

St.Mary's County Public Schools

TITLE



Grievance Procedures

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Introduction

Title IX prohibits sex discrimination in educational institutions that receive federal funding. The preamble to Title IX states that:

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 receiving Federal financial assistance.

While Title IX is a very short statute, Supreme Court decisions and guidance for the U.S. Department of Education have given it a broad scope covering sexual harassment and sexual violence. To understand the specific requirements of Title IX, schools must look to guidance materials from the U.S. Department of Education in the form of “Dear Colleague Letters” (DCL). DCL’s are not law; instead they inform schools how the Department of Education will review and enforce Title IX complaints.

Essentially, Title IX protects students, employees, applicants for admissions and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity. School districts must maintain an environment for students and employees that is free from unlawful sex discrimination on all aspects of the educational and/or employment experience, including academics, extracurricular activities, and athletics.

I. Areas Addressed by Title IX:

Admissions and Academic Counseling

Many fields of study continue to be affected by sex-based enrollment disparities in nontraditional fields. Fields of study in science, technology, engineering, and mathematics or career and technical education may be affected by disproportionate enrollment of students based on sex. Reviewing course enrollment data is suggested to ensure that disparities are not the result of discriminatory practices.

Athletics

Under Title IX, a school district must provide equal athletic opportunities for members of both sexes and effectively accommodate students’ athletic interests and abilities. The Office of Civil Rights (OCR) uses a three-part test to determine whether an institution is providing nondiscriminatory athletic participation opportunities in compliance with the Title IX regulation. The test provides the following three compliance options:

- a) Whether participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- b) Where the members of one sex have been and are underrepresented among athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
- c) Where the members of one sex are underrepresented among athletes, and the district

cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

The three-part test furnishes a school district with three individual avenues to choose from when determining how it will provide individuals of each sex with nondiscriminatory opportunities to participate in athletics. If any part of the three-part test is met, OCR will determine that the school district is meeting this requirement.

Additionally, Title IX regulations and OCR guidance require that recipients that operate or sponsor interscholastic, club or intramural athletics provide equal athletic opportunities for members of both sexes. In determining whether a school district is providing equal opportunity in interscholastic activities, clubs, or intramural athletics, the regulations require a school district to consider the following factors:

- a) provision of equipment and supplies;
- b) scheduling of games and practice time;
- c) travel and per diem allowances;
- d) opportunity for coaching and academic tutoring;
- e) assignment and compensation of coaches and tutors;
- f) provision of locker rooms, and practice, and competitive facilities;
- g) provision of medical and training facilities and services;
- h) publicity;
- i) recruitment; and
- j) support services.

Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment and refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including when it takes the form of:

- quid pro quo harassment (e.g., when an employee conditions a benefit on a person's participation in unwelcome sexual conduct);
- specific offenses (e.g., sexual assault, dating violence, domestic violence, and stalking); and/or
- hostile environment harassment resulting from unwelcome conduct of a sexual nature

Gender-based harassment refers to unwelcome conduct based on an individual's actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature. All of these types of sex based harassment are forms of sex discrimination prohibited by Title IX.

Title IX prohibits sex-based harassment by peers, employees, or third parties that is sufficiently serious to deny or limit a student's/employee's ability to participate in or benefit from district education programs and activities (i.e., creates a hostile environment). When a school knows or reasonably should know of possible sex-based harassment, it must take immediate and appropriate steps to investigate what occurred. If an investigation reveals that the harassment created a hostile environment, the school must take prompt steps to end the harassment, eliminate a hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects on the complainant.

