

Marion County Board of Education

Monitoring:	Descriptor Term:	Descriptor Code:	Issued Date:
Review: Annually, in March	Harassment/Sexual Harassment and Discrimination	5.500	04/8/24
		Rescinds:	Issued:
		5.500	04/24/01

The Marion County Board of Education is committed to safeguarding the rights of all students and employees within the school system to learn and work in an environment that is free from all forms of harassment and discrimination.

It shall be a violation of this policy.

- 1) for any student or employee of this school system to harass an employee, or
- 2) for any employee of this school system to harass a student or a non-employee third party (e.g., contractor, visitor, applicant), through conduct or communication in any form as defined in this policy.

This conduct is applicable during any school related activity or during any education sponsored event, whether in a building or other property being used or operated by the Marion County Department of Education. Persons found to have violated this policy shall be subject to penalties or discipline that the school system deems appropriate.

I. Harassment/Discrimination Defined

It is the policy of the Marion County Board of Education to provide a work environment free from discrimination and harassment based on sex, sexual orientation, gender identity, gender expression or appearance, race, national origin, color, creed, religion, age, marital status, or disability.

Employee discrimination/harassment will not be tolerated.

II. Sexual Harassment Defined and Prohibited

A. Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct or communication of a sexual nature constitute sexual harassment when:

1. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment; or
2. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment; or
3. That conduct, or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment or creating an intimidating, hostile, or offensive employment environment.²

B. Sexual harassment may include, but is not limited to:

1. Sexual advances
2. Verbal harassment or abuse
3. Subtle pressure for sexual activity

4. touching of a sexual nature including inappropriate patting or pinching
5. intentional brushing against a person's body
6. demanding sexual favors accompanied by implied or overt threats concerning an individual's employment or educational status
7. demanding sexual favors especially when accompanied by implied or overt promises of preferential treatment regarding an individual's employment status
8. graffiti of a sexual nature
9. displaying or distributing sexually explicit drawings, pictures, or other written materials including making and playing sexually explicit audio/video tapes
10. sexual gestures including touching oneself sexually or talking about one's sexual activities in front of others
11. sexual or "dirty" jokes, or
12. spreading rumors about or rating other students and/or adults as to sexual activity or performance.

Any sexual harassment as defined above when perpetrated by or toward any employee or student of the school district will be treated as sexual harassment under this policy.

III. Reporting Procedures

Any person who believes he or she has been the victim of harassment/sexual harassment or discrimination as set forth under the terms of this policy, or any third party with knowledge or belief of conduct which may constitute harassment/sexual harassment or discrimination as set forth under the terms of this policy, should report the alleged acts immediately to an appropriate school system official as designated by this policy. Reports shall be made to the immediate supervisor except when the immediate supervisor is the offending party. If the immediate supervisor is the offending party, the report may be made to the Office of the Director of Schools or the Director of Human Resources by calling (423) 942-3434 immediately.

An oral complaint may be submitted; however, such complaints must be transcribed in writing to ensure a more complete investigation. The complaint should include the identity of the alleged victim and the person accused; the location, date, time, and circumstances surrounding the alleged incident; a description of what happened and any other relevant information.

Submission of a complaint or report of harassment/sexual harassment or discrimination will not affect the reporting individual's future employment, or work assignments.

The school system will respect the confidentiality of the complainant and the individual(s) against whom the complaint is filed to the greatest extent possible, consistent with the school system's legal obligations and the necessity to investigate allegations of harassment/sexual harassment or discrimination and take disciplinary action when it can be established that the alleged conduct has occurred.

Because an individual's need for confidentiality must be balanced with obligations to cooperate with police investigations or legal proceedings, to provide due process to the accused, to conduct a thorough investigation or to take necessary action to resolve a complaint, the identity of parties and witnesses may be disclosed in appropriate circumstances to individuals with a need to know or in accordance with applicable law.

IV. Investigation and Recommendation

By authority of the school system, the Director, or his/her designee, upon receipt of a report or complaint alleging harassment/sexual harassment or discrimination, shall immediately authorize an investigation. This investigation shall be conducted by school system officials or by a third party designated by the Board of

Education. The party making the investigation shall provide a written report of the status of the investigation within twenty (20) working days to the Director and Deputy Director. The twenty (20) day period may be extended by the Director or his/her designee or Board of Education if the investigation warrants the extension (e.g. if more time is needed to obtain or review evidence).

In determining whether alleged conduct constitutes harassment/sexual harassment or discrimination, the school system shall consider the surrounding circumstances, the nature of the sexual advance if sexual harassment is alleged, relationships between the parties involved, and the context in which the alleged incidents occurred.

The investigation shall consist of, but not be limited to, personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation shall also consist of employing any other methods and reviewing any documents or other items deemed pertinent by the investigator.

In addition, the school system shall take immediate steps to protect the complainant, students, and employees pending completion of an investigation of alleged harassment/sexual harassment or discrimination.

V. School District Action

A. Upon receipt of a recommendation that the complaint is valid, the school system shall take such action as is appropriate based on the results of the investigation.

B. The result of the investigation for each complaint filed under these procedures shall be reported in writing to the complainant by the school system. The report shall document any disciplinary action taken because of the complaint so long as reporting such disciplinary action does not violate any relevant federal or state privacy laws.

C. The school system shall take such other steps as are necessary to prevent recurrence of the harassment/sexual harassment or discrimination.

D. The school system shall keep the complainant informed of the status of the investigation into the complaint.

E. The school system shall not enter, or require a complainant or to enter into, a non-disclosure agreement during a settlement, or as a prerequisite to settlement, for any act of sexual misconduct, including, but not limited to, sexual harassment or sexual assault. ¹

VI. Reprisal

There shall be no retaliation against any person who reports discrimination/harassment or participates in an investigation. The school system shall discipline any individual who retaliates against any person who reports alleged incidents of harassment/sexual harassment, discrimination or who retaliates against any person who testifies, assists, or participates in an investigation, proceeding, or hearing relating to a harassment/sexual harassment or discrimination complaint. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment which creates a hostile environment.

VII. Non-Harassment/Discrimination and False Accusations

The school system recognizes that not every reported incident or advance of a sexual nature constitutes harassment. Whether a particular action or incident constitutes a personal or social relationship having a harassing or discriminatory effect requires a determination based on all the facts and surrounding circumstances.

False accusations of harassment/sexual harassment or discrimination can have a serious detrimental effect on innocent parties. Any person who knowingly and intentionally makes a false accusation, for any reason which would be contrary to the spirit and intent of this policy, shall be subject to immediate and appropriate disciplinary action.

VIII. Right to Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Tennessee Department of Human Rights, initiating civil action, filing a complaint with the Office of Civil Rights of the United States Department of Education, or, in certain instances, seeking redress under state statutes.

IX. Employment Discipline

Any school system action taken pursuant to this policy will be consistent with requirements of federal law, Tennessee statutes, and school system policies. The school system will take such disciplinary action as it deems necessary and appropriate, including warning, suspension, or immediate discharge, to end harassment/sexual harassment or discrimination and prevent its recurrence.

X. Policy Distribution

A copy of the foregoing policy and reporting procedure shall be published in the school system's policy manual, shall be published by the school system, and shall be posted in a conspicuous place in each school building and other MCDOE work sites. Current MCDOE employees shall be informed of this policy annually. New employees shall sign a harassment/sexual harassment/discrimination acknowledgment form at the time of employment.

Legal References:

1. TCA 49-2-131(a)
2. 29 CFR 1604.11

Cross References: