



Frederick County Public Schools
Board of Education
TITLE IX SEXUAL HARASSMENT
Policy 116

A. Policy Purpose

To provide a safe, welcoming and inclusive environment that is free from discrimination and harassment based on a person's membership in a protected class.

B. Definitions

1. "Complainant" is defined to mean an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
2. "Dating Violence" is defined as violence committed by a person:
 - a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and,
 - b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship;
 - ii. The type of relationship;
 - iii. The frequency of interaction between the persons involved in the relationship.
3. "Decision-Maker" is defined to mean the Title IX Coordinator, who is responsible for making a determination regarding responsibility in response to an investigation of sexual harassment triggered by a formal complaint.
4. "Domestic Violence" is defined to mean felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
5. "Education program or activity" is defined to mean locations, events, or circumstances over which Frederick County Public Schools (FCPS) exhibits substantial control over both the Respondent and the context in which the sexual harassment occurred.
6. "Formal complaint" is defined to mean a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that FCPS investigate the allegation of sexual harassment. Formal complaints may be filed with the Title IX Coordinator by mail or by electronic mail. A "document filed by a Complainant" means a document or electronic submission (such as electronic mail) that

contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint. Although third parties may not file formal complaints, the Title IX Coordinator may sign a formal complaint based upon a third-party complaint or based upon an informal complaint by a Complainant. A formal complaint signed by the Title IX Coordinator does not make the Title IX Coordinator a party in the grievance process described below. The Title IX Coordinator may sign a formal complaint over a Complainant's objections in order to ensure that FCPS does not respond with deliberate indifference to sex discrimination, including sexual harassment, in its programs and activities.

7. "Investigative Report" is defined to mean a written account of the findings of the investigation conducted in response to a formal complaint.
8. "Investigator" is defined as the official responsible for investigating and responding to a formal complaint.
9. "Member of the FCPS School Community" is defined as a Board member, FCPS employee, FCPS volunteer, FCPS student, or any other person who participates in activities of FCPS or is present on FCPS grounds or premises and is supervised or sanctioned by FCPS.
10. "Preponderance of the evidence" is defined to mean evidence that is of greater weight or more convincing than the evidence to the contrary; evidence which shows that something is more likely than not to be true or 50.1% likely to have occurred.
11. "Protected Class" is defined to mean to FCPS applicants, employees, and former employees who are protected from employment discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability, and genetic information (including family medical history).
12. "Remedies" is defined as individualized measures provided to a Complainant designed to restore or preserve the Complainant's equal access to the education program and activities of the school system when a Respondent is found responsible for sexual harassment.
 - a. Remedial measures available to a Complainant following a determination of responsibility include counseling, mental health services referral, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual or one-way restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring, and other measures determined to be necessary to restore or preserve the Complainant's equal access to the education program and activities, regardless of whether such measures impose a burden on the respondent or are punitive or disciplinary in nature. Note: Remedies are different than supportive measures.
13. "Removal" is defined to mean the discontinuation of the Respondent's attendance or participation in an FCPS education program or activity on an emergency basis.

14. "Report" is defined to mean a communication whether verbal or written, in which any person notifies the Title IX Coordinator of sexual harassment.
15. "Respondent" is defined as the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
16. "Retaliation" is defined as:
 - a. Unfavorable differential treatment of a person because that person has opposed any act or practice which is unlawful under Title IX or has made a charge, testified, assisted or participated in an investigation, proceeding or other matter pursuant to Title IX; or
 - b. Threatening, coercing, intimidating or interfering with any person because that person has opposed any act or practice which is unlawful under the Title IX or has made a charge, testified, assisted or participated in an investigation, proceeding or other matter pursuant to the Title IX.
17. "Sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation and includes the following:
 - a. Sex Offenses, Forcible – Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
 - i. Forcible Rape – Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - ii. Forcible Sodomy – Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - iii. Sexual Assault with an Object – To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - iv. Forcible Fondling – The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - b. Sex Offenses, Nonforcible – Nonforcible sexual intercourse.
 - i. Incest – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Maryland law.
 - ii. Statutory Rape – Nonforcible sexual intercourse with a person who is under the statutory age of consent in Maryland.