Hostile Environment

A hostile environment is created when unwelcome conduct of a sexual nature, based on the totality of circumstances, is subjectively and objectively offensive, is so severe, persistent, or pervasive that it denies a student or employee the ability to participate in or benefit from the education program. In determining whether a hostile environment was created, schools should consider the following factors:

- The degree to which the conduct affected one or more students/employee's ability to access an education program or activity
- The type, frequency, and duration of the conduct
- The identity of and relationship between the alleged harasser and the subject(s) of the harassment
- The number of individuals involved
- The age and sex of the alleged harasser and the subject(s)
- The size of the school, location of the incidents, and context in which they occurred

Sexual Orientation

Title IX prohibits discrimination and harassment on the basis of sexual orientation, gender expression, and gender identity. When a school knows or reasonably should know of possible sexual harassment, it must take prompt and appropriate steps to investigate or otherwise determine what occurred. This is a school's responsibility regardless of whether a student/employee has complained, asked the school to take action, or identified conduct as a form of sexual harassment. Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own sexual harassment investigation and take interim measures to protect staff or students prior to the conclusion of the school's investigation of a complaint.

A school can receive notice of sexual harassment in many different ways. In some situations, sexual harassment may be in plain sight, a student/employee may have reported the behavior to a teacher or other employee, or an employee may have witnessed the harassment. The school may also receive notice about sexual harassment in an indirect manner, from sources such as a community member, social networking sites, or the media. In other cases, the pervasiveness of sexual harassment may be widespread, openly practiced, or well-known among students or employees.

If sexual harassment or sexual violence occurred off campus, the school should still investigate to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on the student/employee in the school/work environment. If the sexual harassment

took place in the context of an education program or activity of the school, the school must investigate the complaint as it would for on-campus behavior. Additionally, the school must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus.

School staff should resolve sexual harassment complaints based on what they think is more likely than not to have happened (i.e., a preponderance of the evidence). When addressing sexual harassment, school and district administrators should look beyond simply disciplining the perpetrator(s). Eliminating a hostile environment created by harassment may include separating the harasser and the targeted student/employee, providing counseling for involved parties, taking disciplinary action against the harasser, ensuring that students/employees know how to report subsequent problems, and following up with involved parties to ensure that the harassment has stopped. Depending on the extent of the hostile environment, the school may also need to provide training or other interventions for the larger school community to ensure that all students and school staff recognize sexual harassment and know how to respond. Schools should monitor incidents to help identify students or employees who have multiple complaints filed against them or who have been repeated targets and address any patterns or systemic problems that arise, including making the District Title IX Coordinator and district officials aware of these patterns or systemic problems as appropriate.

Pregnancy or Related Conditions

Under the Title IX regulations, districts are prohibited from discriminating against or excluding any student/employee from its education program or activity, including any class or extracurricular activity on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

Discipline

Title IX regulations prohibit a district from subjecting any person to separate or different rules of behavior, sanctions, dress code or other treatment, such as discriminatory discipline, based on sex. For example, similarly situated students should not be disciplined differently based on sex, gender identity, or for failing to conform to stereotypical notions of masculinity or femininity in their behavior or appearance for the same offense.

Single-Sex Education

A school is generally prohibited from providing any of its education programs or activities separately on the basis of sex, or requiring or refusing participation by students on the basis of sex unless expressly authorized to do so under Title IX regulations. Title IX regulations do not prohibit recipients from grouping students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex or using requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex. Title IX regulations identify the following categories for which a recipient may intentionally separate students by sex:

- (a) contact sports in physical education classes;
- (b) classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality; and

- (c) non-vocational classes and extracurricular activities within a coeducational, non-vocational elementary or secondary school if certain criteria are met.

With respect to the third category, a recipient may offer a single-sex non-vocational class or extracurricular activity in a coeducational, non-vocational elementary or secondary school if the class is based on one of two important objectives: (1) to improve its students' educational achievement through its overall established policy to provide diverse educational opportunities or (2) to meet the particular identified educational needs of its students. The single-sex nature of each class must be substantially related to achievement of the important objective and the recipient must implement its important objective in an even handed manner. In addition, enrollment in a single-sex class must be completely voluntary and the recipient must provide a substantially equal coeducational class in the same subject to all students and may be required to provide a substantially equal single-sex class for students of the excluded sex. If a district provides a single-sex class under this regulatory exception, it is also required to conduct a periodic evaluation of the class and the original justification behind the class at least every two years. The periodic evaluation must ensure that each single-sex class is based upon a genuine justification and does not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex, and that each single-sex class or extracurricular activity is substantially related to the achievement of the important objective for the class.

