Title IX Student Grievance & Investigation Process

Section I

Introduction

A. Purpose of this procedure

Baltimore County Public Schools (BCPS) is committed to providing a safe, secure, and orderly teaching, learning, and working environment free of sex-based discrimination, including sexual harassment, for both BCPS students and staff. BCPS prohibits sex-based discrimination, including sexual harassment. The purpose of this document is to outline the processes, including the Title IX Grievance Process, for a BCPS student or staff to address an allegation of sexual harassment against a student, as defined by Title IX of the Education Amendments of 1972.

While all forms of sex-based discrimination, including sexual harassment, are prohibited in BCPS and under Title IX regulations, the purpose of the grievance procedure is to address, sexual harassment as defined in the Title IX regulations that occurs within BCPS educational programs and activities. The grievance procedure provides a process for investigating and reaching a final determination of responsibility for a formal complaint of sexual harassment. While BCPS must respond to all “reports” it receives of sexual harassment, the Title IX grievance process is initiated only with the filing of a formal complaint.

For harassing or discriminatory conduct which does not meet the definition of sexual harassment under Title IX regulations, BCPS’s response will be governed under other applicable BCPS Board policies, Superintendent’s rules, and system procedures. This grievance process shall apply to all students, employees, and any third party who contracts with the school system to provide services to BCPS students or employees, on school system property or during any BCPS educational program or activity.

B. Overview of Title IX

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex, including sexual harassment, in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education enforces Title IX, defining the meaning of Title IX’s prohibition on sex discrimination broadly, and setting forth regulations with which recipients of federal financial assistance, including elementary and secondary schools, must comply to address sex-based discrimination in any educational program or activity.

In May 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Educational Amendments of 1972 which set forth regulations for the investigation and
resolution of complaints of sexual harassment in educational programs and activities. The new regulations include the following:

- Defining the meaning of sexual harassment;
- Addressing how local education agencies (LEAs) must respond to reports of sex-based discrimination, including sexual harassment; and
- Requiring LEAs to establish a grievance process for investigating complaints and issuing disciplinary actions against persons accused of sex-based discrimination, or sexual harassment.

The Final Rule under Title IX narrows the scope under which LEAs have authority to act and the types of sexual harassment that are subject to a Title IX investigation. Only incidents that fall within this purview will be investigated and brought forth to the grievance process should a formal complaint be filed.

C. Summary of Title IX Process
All BCPS employees are mandated to report any type of sex-based discrimination, including sexual harassment, that the employee has experienced, or that the employee has witnessed, or of which the employee has been informed, including harassment that has occurred in the cyber environment. BCPS also encourages and expects its students to report as well.

Title IX defines the scope by which reported incidents are subject to a Title IX investigation. BCPS encourages the reporting of any conduct by BCPS students and staff that is perceived to violate BCPS’ standards for a safe, secure, and orderly teaching, working, and learning environment, free from discrimination. BCPS staff must respond to actual knowledge of sex-based discrimination, including sexual harassment, in the education program or activity in a manner that is not deliberately indifferent. A report of sex-based discrimination, including sexual harassment, must have occurred within a BCPS educational program, or activity, in which BCPS exercises substantial control to be subject to a Title IX investigation.

Section II

D. Definitions
1. **Actual Knowledge:** The school system has actual knowledge when notice of sexual harassment is reported to any school employee or when an employee personally observes such behavior.
2. **Appellate Decision-Maker:** Review officer who handles appeals from the decision-maker.
3. **Complainant:** The individual who is alleged to have been the victim of sex-based discrimination, including sexual harassment. This person may not be the person who provides the initial notice of the potential sex-based discrimination.
4. **Decision Maker**: Neutral person who reviews the evidence, obtains additional information, and issues a report of the decision; may not be the investigator or the Title IX coordinator.

5. **Deliberately Indifferent**: Failure to investigate/respond and correct known harassment, failure to provide academic/safety accommodations, and failure to adequately discipline the harassing student.

6. **Preponderance of Evidence**: The standard of proof in which one party presents evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.

7. **Education Program or Activity**: Locations, events, or circumstances in which BCPS exercises substantial control over both the respondent and the context in which the sex-based discrimination, including sexual harassment, occurred. Includes: academic, educational, extracurricular, athletic, and other programs or activities of schools, regardless of location; online activities that occur on computer and internet networks, digital platforms, and computer hardware and software owned or operated by, or used in the operations of BCPS; and off campus and/or online sexual harassment depending on the factual circumstances of each case.

