

## Background

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Maryland State government is dedicated to a strong policy against discrimination on the basis of any factor prohibited by law, including sex, as set forth in Title VII of the Civil Rights Act of 1964; the Annotated Code of Maryland State Personnel and Pensions Article, Title 5, Subtitle 2; the Annotated Code of Maryland, State Government Article, Title 20; Maryland Code of Fair Employment Practices (Executive Order 01.01.2007.16) and the United States Equal Employment Opportunity Commission Policy Guidance on Sexual Harassment. Our commitment to the prohibition of sex discrimination extends to those who participate in our education programs and activities. As the State's education agency and a recipient of federal funding, we also enforce Title IX of the Education Amendments of 1972 (Title IX).

Title IX prohibits discrimination based on sex in education programs and activities that receive federal financial assistance. Title IX states "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity received Federal financial assistance[.]" All federal agencies that provide grants of financial assistance are required to enforce Title IX's nondiscrimination mandate.

### NONDISCRIMINATION POLICY & NOTICE OF NONDISCRIMINATION

Maryland State Department of Education (MSDE) does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission and employment.

MSDE's nondiscrimination policy and grievance procedures can be located at MSDE's Title IX Applicable Guidance and Compliance [webpage](#).

To report information about conduct a program or activity operated by MSDE that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer MSDE's Title IX Applicable Guidance and Compliance [webpage](#).

Inquiries about Title IX may be referred to MSDE's Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or both. MSDE's Title IX Coordinator is:

Delinda Johnson Blake, Director  
Office of Equity Assurance and Compliance, Room 610  
200 West Baltimore Street, Baltimore, Maryland, 21201  
410-767-1126 (o) / 443-928-8236 (c)  
[Delinda.blake1@maryland.gov](mailto:Delinda.blake1@maryland.gov)  
Deaf and/or Hard of Hearing Use Relay

## Grievance Procedure for Complaints of Sex Discrimination

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Maryland State Department of Education (MSDE) has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

### COMPLAINTS:

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that MSDE investigate and make a determination about alleged discrimination under Title IX:

- A “complainant,” which includes:
  - a student or employee of MSDE who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  - a person other than a student or employee of MSDE who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in MSDE’s education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- MSDE’s Title IX Coordinator.

A person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- Any student or employee of MSDE; or
- Any person other than a student or employee who was participating or attempting to participate in MSDE’s education program or activity at the time of the alleged sex discrimination.

MSDE may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

**BASIC REQUIREMENTS OF TITLE IX GRIEVANCE PROCEDURES:**

MSDE will treat complainants and respondents equitably.

MSDE requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.

MSDE presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

MSDE has established the following timeframes for the major stages of the grievance procedures:

Employees and Applicants must file a written complaint with the Title IX Coordinator within **1 year** after the complainant knew, or reasonably should have known, of the alleged violation in accordance with the State's Fair Employment Practices Policy (SPP-5-211). If the complainant is alleging harassment in violation of State Government Article § 20-606(a)(5), a complaint must be filed within **two years** of the alleged violation.

Students and other persons who were participating or attempting to participate in MSDE's education program or activity at the time of the alleged sex discrimination, shall file a written complaint with the Title IX Coordinator within 60 calendar days of the alleged violation or when the complaint learned of the alleged violation.

Upon receiving the written complaint, MSDE will evaluate to determine whether it will authorize an internal complaint of the allegations and provide a written response to the complainant within 15 days.

Investigations and final determinations of Title IX complaints must be issued to the complainant within 60 calendar days of receipt of the written complaint.

Employees and applicants may appeal the determination to the Office of the Statewide EEO Coordinator within 10 calendar days of receiving the determination notice from MSDE.

Students and other persons who were participating or attempting to participate in MSDE's education program or activity may appeal the determination to the State Superintendent of schools within 15 calendar days.

MSDE has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay: MSDE may request an additional 30 days to investigate by receiving written authorization from the complainant.

MSDE will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including speaking to witnesses; consulting with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

MSDE will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by MSDE to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless MSDE obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

#### **NOTICE OF ALLEGATIONS:**

Upon initiation of MSDE's Title IX grievance procedures, MSDE will notify the parties of the following:

- MSDE's Title IX grievance procedures and any informal resolution process;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited; and
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. [If MSDE provides a description of the evidence: The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.]

If, during an investigation, MSDE decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, MSDE will notify the parties of the additional allegations.