If the district offers a single-sex class, then the Title IX coordinator should be involved in assessing the recipient's compliance with Title IX, both when determining whether and how single-sex classes can be offered and during the recipient's periodic review of single-sex offerings. The Title IX coordinator may assist with helping to ensure that the recipient offers a substantially equal coeducational class and, as appropriate, substantially equal single-sex class, for each single-sex class offered. The Title IX coordinator should also help ensure that transgender students are treated consistent with their gender identity in the context of single-sex classes.

II. Basic Requirements of Title IX Grievance Procedures

Equitable and Unbiased Investigation

SMCPS will treat complainants and respondents equitably. SMCPS requires that any Title IX coordinator, investigator, or decision maker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decision maker may be the same person as the Title IX coordinator or investigator.

Presumption of Innocence

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

Grievance Timeline

SMCPS has established the following time frames for the major stages of the grievance process:

- TIX Coordinator will issue Notice of Receipt of Complaint to parties within 3 work days upon receipt of complaint.

- TIX Coordinator will issue written decision of whether to dismiss complaint or initiate the formal TIX Investigation within 5 work days upon receipt of complaint.
- Notice of intent to interview shall be sent to parties within 5 work days upon decision to initiate the formal TIX investigative process (note: at any time, the parties involved may elect to resolve the grievance process through informal resolution).
- TIX Investigator will issue written Preliminary Findings to parties within 10 work days upon review of all evidence.
- Parties shall have 10 calendar days to review the Preliminary Findings and submit rebuttal evidence to the TIX Investigator.
 - If no rebuttal evidence is submitted, the TIX Coordinator will issue a written Investigative Report to involved parties and the Decision Maker within 10 work days. If rebuttal evidence is submitted, the investigator shall have 15 work days to consider and review the rebuttal evidence submitted and shall issue the final Investigative Report to involved parties and the Decision Maker.
- The Decision Maker shall have 10 work days upon receipt of the Investigative Report to issue a Decision of Responsibility to involved parties.
- Appeal of the Decision Maker - An appeal of the Determination of Responsibility must be filed in writing within 10 work days of the date of Determination of Responsibility.
- Decision of the Title IX District Coordinator in response to appeal of the Decision Maker will provide a written report of findings within thirty (30) work days of receipt of the appeal.
- Appeal of the Title IX District Coordinator - The parties shall have an opportunity to appeal the decision of the Title District IX Coordinator or designee in writing to an impartial third-party examiner within ten (10) work days of the date of the written report of findings.
- Decision of the Examiner in response to appeal of the Title IX District Coordinator - examiner will review the appeal along with the written report of findings and then respond in writing within thirty (30) work days of receiving the appeal. The Examiner shall either affirm or reverse the decision of the District Title IX Coordinator or designee. There is no additional appeal process beyond the decision of the Examiner. An extension of the thirty (30) work day deadline for the submission of the decision on appeal may apply if necessary as determined by the District Title IX Coordinator or designee. The parties will be notified in writing of the extended time limit.

Extension of Timeline

SMCPS has also established the following process that allows for the reasonable extension of time frames on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay. An extension of the thirty (30) work day deadline for the submission of a written report of an investigation or response to an appeal may apply if necessary as determined by the Title IX District Coordinator or Examiner. NOTE: Under applicable regulations, “good cause” for delay may include, but is not limited to, considerations such as: (1) the absence of a party, a party’s advisor or witness; (2) concurrent law enforcement action; or (3) the need for language assistance or accommodation of disabilities.

Protection of Privacy

SMCPS will take reasonable steps to protect the privacy of the parties and witnesses during the grievance process. These steps will 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. The parties cannot engage in retaliation, including against witnesses.

Evaluation of Evidence

SMCPS 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.