8. **Equitable treatment of the parties**: Both complainant and respondent must be treated in a fair and just manner to include supportive measures to be offered to both the complainant and respondent; disciplinary sanctions against a respondent will not be imposed until the formal grievance investigation has concluded.

9. **Finding of Facts**: Conclusion by the preponderance of evidence that conduct did or did not occur as alleged: these either support or refute an allegation that sex-based discrimination or sexual harassment occurred and are incorporated into any final determination(s) of responsibility that is/are made.

10. **Formal Complaint**: Document filed and signed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent which requires that BCPS investigate the allegation of sex-based discrimination, including sexual harassment.

11. **Grievance Process**: The process of formal resolution pursued in response to the filing of a formal complaint that alleges sex-based discrimination or sexual harassment.

12. **Investigator**: Staff member at each BCPS school or at central office or the Title IX Coordinator, who may be assigned to investigate allegation(s) of sexual harassment.

13. **Respondent**: The individual who has been reported to be the perpetrator of conduct that could constitute sex-based discrimination, including sexual harassment.

14. **Retaliation**: A form of unlawful discrimination that occurs when a BCPS staff member or student takes an adverse action against an individual for filing a complaint of sex-based discrimination, to include sexual harassment.

15. **Sex-based Discrimination**: A form of sexual harassment, and occurs when, within BCPS education program or activity, a BCPS student or staff member is denied or limited in their ability to participate in or benefit from BCPS services, activities or opportunities on the basis of sex, to include gender, sexual orientation and gender identity.
16. **Sexual harassment:** Conduct on the basis of sex that satisfies one or more of the following:

a. **Quid Pro Quo:** BCPS employee or student conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct;

b. **Hostile School Environment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the BCPS education program or activity; or

c. **Sexual Violence:** sexual assault, dating violence, domestic violence, and/or stalking
   
   i. **Sexual Assault:** Offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, as follows:
      
      1. 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;
         
         a. Forcible rape: Penetration, no matter how slight, of the vagina or anus with any body part, 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 age or because of temporary or permanent mental or physical incapacity
         
         b. 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 his/her age or because of his/her temporary or permanent mental or physical incapacity
         
         c. 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 his/her age or because of his/her temporary or permanent mental or physical incapacity
         
         d. Forcible fondling: 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 his/her age or because of his/her temporary or permanent mental or physical incapacity
      
      2. Sex offenses, Nonforcible: Nonforcible sexual intercourse;
a. Incest: Nonforcible sexual intercourse between person who are related to each other within the degrees wherein marriage is prohibited by Maryland law
b. Statutory rape: Nonforcible sexual intercourse with a person who is under statutory age of consent in Maryland

ii. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with victim; existence of such a relationship shall be determined based on consideration of the following factors: length and type of relationship, and frequency of interaction between the persons involved in the relationship

iii. Domestic Violence: Felony or misdemeanor crimes of violence committed by-
   1. Current or former spouse or intimate partner of victim;
   2. Person with whom victim shares a child in common;
   3. Person who is cohabitating with or has cohabitated with victim and spouse or intimate partner;
   4. Person similarly situated to spouse of victim under domestic or family violence laws of Maryland; or
   5. 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 Maryland

17. Title IX Coordinator: Ensures that BCPS is compliant with the United States Department of Education Title IX Regulations, monitors the implementation of Title IX procedures, and oversees the complaint process for BCPS. The Title IX Coordinator will investigate or assign employee matters to a designee as appropriate.

18. Witness: Person(s) who may have knowledge of the allegations and who may be interviewed by investigative staff.

Section III

Making a Report Regarding Sexual Harassment

A. Title IX Coordinator
Any person may report sexual harassment in person, by mail, or by electronic mail, using the contact information listed for the BCPS Title IX coordinator. The Title IX coordinator is the designated person authorized to coordinate efforts to comply with and carry out responsibilities under Title IX of the Education Amendments of 1972, and its related Grievance Process.

Contact information for the Title IX coordinator:
Tiffany Eshelman
B. Reporting Requirements

1. BCPS students, members of the community, and parents should report, and staff must report allegations of sexual harassment, promptly. A delay in reporting may result in the loss of relevant evidence, impacting BCPS staffs’ ability to respond and take appropriate action.

2. Complainants may file anonymously, however, this may significantly impact the investigation and resolution of the allegation.

3. Any BCPS staff member who receives a report of alleged sexual harassment, or observes an incident of sexual harassment, must promptly notify the Title IX coordinator or school-based administration.