18. “Sexual harassment” is defined to mean conduct on the basis of sex that satisfies one or more of the following:
- a. An employee of FCPS conditioning the provision of an aid, benefit, or service of FCPS 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 a person equal access to an FCPS education program or activity.
 - c. “Sexual harassment” may include, but not be limited to, the following examples:
 - i. Verbal harassment, such as derogatory comments, jokes, name calling, or slurs;
 - ii. Pressure for sexual activity;
 - iii. Unnecessary or offensive touching, inappropriate patting or pinching, or impeding or blocking a person's physical movement;
 - iv. Intentional brushing against a person's body;
 - v. Visual harassment, such as derogatory or offensive posters, cards, emails, pictures, calendars, cartoons, graffiti, or drawings;
 - vi. Demanding sexual favors accompanied by implied or overt threats of preferential treatment with regard to an individual's employment or educational status; or
 - vii. Demanding sexual favors accompanied by implied or overt threats concerning an individual's employment or education.
 - d. Pursuant to Maryland law, State Government Article § 20-601(h), harassment includes unwelcome and offensive conduct, which need not be severe or pervasive, when conduct is not a requirement when: (1) submission to the conduct is made either explicitly or implicitly a term or condition of employment of an individual; (2) submission to or rejection of the conduct is used as a basis for employment decisions affecting the individual; or (3) based on the totality of the circumstances, the conduct unreasonably creates a working environment that a reasonable person would perceive to be abusive or hostile.
19. “Student Code of Conduct” as referenced in [FCPS Regulation 403-01](#), *Student Discipline*.
20. “Stalking” is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.
21. “Supportive measures” is defined to mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to an FCPS education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the FCPS educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of schools or other buildings operated by FCPS, and other similar measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

22. "Title IX" is defined to mean Title IX of the Education Amendments of 1972, codified at 20 U.S. Code Section 1681, *et seq.* and its implementing regulations codified at 34 Code of Federal Regulations (CFR) Part 106.1, *et seq.* which, in pertinent part, prohibit discrimination on the basis of sex in employment with respect to access to facilities, programs or activities and prohibit sexual harassment.
23. "Title IX Coordinator" is defined to mean the individual designated by FCPS to:
 - a. oversee the FCPS response to sexual harassment reports and complaints, and identify and address any patterns or systemic problems revealed by such reports and complaints;
 - b. coordinate, conduct, and/or delegate sexual harassment investigations;
 - c. oversee, review content, and, in collaboration with other FCPS offices, develop the training plan, and conduct training for all responsible employees on sexual harassment issues;
 - d. ensure that appropriate policies are in place for responding to complaints of sexual harassment against faculty, staff, and students;
 - e. work with local law enforcement to ensure coordinated responses to sexual harassment cases;
 - f. maintain accurate documentation and logs related to the Maryland State Department of Education (MSDE) reports; and,
 - g. receive all reports of sexual harassment and maintain all records related to Title IX sexual misconduct.

C. Policy Statement

1. The Board of Education of Frederick County (Board) prohibits discrimination on the basis of sex in its educational program, activities, or employment as required by Title IX of the 1972 Education Amendments and recognizes sexual harassment as a form of sexual discrimination.
2. It is the policy of the Board to maintain a learning and working environment that is free from sexual harassment. The Board believes that sexual harassment is offensive and morally wrong. Therefore, the Board prohibits sexual harassment of, or by, employees, students, volunteers, vendors, or others having business or contacts with the school system. All complaints of sexual harassment will be investigated and appropriate action taken to end the harassment and protect the victim from retaliation.
3. Sexual harassment is prohibited in FCPS, its properties, activities, programs and in employment whether occurring on FCPS premises, FCPS's controlled properties, or at activities or functions supervised and sanctioned by FCPS. Conduct is not deemed sexual harassment for purposes of this policy, if the conduct occurred (1) outside the United States, or (2) under circumstances in which the school system did not have substantial control over both the harasser and the context in which the harassment occurred. Conduct that is determined not to meet the definition of "sexual harassment" set forth in this policy, may violate other Board policies, FCPS regulations or established standards of conduct and will be treated accordingly. For example, conduct that does not meet the definition of Title