**DISMISSAL OF A COMPLAINT:**

MSDE may dismiss a complaint of sex discrimination if:

- MSDE is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in MSDE's education program or activity and is not employed by MSDE;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and MSDE determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- MSDE determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, MSDE will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, MSDE will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then MSDE will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

MSDE will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then MSDE will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome.
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal is appealed, MSDE will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties, where applicable;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;

- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, MSDE will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within MSDE's education program or activity

### **INVESTIGATION:**

MSDE will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on MSDE—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

MSDE will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible.

MSDE will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

MSDE will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- MSDE will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. [If MSDE provides a description of the evidence: MSDE will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party].
- MSDE will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- MSDE will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

**QUESTIONING THE PARTIES AND WITNESSES:**

MSDE will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. The investigation will include, but is not limited to, interviewing the complainant, the accused, other relevant witnesses determined by the decision-maker, review of sufficient documentation and/or media. The decisionmaker will take notes; however, interviews are not recorded without the consent of all parties present in accordance with Maryland regulations.

**DETERMINATION WHETHER SEX DISCRIMINATION OCCURRED:**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, MSDE will:

- Notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
- Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the MSDE will, as appropriate:
  - Coordinate the provision and implementation of remedies to a complainant and other people MSDE identifies as having had equal access to MSDE's education program or activity limited or denied by sex discrimination;
  - Coordinate the imposition of any disciplinary sanctions on a respondent,
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within MSDE's education program or activity.

**APPEAL OF DETERMINATIONS:**

MSDE offers the following process for appeals from a determination whether sex discrimination occurred:

Employees and applicants may appeal the determination to the Office of the Statewide EEO Coordinator within 10 calendar days of receiving the determination notice from MSDE.

Students and other persons who were participating or attempting to participate in MSDE's education program or activity may appeal the determination to the State Superintendent of schools within 15 calendar days.

**INFORMAL RESOLUTION:**

In lieu of resolving a complaint through MSDE's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. MSDE does not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

**SUPPORTIVE MEASURES:**

Under the final regulations, recipients are required to offer supportive measures, as appropriate, to restore or preserve a party's access to the recipient's education program or activity or provide support during a recipient's grievance procedures or the informal resolution process. Supportive measures cannot be unreasonably burdensome to a party and cannot be imposed for punitive or disciplinary reasons.

MSDE will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to MSDE's education program or activity or provide support during MSDE's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

**DISCIPLINARY SANCTIONS AND REMEDIES:**

MSDE will take reasonable steps to address any violations of the policy and to restore or preserve equal access to the MSDE's education programs or activities. Sanctions for findings of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline for similar violations, or both. When a respondent is found responsible for the prohibited behavior as alleged, remedies shall be provided to the complainant. Remedies are designed to maintain the complainant's equal access to education and may include supportive measures or remedies that are punitive or would pose a burden to the respondent.



## Appendix: Definitions (106.2)

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**Complainant** means:

- (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or
- (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

**Complaint** means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or its regulations.

**Disciplinary sanctions** mean consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on sex discrimination.

**Party** means a complainant or respondent.

**Relevant** means related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

**Remedies** means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

**Respondent** means a person who is alleged to have violated the recipient's prohibition on sex discrimination.

**Retaliation** means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the 24 person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations.

**Sex-based harassment** is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:

- (1) *Quid pro quo harassment*. An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- (2) *Hostile environment harassment (HEH)*<sup>1</sup>. Per federal law, HEH is Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
  - (i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
  - (ii) The type, frequency, and duration of the conduct;
  - (iii) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
  - (iv) The location of the conduct and the context in which the conduct occurred; and
  - (v) Other sex-based harassment in the recipient's education program or activity; or
- (3) *Specific offenses*.
  - (i) Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
  - (ii) Dating violence meaning 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:
      - (1) The length of the relationship;
      - (2) The type of relationship; and
      - (3) The frequency of interaction between the persons involved in the relationship;

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<sup>1</sup> Md. Code, State Gov't § 20-601(h)"Harassment" includes:(1) unwelcome and offensive conduct, which **need not be severe or pervasive**, when:(i) the conduct is based on race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or disability; and (ii) 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; and(2) sexual harassment.

- (iii) Domestic violence meaning felony or misdemeanor crimes committed by a person who:
  - (A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
  - (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - (C) Shares a child in common with the victim; or
  - (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or
- (iv) Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - (A) Fear for the person's safety or the safety of others; or
  - (B) Suffer substantial emotional distress.

**Supportive measures** means 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 recipient's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or
- (2) Provide support during the recipient's grievance procedures or during an informal resolution process.