you in fear of immediate serious bodily harm or actually causes you seriously bodily harm; rape in the 1st and 2nd degree; attempted rape, in any degree; sexual offense in the 3rd or 4th degree; attempted sexual offense, in any degree; stalking; false imprisonment; or revenge porn. MD Code, Fam. Law § 4-501(b)(1).

c. *Domestic Violence* includes felony or misdemeanor crimes of violence committed by:

- i. A current or former spouse or intimate partner of the Complainant,
- ii. A person with whom the Complainant shares a child in common,
- iii. A person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner,
- iv. A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the Maryland.
- v. Any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Maryland.

K. *Employees* - A full-time or part-time permanent or temporary worker, including a substitute teacher, employed by PGCPs.

L. *School Property* - Any property owned or leased by PGCPs or used by PGCPs for school-related and/or school-sponsored activities. The concept of *school property* extends to school activities such as field trips, use of parks and recreation facilities, and school buses, etc. For the purposes of this policy, facilities scheduled by PGCPs for students' use are considered an extension of school property.

M. *Stalking* – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for the person's safety or the safety of others; or
2. Suffer substantial emotional distress.
3. For the purposes of this definition:
 - a. Course of conduct means two (2) or more acts, including, but not limited to acts in which the stalker directly, indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

N. *Supportive Measure* – Supportive measures mean individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

1. Restore or preserve that party's access to the PGCPs' employment, education program or activities, including measures that are designed to protect the safety of the parties or PGCPs' workplace or educational environment; or
2. Provide support during the PGCPs's grievance procedures regarding sex-based discrimination, or during the informal resolution process, under this Policy and the accompanying administrative procedures.

O. *Third Party* – Any person, other than a PGCPs employee or student, who participates in activities of PGCPs or is present on PGCPs grounds or premises and is under the

authority or control of PGCPs, and may include, but is not limited to, parents/guardians, mentors, volunteers, vendors, contractors, members of a visiting athletic team and others with whom students interact during school or school-related activities

- P. *Title IX* -Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 *et seq.*, and implementing regulations promulgated by the United States Department of Education, 34 C.F.R. Part 106. Title IX requires educational institutions to maintain policies, practices, and programs that do not discriminate against anyone based on sex. Under this law, males and females are expected to receive fair and equal treatment in all arenas of public schooling: recruitment, admissions, educational programs and activities, course offerings and access, counseling, financial aid, employment assistance, facilities and housing, health and insurance benefits, marital and parental status, scholarships, sexual harassment, and athletics.
- Q. *Title IX personnel* – PGCPs staff who have been assigned tasks related to fulfilling the Title IX mandates, including, but not limited to: the Title IX Coordinator, investigator, and decision-maker.
1. *Title IX Coordinator* – The individual designated to be responsible for coordinating PGCPs' compliance with its obligations with Title IX.
 2. *Title IX Investigator*- A trained individual responsible for conducting impartial investigations into complaints of sex-based discrimination, harassment, and other violations under Title IX.
 3. *Title IX Decision Maker* – A trained individual with the authority to evaluate evidence and oversee hearings, and issue a written determination on a Title IX complaint.

IV. STANDARDS

- A. The Board prohibits sexual harassment and discrimination on the basis of sex of any person on school property, at school-sponsored activities or by the use of electronic technology or in any manner that substantially disrupts the orderly operation of a school or school-sponsored activity in PGCPs.
- B. The Superintendent/designee is required to provide equity and access for pregnant and parenting students' participation in a supportive school environment. Discrimination is prohibited against any student based on the student's current, potential, or past pregnancy or related conditions. Pregnant and parenting students must be allowed to participate in all aspects of the education program, including all academic, physical, and social programming and activities. Pregnant and parenting students must have access to a range of specific activities and policies that govern activities both in and outside the classroom, including but not limited to accommodations for instruction and access to designated school support staff.
- C. In addition, the Board prohibits reprisal or retaliation against individuals who report acts of sex-based discrimination or who are Complainants, witnesses, bystanders, or others with reliable information about acts of sex-based discrimination.
- D. The Board recognizes that the following elements must be implemented to address discrimination based on sex and/or sexual harassment.

1. Title IX personnel
 - a. Title IX Coordinator
 - b. The Superintendent/designee is responsible for assigning an impartial Investigator and impartial Decision Maker upon receipt of a Title IX complaint.
2. Professional Development
 - a. The Superintendent/designee shall require annual, mandatory professional development of all employees to support them in implementing this policy and its corresponding administrative procedure.
 - b. The Superintendent/designee shall ensure that Title IX personnel receive training on the definition of sexual harassment, the scope of the school's education program or activity, how to conduct an investigation and grievance process, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. These training materials shall be available to the public, upon request and posted on the PGCPs website.
3. Accessible Reporting to the Title IX Coordinator
 - a. The Superintendent/designee shall notify students, employees, applicants for admission and employment, parents of PGCPs students, and all associations of the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator.
 - b. The Superintendent/designee shall display the Title IX Coordinator's contact information on the PGCPs website, in the Student Rights and Responsibilities Handbook, the Title IX administrative procedure and the employee code of conduct.
4. PGCPs Reporting Options
 - a. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
 - b. Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address listed for the Title IX Coordinator. The Superintendent/designee shall develop a Title IX Formal Complaint form which may be used to make the report.
 - c. Violations of this policy may be reported by completing the Title IX Formal Complaint form, in writing, and submitting it to the Equity Assurance Office.
 - (1) Student Complaints: In addition to the student reports of sex discrimination, including sexual harassment, being made to the Title IX Coordinator, the student report may be made to any PGCPs employee, Volunteer, or contractor. Student Reports Received by PGCPs Employee, Volunteer or Contractor: Any school employee, volunteer or contractor who receives a report by a student alleging harassment or discrimination based on sex by an employee, volunteer, or student should obtain the basic facts of the incident(s) alleged but should not conduct any further investigation without direction from the Title IX Coordinator. All information received from the student must be forwarded to their

immediate supervisor or the Title IX Coordinator. If the report is given to the immediate supervisor, then the supervisor shall forward the report to the Title IX Coordinator immediately.

(2) Employee Complaints: Employee reports of violation of this policy may be made to supervisor(s)/directors, or the Title IX Coordinator, where applicable. If the report is given to the immediate supervisor, then the supervisor shall forward the report to the Title IX Coordinator immediately.

d. Applicant for Employment, Applicant for Student Enrollment or Third Parties: Applicants for employment, applicants for student enrollment or Third Parties may report violations of this policy in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, by any other means that results in the Title IX Coordinator receiving the person's verbal or written report or by submitting, in writing, the completed Title IX Formal Complaint form to the Equity Assurance Office.

5. Equitable Investigation Process

a. When the Superintendent/designee has actual knowledge, with or without a formal complaint, of a Title IX violation, they must promptly respond and take steps to end and remedy any unlawful discrimination and/or harassment.

b. The Superintendent/designee shall ensure that all e formal complaints of sexual harassment and/or discrimination based on sex under Title IX or if the school has actual knowledge of sexual harassment and/or discrimination based on sex if the acts occur within the United States and a PGCP's education program or activity are investigated within the established timeline.

c. The Superintendent/designee is responsible for gathering evidence, and not restricting the ability of the parties to discuss the allegations or gather evidence.

6. When PGCP has actual knowledge, with or without a formal complaint, of a Title IX violation, PGCP will promptly respond and take steps to end and remedy any unlawful discrimination based on sex and/or sexual harassment.

a. Grievance Process

(1) Complete confidentiality cannot be ensured because it cannot be predicted what will be discovered or if a hearing might result from the ultimate outcome of the investigation. However, PGCP shall take reasonable steps to protect the confidentiality and privacy of the parties and witnesses, during the pendency of PGCP's grievance procedures, provided that the steps do not restrict the ability of the parties to: obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. . In addition, these reasonable steps shall be consistent with PGCP's legal obligations, including the necessity to thoroughly investigate allegations of sex-based discrimination and to implement remedies and disciplinary consequences when it determines that sex-based discrimination occurred. Information will only be shared on a "need to know" basis.

(2) The Title IX decision maker is required to objectively evaluate all of the relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a Complainant, Respondent, or witness.

(3) The Title IX decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding responsibility with findings of fact, conclusions

about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the Respondent, and whether remedies will be provided to the complainant.

- (4) Remedies, which are required to be provided to a Complainant when a Respondent is found responsible, must be designed to maintain the Complainant's equal access to education and may include the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
- (5) The Title IX decision maker's written determination must be sent simultaneously to the parties along with information about how to file an appeal.

E. Informal Resolution

1. The Superintendent/designee, in their discretion, may choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution.
2. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
3. The informal resolution process shall not be available to resolve allegations that an employee sexually harassed a student.

F. Appeals

1. The Complainant or the Respondent who wishes to appeal a determination regarding responsibility, and from a dismissal of a formal complaint or any allegations therein, on the following bases:
 - a. procedural irregularity that affected the outcome of the matter;
 - b. newly discovered evidence that could affect the outcome of the matter; and/or
 - c. Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter must submit a written appeal to the Office of Appeals within ten (10) business days of the timestamp on the email containing the determination.
2. An appeal from the decision by the Office of Appeals to the Board of Education must be made in writing and received by the Board Office within 30 calendar days of the date on the decision letter by the Office of Appeals, acting as the Superintendent's designee.
3. Circumstances in which in PGCPs can dismiss the formal complaint consist of:
 - a. If the conduct alleged in the formal complaint does not constitute discrimination or harassment on the basis of sex if proved, did not occur in PGCPs' worksite, education program or activity, or did not occur against a person in the United States;

- b. If any time during the investigation the Complainant withdraws the complaint in writing to the Title IX Coordinator;
- c. The Respondent is no longer affiliated with PGCPs; or
- d. Specific circumstances prevent PGCPs from gathering evidence sufficient reach a determination as to the formal complaint or allegations therein.

All dismissals will be issued in writing to the parties and the parties can appeal the dismissal.

G. Record Retention

1. The Superintendent/designee shall maintain all records related to a Title IX complaint for a seven (7) year retention period. These records include, but are not limited to the following:
 - a. Each sexual harassment investigation including any determination regarding responsibility;
 - b. Any disciplinary sanctions imposed on the Respondent and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
 - c. Any appeal and the results of the appeal;
 - d. Any informal resolution and the results of the resolution;
 - e. All materials used to train Title IX personnel; and
 - f. Any records of actions, including supportive measures; taken in response to a report or formal complaint of sexual harassment.

H. Retaliation

1. The Superintendent/designee is required to keep the identity of complainants, Respondents, and witnesses, confidential, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. –
2. Filing of a complaint or otherwise reporting sex-based discrimination will not reflect upon an employee's or student's status, or will it affect the student's future education program or the employee's future employment opportunities, unless the complaint or report was knowingly and materially false.
2. Retaliation against an employee who in good faith filed a report of an alleged Title IX violation is a violation of Title IX, Board Policy 0109 and Administrative Procedure. 2200.
3. Complaints alleging retaliation may be filed with the Title IX Coordinator.
4. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

I. Alternative Formal Complaint Options

Any individual has the right to pursue other avenues of recourse, which may include filing charges with the external agencies listed below:

1. **U.S. Department of Education**

Office for Civil Rights

Lyndon Baines Johnson Department of Education Building

Address: 400 Maryland Avenue, SW

Washington, DC 20202-1100

Telephone: 800-421-3481

TTY: 800-877-8339

Fax: 202-245-8392

Email: OCR@ed.gov

Website: <https://ocrcas.ed.gov/contact-ocr>

2. **U.S. Equal Employment Opportunity Commission**

Baltimore Field Office, City Crescent Building

10 S. Howard Street, Third Floor

Baltimore, MD 21201

Telephone 1-800-669-4000

Direct: 410-801-6685

TTY: 1-800-669-6820

Fax: 443-992-7889

Email: BFOContact@eeoc.gov

V. IMPLEMENTATION RESPONSIBILITIES

- A. The Superintendent shall develop administrative procedures consistent with this policy and monitor its implementation by providing reports to the Board, as needed.
- B. The Superintendent shall take immediate action to correct any violation of Title IX in the operation of the school system's programs.
- C. The Superintendent shall designate a Title IX Coordinator to oversee implementation and compliance with the regulations of the Title IX Educational Amendments of 1972.

VI. REFERENCES

A. Legal

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, 34 C.F.R. § 106 *et seq.*

Annotated Code of Maryland, Education Article, §§ 6-104, 6-113, 6-113.2, 7-303.1, 7-424, 7-424.1, and 7-424.3

Annotated Code of Maryland, State Government Article, Title 20, Human Relations Code of Maryland Regulations §13A.12.05.02

B. Board Policy

Policy 0109 – Financial Impropriety, Improper Conduct and Whistleblower Protection

Policy 0125 – Nondiscrimination

Policy 0127 – Reporting Suspected Child Abuse and Neglect

Policy 4400 – Inappropriate Relationships between Students, Employees, Volunteers, and Contractors

Policy 5119.3 – Pregnant and Parenting Students
Policy 5143 - Bullying, Harassment or Intimidation

- C. Superintendent’s Administrative Procedures
 - Administrative Procedure 0104 – Discrimination and Harassment on the Basis of Sex (Title IX)
 - Administrative Procedure 2200 - Financial Impropriety, Improper Conduct and Whistleblower Protection
 - Administrative Procedure 4170 – Discrimination and Harassment
 - Administrative Procedure 5119.3 – Educational Programs – Services for Pregnant and Parenting Students

VII. HISTORY

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