Types of Evidence

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by SMCPS 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 witnesses' 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 SMCPS 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 interest 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.

Informal Resolution

In lieu of resolving a complaint through SMCPS's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. SMCPS 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

SMCPS will offer and coordinate supportive measures, as appropriate, for the complainant and /or respondent to restore or preserve the person's access to a SMCPS education program or activity or provide support during the Title IX grievance procedures or during the informal resolution process. Supportive measures will not unreasonably burden either party and will be designed to protect the safety

of the parties or the educational environment, to provide support during the grievance procedure/information resolution process and will not be for disciplinary reasons. SMCPS will provide the complainant/respondent reasonable time to see modification or reversal of a decision on supportive measures applicable to the party. These support measures may include, but are not limited to:

- Class change
- Schedule modification
- School route change
- Bus change
- Counseling services through the school counselor
- Campus escort to and from a specific class
- Mutual restrictions on contact between parties
- Leave of absences
- Increased security
- Monitoring of certain areas

Disciplinary Sanctions

Following a determination that sex-based harassment occurred, SMCPS may impose disciplinary sanctions for students, which may include, but are not limited to:

- Loss of privileges
- Behavior intervention contract
- Conference with the School Counselor
- Change in schedule and/or bus transportation
- Restitution
- Conference with a Safety Resource Officer (SRO)
- Verbal Correction
- Warning
- Removal from extracurricular activities
- Detention
- Referral to Pupil Services Team (PST)
- IEP review (for students with an IEP)
- Bus Suspension
- In-School Intervention (ISI)
- Behavior Intervention Plan (BIP)/Functional Behavioral Assessment (FBA)
- Short-term suspension, 1-3 days
- Alternative Placement
- Extended suspension or expulsion (if warranted following Student Services disciplinary conference)
- Police contacted, possible student arrest (where applicable)

Following a determination that sex-based harassment occurred, SMCPS may impose disciplinary sanctions for employees, which may include, but are not limited to:

- Any sanctions under Board policy, up to and including termination of employment.

Remedies

SMCPS may also provide remedies, which may include:

- Access to supports
- No contact order
- Adjustment to schedules
- Adjustments to participation in school-sponsored activities

Rights and Expectations

Complainants have the right to:

- Have an adult advisor of their choice present with them (friend, parent, school employee, counselor, coach, etc.).
- Be provided with information on the grievance process and their rights (SMCPS Title IX Guidelines).
- Supportive measures to ensure and/or restore access to the educational program.
- Identify relevant parties/witnesses for the investigator to interview.

Complainants can expect:

- Their complaint will be taken seriously and investigated promptly according to the SMCPS Title IX grievance procedures.
- Every effort will be made to handle the complaint discreetly and with as much confidentiality as possible.
- Their name to be provided to the respondent when the respondent receives the complaint.
- The investigation will begin immediately and be completed in a timely manner.
- To be informed as to the progress of the investigation.
- To be informed of the investigation results.
- To be informed of the option to participate in an informal resolution process.
- All persons included in the complaint and investigation to be warned that retaliatory conduct is prohibited.

Respondents have the right to:

- Have an adult advisor of their choice present with them (friend, parent, school employee, counselor, coach, etc.).
- Be provided with information on the grievance process and their rights (SMCPS Title IX Guidelines).
- Supportive measures to ensure and/or restore access to the educational program.
- To be informed of the option to participate in an informal resolution process.
- Be given the name of the person making the complaint.
- Be given the specifics of the allegation(s).
- Identify relevant parties/witnesses for the investigator to interview.

Respondents can expect:

- The investigation will begin immediately and be completed in a timely manner.
- To be presumed as not responsible for the alleged conduct until a determination has been made at the conclusion of the investigative process.
- To be informed about the progress and the result of the investigation.

- All persons included in the complaint and investigation to be warned that retaliatory conduct is prohibited.
- If warranted, remedial steps to be taken including disciplinary action in accordance with the Student Code of Conduct.

Retaliation

SMCPS prohibits retaliation, including peer retaliation, in its education program or activity. Upon receiving a complaint alleging retaliation, SMCPS will initiate grievance procedures or, as appropriate, an informal resolution process.

III. Grievance Procedures

It is the policy of St. Mary's County Public Schools (SMCPS) to provide for the adequate, equitable, reliable and impartial investigation of all Title IX complaints. Instances where complainants who wish to resolve their concerns informally through counseling, advice, or information discussion, should bring their concerns to the attention of the Title IX Coordinator or building designee. The SMCPS grievance process is comprised of four major stages: evaluation, investigation, determination, and appeal. During the Evaluation Stage, notification of a complaint is received and evaluated to determine whether an investigation should be conducted. The Investigation Stage involves the interviewing of involved parties as well as witnesses and the gathering of information through additional resources (i.e. school cameras, cell phones, etc.). During the Investigative Stage, preliminary findings will be issued to involved parties followed by a 10 day review period. An Investigative Report will be drafted and provided to involved parties, advisors, and the Decision Maker at the close of the Investigative Stage. The Determination Stage begins with the receipt of the Investigative Report and ends with the rendering of the Determination of Responsibility by the Decision Maker to all parties. The Appeal Stage is engaged should either party submit a written appeal of the Determination of Responsibility.

Evaluation

A. Notification

A notification of sexual discrimination, including sexual harassment, may be made to a school staff member in person, by phone, via email, or in writing. If the notification is regarding sexual discrimination, including sexual harassment, the administrator will inform the School Title IX Coordinator. The School Title IX Coordinator will review the notification and initiate a complaint per SMCPS grievance procedures and notify the District Title IX Coordinator via Cognito. The District Title IX Coordinator for student complaints is the Supervisor of School Counseling in the Department of Student Services. The District Title IX Coordinator for employee complaints is the Chief of Staff in the Department of Human Resources.

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

- A “complainant,” which includes:
 - a student or employee of SMCPS 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 SMCPS 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 a SMCPS education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- A Title IX Coordinator of SMCPS

Note that 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).

SMCPS may consolidate complainants 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 to a party, complainant, or respondent include the plural, as applicable.

B. Notice of Allegations

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

- SMCPS 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 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 SMCPS 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, in the course of an investigation, [ABC School] 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, [ABC School] will notify the parties of the additional allegations.

C. Dismissal of a Complaint

SMCPS may dismiss a complaint of sex discrimination if:

- SMCPS is unable to identify the respondent after taking reasonable steps to do so;
 - The respondent is not participating in a SMCPS education program or activity and is not employed by SMCPS;
 - The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and SMCPS 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

- SMCPs determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, SMCPs will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, SMCPs 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 SMCPs will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification of the complainant, or simultaneously if notification is in writing.

SMCPs 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 SMCPs 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 decision maker 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, SMCPs 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;
- Ensure that the decision maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decision maker 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, SMCPs will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measure 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 a SMCPs education program or activity.

Investigation

SMCPS will provide for adequate, reliable, and empirical investigation of complaints. The burden is on SMCPS, not the parties, to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred. Equal opportunity will be provided for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

SMCPS will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. Each party will be afforded equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible (See Types of Evidence p.10), in the following manner:

- SMCPS will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If SMCPS provides a description of the evidence, SMCPS will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party;
- SMCPS will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- SMCPS will take sensible 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.

Upon receipt of the written/verbal complaint, the Title IX Investigator will investigate the allegation, schedule meetings to interview the complainant, possible witnesses, and the respondent. Supportive measures will be offered, as appropriate, before and/or after the filing of a complaint. The Title IX Investigator will provide sufficient written notice to all known parties to give time to prepare a response before an initial interview. The written notification will include:

- Notice of the grievance process, including the availability of an informal resolution process;
- Notice of the allegation, including sufficient detail (i.e. names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response;
- A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.

The Investigator will provide written notification of preliminary findings to the Complainant, Respondent, and advisors, if any, for their review and written response at least 10 days before the issuance of a final Investigative Report. During this time each party will be provided the opportunity to submit to the Investigator written relevant questions for limited follow-up. The Investigator may determine what evidence is relevant and will inform parties of evidence considered to be impermissible.

If the investigation yields additional allegations that were not included in the original written notice, notice of the additional allegations will also be provided in writing to the known parties. An Investigative Report that summarizes the relevant evidence will be provided to both parties, their advisors, if any, and the Decision Maker.

A. Questioning of the Parties and Witnesses

SMCPS will provide a process that enables the Decision Maker 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. If a Decision Maker decides to question parties and witnesses, the Decision Maker will provide sufficient written notice to all known parties to give time to prepare a response before the interview. The written notification will include:

- A description of the alleged violation
- Time, date, and location of the meeting
- Technology that will be used to facilitate the meeting (Zoom, Google Meet)
- Name and contact information of the Decision Maker
- A statement that if any party does not appear at the scheduled meeting, the meeting will only be rescheduled for compelling reasons.
- Notification that the parties may have the assistance of an Advisor of their choosing at the meeting.

Determination of Responsibility

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

- Use the preponderance of evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the Decision Maker to evaluate relevant and not otherwise impermissible evidence for its pervasiveness. If the Decision Maker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the Decision Maker will not determine that sex discrimination occurred.
- 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 Title IX Coordinator will, as appropriate:
 - Coordinate the provision and implementation of remedies to the complainant and other people SMCPS identifies as having had equal access to the SMCPS education program or activity limited or denied by sex discrimination;

- Coordinate the imposition of any disciplinary sanctions on a respondent, including notification of the complainant of any such disciplinary sanctions; and
- Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within a SMCPs education program or activity.
- Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

The Title IX Decision Maker will then render in writing a determination of responsibility using a preponderance of evidence standard of proof. If a violation is found to have occurred, the appropriate disciplinary and /or remedial action will be taken in accordance with the Code of Student Conduct or BOE employee-related policies and regulations. Additionally, the Title IX School Coordinator will provide and implement supportive measures and/or remedies for the complainant or others whose access to the educational program or activity has been limited or denied and will take steps to ensure that sex discrimination does not occur in the future.

Appeal

SMCPs offers the following process for appeals from a determination whether sex discrimination occurred. Grievance procedures ensure that the students, parents, and staff members of the school district are aware of their rights under Title IX, have contact information for the Title IX Coordinator, and know how to file a complaint alleging a violation of Title IX. SMCPs has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any discrimination and sexual harassment prohibited under Title IX of the Education Amendments of 1972. Any person who believes he or she has been subjected to discrimination and harassment on the basis of sex may file a grievance under this procedure. This grievance procedure applies to complaints alleging sex-based discrimination carried out by students, employees, or third parties. The procedure is meant to provide a prompt and equitable resolution of a complaint and is at a minimum, the same as SMCPs offers in all other comparable proceedings, including proceedings relating to other discrimination complaints. It is against the law for SMCPs to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.

An appeal of the Decision Maker's Determination of Responsibility must be filed in writing within 30 calendar days of the date of Determination of Responsibility, and at a minimum contain (1) the nature of the grievance; (2) the facts upon which the grievance is based, including a list of all witnesses; (3) the remedy requested; (4) the grievant's signature and (5) the date the grievance is filed. The written grievance must be filed with the appropriate District Title IX Coordinator.

Students, parents/legal guardians, and community members may report allegations of discrimination or harassment to:

Ms. Rhonda Hunt
Supervisor of School Counseling

23160 Moakley Street, Suite 104
Leonardtown, Md. 20650
301-475-5511, ext. 32150

Employees may report allegations of discrimination or harassment to:

Dr. Dale Farrell
Chief of Staff
23160 Moakley Street, Suite 106
Leonardtown, Md. 20650
301-475-5511, ext. 32194

The District Title IX Coordinator will reconsider the determination on the following basis:

1. Procedural irregularity that affected the outcome of the matter;
2. Newly discovered evidence that could affect the outcome of the matter; and/or
3. Title IX personnel had a conflict of interest or bias that affected the outcome of the matter;
4. The disciplinary sanction is inappropriate or unreasonable;
5. Or any other basis provided by law or Board policy governing appeals.