IX sexual harassment above may nevertheless violate other Board policies. Nothing in this policy is intended to limit discipline for violation of other Board policies or FCPS regulations when appropriate and consistent with law. (Refer to [Board Policy 309](#), *Discrimination and Harassment – Employees/Applicants/Community Members.*)

4. Sexual harassment behavior between an employee and a student may also be deemed a form of child sexual abuse as defined as “an act by an adult involving a minor or a student that constitutes a sexual offense under the laws of the state, or any sexual contact between an adult and a minor” as stipulated in Education Article, *Annotated Code of Maryland*, §6-113.1 and [Board Policy 418](#), *Child Abuse and Neglect* and [FCPS Regulation 400-47](#), *Reporting Abuse and Neglect*. The relationship between students and staff is to be of a professional nature. Because school personnel have the responsibility for the supervision of children, interactions with students should remain clearly within the appropriate confines of a professional staff/student relationship. Therefore, asking for a date, dating or exploiting the student relationship by soliciting or actually engaging in sexual relations is not to occur between FCPS employees and students. Such action may be grounds for discipline up to and including termination, suspension or revocation of a professional certificate in accordance with Maryland law, and criminal sanctions.
5. The Board is committed to educating its employees and students regarding the prevention and elimination of sexual harassment.

D. Implementation

The Superintendent is directed to provide a regulation to establish a procedure for individuals to report allegations which will be appropriately investigated and acted upon. The regulation shall also outline training procedures regarding the prevention and elimination of sexual harassment.

E. Related Information

1. **Board Policy**
 - a. [Policy 309](#), *Discrimination and Harassment - Employees/Applicants/Community Members*
 - b. [Policy 418](#), *Child Abuse and Neglect*
 - c. [Policy 437](#), *Bullying/Harassment/Intimidation*
2. **FCPS Regulations**
 - a. [Regulation 400-47](#), *Reporting Abuse and Neglect*
 - b. [Regulation 400-48](#), *Bullying/Harassment/Intimidation Complaint Process for Students*
 - c. [Regulation 403-01](#), *Student Discipline*
3. **FCPS Forms**
 - a. [Bullying, Harassment, or Intimidation Reporting Form \(Students\)](#)
 - b. [Discrimination and Harassment Complaint Form \(Employees, Applicants, and Community Members\)](#)

4. **FCPS Resources**

- a. [FCPS Notice of Non-Discrimination Website](#)

5. **Federal Law**

- a. Title IX of the 1972 Education Amendments (20.U.S.C. § 1681) and U.S. Department of Education Regulations Implementing Title IX (34 C.F.R. Part 106)
- b. Title VII of the Civil Rights Act of 1964, 1991
- c. 20 U.S.C. § 1092(f)(6)(A)(v)
- d. 34 U.S.C. § 12291(a)(10)
- e. 34 U.S.C. § 12291(a)(8)
- f. 34 U.S.C. § 12291(a)(30)

6. **Maryland Statutes**

- a. Md. Code Ann., State Govt § 20-602, *Definitions*
- b. Md. Code Ann., Educ. § 6-113.1, *Adoption of Policies to Support the Prevention of Child Sexual Abuse*

F. Policy History (Maintained by Legal Services)

<i>Responsible Office</i>	Human Resources; Legal Services
Adoption Dates	06/23/21
Review Dates	2022, 2023
Revision Dates	03/23/22, 02/28/24