4. Any BCPS student who receives a report of alleged sexual harassment, or observes an incident of sexual harassment, is encouraged to promptly notify the Title IX coordinator or school-based administration.

5. Reports should be made in good faith with honest, non-malicious intent.

6. No BCPS employee or student shall retaliate in any way against a person for making a complaint, testifying, assisting, participating, or declining to participate in any manner in an investigation or complaint proceeding. Individuals who engage in retaliatory actions will be subject to the appropriate and applicable disciplinary process.

7. Although BCPS encourages all BCPS students, parents, and community members and requires staff to report conduct that is perceived to violate a BCPS policy, or Title IX, the Title IX coordinator will determine if the allegation falls within Title IX regulations. Only incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought forth through the Title IX Grievance Process. Should reports not fall under the Title IX Final Rule, these will be addressed through other means, to include BCPS Board policies, Superintendent’s rules, and system procedures.

C. Notice of Allegations

1. If an allegation of sexual harassment is made to a BCPS staff member or if the sexual harassment is observed by a BCPS staff member, the staff member must complete the Sexual Harassment under Title IX Intake Form or have complainant complete the intake form and report the incident to the Title IX coordinator promptly. If allegation is made
to a school resource officer (SRO), the SRO shall report the allegation to school-based administration.

2. BCPS staff must report any allegation of sexual harassment, promptly. If an allegation of sexual harassment is witnessed by anyone other than a BCPS employee, said person is requested to promptly complete the report form found on the BCPS website or contact the Title IX coordinator, or school-based administration to inform and complete the report. A delay in reporting may result in the loss of relevant evidence, impacting BCPS’s ability to respond and take appropriate action.

D. Title IX Coordinator’s Response to Report of Sexual Harassment

1. Upon receiving a report of alleged sexual harassment, the Title IX coordinator will promptly contact the complainant to:
   - Discuss the school and/or office responsibility to provide supportive measures, which are available whether a formal complaint is filed or not, to ensure the complainant feels safe and secure, maintaining access to educational or working environment; and
   - Discuss next steps including a review of the grievance and investigation process.

2. School administration in collaboration with the BCPS Division of School Climate and Safety may determine the need for an emergency removal of the respondent. The emergency removal is to address imminent threats posed to any person’s physical health or safety, which might arise out of the sexual harassment allegations. Emergency removal under § 106.44(c) is not a substitute for reaching a determination as to a respondent’s responsibility for the sexual harassment allegations.

3. If a formal complaint is not initiated, the Title IX coordinator will conduct a preliminary review of the report.
   a. If the Title IX coordinator determines the allegation is appropriate for resolution under Title IX and warrants investigation due to the nature of the allegation, the Title IX coordinator has the authority to initiate a formal complaint and address the allegation consistent with the grievance process.
   b. If the Title IX coordinator determines the allegation may violate a different Board policy or superintendent’s rule, the allegation will be sent to the appropriate BCPS staff and/or office for investigation.

4. Although BCPS encourages all BCPS students, parents, and community members and requires staff to report conduct that is perceived to violate a BCPS policy, or Title IX, the Title IX coordinator will determine if the allegation falls within Title IX regulations. Only incidents falling within the final rule’s definition of sexual harassment will be investigated and, if appropriate, brought forth through the Title IX Grievance Process. Should reports not fall under the Title IX Final Rule, these will be addressed through other means, to include BCPS Board policies, rules, and procedures.

5. Should the Title IX coordinator suspect the alleged conduct constitutes sexual assault, the Title IX coordinator will notify the appropriate authorities to include the Department
of Social Services and law enforcement. Upon notification to these authorities, the Title IX coordinator will suspend the investigation as appropriate until the authorities have completed their fact finding. In the interim, supportive measures will be provided to both the complainant and respondent.

Section IV

Grievance Process: Student to Student

A. Guiding Principles
The following principles will guide the grievance process upon initiation from the Title IX coordinator:

1. Fair and impartial treatment of both parties.
2. Presumption that the respondent is not responsible for the alleged conduct until the investigation occurs, and final determination of responsibility is made.
3. Objective evaluation of all relevant evidence to include a fair, complete, and impartial investigation completed by BCPS.
4. The Title IX coordinator, investigator, decision maker, or any person designated to facilitate an informal process will not have a conflict of interest or be biased against the complainant or respondent.
5. A range of supportive measures (e.g., brochures, change in schedule, safety plan, counseling) offered and provided to both parties. These measures also being implemented during an outside agency’s investigation.
6. Prompt initiation and resolution of the Title IX Grievance Process.
7. Preponderance of evidence standard shall be applied for formal complaints in the Title IX Grievance Process.
8. Provision of an appeal process for each party.