The District Title IX Coordinator or designee will provide a written report of the investigation within thirty (30) school days of receipt of the grievance. The report should include the following information:

- A statement of the complainant's allegations and the remedy sought;
- A statement of the facts as contended by each party;
- A list of the witnesses interviewed and/or the documents reviewed during the investigation;
- A statement of the facts as determined by the District Title IX Coordinator or designee with reference to the evidence to support each fact;
- The District Title IX Coordinator's conclusion as to whether the allegations are valid;
- Any corrective action recommended and/or determined;
- An assurance and description of the steps to be taken, if necessary, to prevent the recurrence of the prohibited actions and to correct any discriminatory effects on the complainant and others, if appropriate.

An extension of the thirty (30) school day deadline for the submission of the written report of findings may apply if necessary as determined by the District Title IX Coordinator. The parties will be notified in writing of the extended time frame.

The parties shall have an opportunity to appeal the decision of the Title District IX Coordinator or designee in writing to an impartial third-party examiner within ten (10) work days of the date of the written report of findings. The appeal should be submitted in writing to the Title IX Coordinator. The parties including the parent or guardian or other representative, will have an opportunity to participate in the appeal. Following an appeal, an examiner will review the appeal along with the written report of findings and then respond in writing within thirty (30) school days of receiving the appeal. The

examiner shall either affirm or reverse the decision of the District Title IX Coordinator or designee. There is no additional appeal process beyond the decision of the Examiner.

The Complainant has the right to file a complaint at any time with the U.S. Department of Education Office for Civil Rights (OCR) without going through the SMCPS internal grievance procedures.

III. Definition of Terms

Section 106.2 of the 2024 amendments includes a number of definitions. When those defined terms are used in this document, they have the meaning set forth in § 106.2.

Complainant:

- (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: 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: consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on sex discrimination.

Party: a complainant or respondent.

Relevant: 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: 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: a person who is alleged to have violated the recipient's prohibition on sex discrimination.

Retaliation: 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 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. 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;

(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: 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.

REFERENCES

Dear Colleague Letter: Nondiscriminatory Treatment of Pregnant Student Athletes (June 25, 2007), available at <http://www.ed.gov/ocr/letters/colleague-20070625.pdf>.

Dear Colleague Letter: Pregnant and Parenting Students (June 25, 2013), available at <http://www2.ed.gov/ocr/letters/colleague-201306-title-ix.pdf>.

34 C.F.R. PART 106—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (released April 19, 2024, effective August 1, 2024) available at <https://www2.ed.gov/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf>

Fact Sheet: U.S Department of Education’s 2024 Title IX Final Rule Overview (2024) *www2.ed.gov* [Preprint]. Office for Civil Rights. Available at: <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf> (Accessed: 01 July 2024).

Orman, Sarah. “Summary of Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance”, *Council of School Attorneys*. May 19, 2020, pp.1-13.

Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures under 2024 Amendments to the U.S. Department of Education’s Title IX Regulation (2024) *www2.ed.gov* [Preprint]. Office For Civil Rights. Available at: <https://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf> (Accessed: 01 July 2024).

Summary of Major Provisions of the Department of Education’s Title IX notice of Proposed Rulemaking PDF (2024) *www2.ed.gov* [Preprint]. U.S. Department of Education. Available at: <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf> (Accessed: 01 July 2024).

Supporting the Academic Success of Pregnant and Parenting Students (June 2013), available at <http://www.ed.gov/ocr/docs/pregnancy.pdf>.

Title IX 2020 Regulations v. 2024 Regulations: Summary of Key Provisions and Comparison Chart (April 2024) National School Boards Association. COSA Council of School Attorneys.