B. Timeline
All formal complaints of sexual harassment will be investigated, and findings made with reasonable promptness, to not exceed sixty (60) calendar days from the filing of the formal complaint. Temporary delays of any of the grievance process, and/or limited extensions of time frames, will be allowed for good cause determined by the Title IX coordinator; with, written notice to complainant and respondent of delays or extensions, or reasons for such actions. Good cause may include, but not be limited to considerations such as absence of a party, a party’s advisor, a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.
C. Written Response to Formal Complaint
Upon receiving a formal complaint, the Title IX coordinator will provide a written notice to all known parties, including the investigator, within three (3) business days to include the following:

a. Notice of grievance process;
b. Notice of allegations with sufficient details as reported, and a deadline to not exceed five (5) business days in which the respondent is to provide a written response to the allegations to both the Title IX coordinator and the investigator. Sufficient details must include the identities of the parties involved in the alleged incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;
c. Notice that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
d. Notice of parties’ right to inspect and review evidence; and,
e. Notice of parties’ right to have an advisor (representative) of their choice, who may be, but is not required to be, an attorney, or a guardian, and may inspect and review evidence.

Note: Employees are prohibited from knowingly making false statements or providing false information during the grievance process.

D. Investigation of Formal Complaint
1. Investigator will interview:
   • Both complainant and respondent.
   • Any individuals identified in the Title IX coordinator’s written notice, the respondent’s written response, and/or interviews with the complainant and respondent following interviews of the complainant and respondent.
2. Investigator will provide both parties a draft investigative report in electronic format or hard copy, for their review and written response. The investigator will provide both parties:
   • An equal opportunity to inspect and review any evidence obtained as part of the investigation; and
   • At least ten (10) calendar days from the provision of such evidence, the opportunity to submit a written response to such evidence.
3. The investigator may take additional investigative steps if warranted, to include posing additional questions to witnesses. Additional investigative steps will be completed in a reasonable timeframe.
4. Upon conclusion of interviews, the investigator will update the investigative report, if required, that summarizes relevant evidence, and at least ten (10) calendar days prior to time of determination of responsibility, send to the decision maker.
E. Dismissal of Formal Complaint

1. Mandatory dismissal:
   a. If the Title IX coordinator determines the conduct alleged in the formal complaint does not constitute sexual harassment as defined in the Title IX regulations, and/or did not occur in a BCPS education program or activity, or against a person not in the United States of America, the formal complaint must be dismissed. The Title IX coordinator will refer the matter to the appropriate BCPS staff or external agency.

2. Permissive dismissal: A formal complaint may also be dismissed at any time during the investigation if:
   • The complainant notifies the Title IX coordinator in writing that complainant would like to withdraw the formal complaint. The Title IX coordinator has the authority to continue the formal complaint process should the allegation be deemed appropriate for further investigation.
   • The respondent is no longer enrolled in BCPS. BCPS staff will proceed with investigative procedures to the extent they can without respondent present, and with the understanding that no disciplinary procedures will be attached to the determination of responsibility. The investigative report for both parties will be maintained.
   • Specific circumstances prevent the investigator from gathering evidence sufficient to reach a determination regarding responsibility as to the formal complaint.

F. Informal Resolution

1. After the filing of a formal complaint, but before a final determination regarding responsibility has been made, BCPS may facilitate an informal resolution process that does not involve a full investigation provided that:
   • Both parties have been provided written notice disclosing the allegations, the requirements of the informal resolution process, including any party’s rights to withdraw from the informal resolution process and resume the formal grievance process, any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
   • Both respondent and complainant provide their voluntary, written consent to the informal resolution process.

2. The Title IX coordinator has the authority to determine if an informal resolution process is appropriate given the allegations. Should the Title IX coordinator determine an informal resolution is not appropriate based on the allegations presented, the informal resolution process will be denied, and the formal complaint process will be initiated.
3. The informal process is intended to be flexible, while providing a full range of possible outcomes. A facilitator will supervise the informal resolution process and will provide both parties independently, in writing, the proposed terms. Should either party not agree with proposed terms, or is uninterested in engaging in the process, the formal complaint process will be initiated.

4. The informal resolution will not require either party to be present in the same room. Parties are allowed to consult their advisors or have their advisors present during the process.

5. Should the facilitator feel that either party is not acting in good faith, the facilitator may terminate the informal resolution, and the grievance process will be initiated.

6. Both parties and the facilitator will have the opportunity to offer terms as part of the final agreement. The facilitator will draft a final agreement for both parties' review. The facilitator and both parties must agree to all outcomes of the informal resolution. Should there be disagreement or either party refuses to sign, the final agreement is considered failed, and the grievance process will be initiated.

7. The signed final agreement of the informal resolution is binding for both parties and concludes the formal complaint process for BCPS.

G. Written Determination Regarding Responsibility

1. Before issuing a written determination regarding responsibility, the decision maker, who shall not be the same person as the investigator, must afford each party the opportunity to submit written questions to the opposing party, provide each party the responses, and allow for limited follow-up questions for each party. The decision maker has the authority to decide if questions are relevant and require responses.

2. The decision maker will consider all materials when making a decision regarding the responsibility of the respondent and apply the preponderance of the evidence standard.

Note: Sexual predisposition or prior sexual behavior of a complainant is not relevant unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or, if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

3. The decision maker will issue a written determination regarding responsibility within sixty (60) calendar days of the filing of the initial formal complaint to both parties simultaneously, as well as a copy to the Title IX coordinator. The written determination must include:
   • Identification of the allegations potentially constituting sexual harassment;
   • Description of the procedural steps taken from receipt of the formal complaint through the determination;
   • Finding of facts supporting the determination;
• Conclusions regarding the application of BCPS policies, rule, and procedures to the facts;
• A statement of, and rationale for, the result as to each allegation;
• LEA’s procedures and permissible bases for the complainant and respondent to appeal; and
• Identification of the appellate decision maker who will preside over the appeal, which cannot be the same person as the previous decision maker, investigator, or Title IX coordinator.

4. The determination becomes final:
   a. If an appeal is not filed, and the 10 calendar days in which an appeal would be considered timely have been exceeded;
   b. The day each party is notified of the written result of the appeal if one is filed.

5. Disciplinary consequences for substantiated sexual harassment will be assigned in accordance with the Code of Student Conduct, Board Policies and Superintendent’s Rules 5550 and 5560. Based on the nature and severity of the offense and the circumstances surrounding the incident, the student will be subject to appropriate consequences and remedial actions ranging from positive behavioral interventions up to, and including, expulsion. In addition, the conduct also may be reported to law enforcement, as appropriate.
   a. A student recommended for a long-term suspension or expulsion will have all applicable rights accorded by Board Policy and state law. A student with disabilities will have all rights accorded by law, including the right to a manifestation hearing before the imposition of a suspension exceeding 10 cumulative days in a school year. Nothing in this policy will preclude the school system from taking disciplinary action against a student when the evidence does not establish sexual harassment as defined in this procedure, but the conduct violates other Board Policy and/or the Code of Student Conduct.
   b. A recommendation on disciplinary consequences, which will be referred to the appropriate Baltimore County Public School personnel for further action and implementation.
   c. If the appeal includes an appeal of a disciplinary consequence, relative to which a law, Board policy, regulation, entitle a student to a specific type of hearing and/or proceeding, the appeal shall be conducted in accordance with such provisions. If no other procedural protections apply, then the hearing shall be governed by Board policy.

H. Appeals
1. Either party may file an appeal regarding the determination of responsibility or a dismissal of the formal complaint on the following bases:
   a. Procedural irregularity.
   b. New evidence that was not presented or available prior for consideration. The submission must support a written request for reconsideration, and the written
request must include a compelling reason for why the documentation or evidence was not made available during the investigation.

c. The Title IX coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents.

2. The appeal must be made in writing to the decision maker presiding over the appeal as identified in the written determination and the Title IX coordinator within ten (10) calendar days of the determination of responsibility. The appeal must provide in detail the grounds supporting the appeal.

3. Upon receipt of the appeal, the decision maker will review the appeal to determine if it satisfies the grounds for filing an appeal. Should it satisfy, the decision maker presiding over the appeal will notify the other party in writing when the appeal is filed, and simultaneously provide a copy of the appeal materials to each party.

4. Each party may submit a written response to any appeal no more than fourteen (14) calendar days after the decision maker presiding over the appeal provides a copy of the appeal materials.

5. The decision maker presiding over the appeal shall issue a written decision simultaneously to each party and to the Title IX coordinator describing the result of the appeal, and the rationale for the result.

6. The written decision concludes the appellate and grievance process of the Title IX formal complaint for BCPS.