

**INTERSECTION OF TITLE IX AND MARYLAND LAW:
A COMPARISON CHART**

	Title IX Rule (2020)	Maryland Education Code	Analysis
Definition of Harassment	<p>Colleges and Universities: schools must address sexual harassment if it is:</p> <ol style="list-style-type: none"> 1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct. 2. Unwelcome sex-based conduct that, based on the totality of the circumstances so “severe” <u>and</u> “pervasive” that it “effectively denies” a person equal access to a school program or activity. 3. An incident meeting the definitions of sexual assault as defined in 20 U.S.C. 1092(f)(6)(A)(v); dating violence as defined in 34 U.S.C. 12291(a)(10); domestic violence as defined in 34 U.S.C. 12291(a)(8); or stalking as defined in 34 U.S.C. 12291(a)(30). <p>34 C.F.R. § 106.30(a).</p>	<p>The higher education article imposes requirements for policies on “sexual assaults” but does not define “sexual assault” and does not reference “harassment”. Md. Code, Educ. § 11-601(c).</p> <p>The higher education article states that the sexual assault policy shall conform with Title IX and “any additional requirements under this section”. Md. Code, Educ. § 11-601(a)(1).</p> <p>The K12 article defines “Bullying, harassment, or intimidation” as “intentional conduct, including verbal, physical, or written conduct, or an intentional electronic communication, that: (i) Creates a hostile educational environment by substantially interfering with a student's educational benefits, opportunities, or performance, or with a student's physical or psychological well-being and is: 1. Motivated by an actual or a perceived personal characteristic including race, national origin, marital status, sex, sexual orientation, gender identity, religion,</p>	<p>No conflict. Maryland law requires sexual assault policy to satisfy Title IX.</p>

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		ancestry, physical attributes, socioeconomic status, familial status, or physical or mental ability or disability; 2. Sexual in nature, including descriptions or depictions of a student with the student's intimate parts exposed or while engaged in an act of sexual contact; or 3. Threatening or seriously intimidating; and (ii) 1. Occurs on school property, at a school activity or event, or on a school bus; or 2. Substantially disrupts the orderly operation of a school.” Md. Code, Educ. § 7-424(a)(2).	
Jurisdiction	<p>Schools must address sexual harassment that occurs off-campus and inside the US if it occurs:</p> <ol style="list-style-type: none"> 1. in a school program or digital platform 2. in an official student group’s building,* <u>or</u> 3. under the school’s “substantial control” <p>Schools <u>cannot</u> address any conduct that occurred abroad.</p> <p>34 C.F.R. §§ 106.44, 106.45(b)(3)(i).</p> <p>*An Official student group’s building could include, but is not limited to, an officially recognized fraternity or sorority house or athletic housing.</p>	<p>Does not specifically address. However, the K12 article defines “Bullying, harassment, or intimidation” as “intentional conduct... [that] 1. [that] [o]ccurs on school property, at a school activity or event, or on a school bus; or 2. Substantially disrupts the orderly operation of a school.” Md. Code, Educ. § 7-424(a)(2).</p>	No conflict. Federal law has more robust requirements.

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Notice of Harassment/ Reporting Requirements	<p>K12 schools must respond to alleged sexual harassment if any employee has actual knowledge of it.</p> <p>Colleges and universities must respond to alleged sexual harassment if a Title IX coordinator or an official with “authority to institute corrective measures” has actual knowledge of it.</p> <p>34 C.F.R. § 106.30(a).</p>	<p>The Education Article for Higher Education does not define what a report is or what actual knowledge is or what triggers the requirement to respond.</p> <p>The Education Article for K-12 schools states, under the subtitle “Mandatory reporting of bullying, harassment, or intimidation of students”: “An incident of bullying, harassment, or intimidation may be reported by: (i) A student; (ii) The parent, guardian, or close adult relative of a student; or (iii) A school staff member.” It also states that the Department shall require a county board to report incidents of bullying, harassment, or intimidation against students attending a public school under the jurisdiction of the county board.</p> <p>Md. Code, Educ. § 7-424.</p>	<p>No conflict. Following the Federal regulations will ensure compliance with Maryland law.</p>

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Promptness/Timeframes	<p>Complaints of sex discrimination should be resolved in a “prompt” manner. Regs do not define what “prompt” means – what is considered prompt is left up to the schools</p> <p>May impose “temporary” delays for “good cause”.</p> <p>Specific examples that MAY constitute good cause for temporary delays:</p> <ol style="list-style-type: none"> 1. absence of either party 2. concurrent law enforcement activity 3. need for language assistance <p>34 C.F.R. §§ 106.8(c), 106.45(b)(1)(v).</p>	<p>Disciplinary proceedings and resolutions should be “prompt and equitable.” Md. Code, Educ. § 11-601(d)(3)(iii).</p>	<p>No conflict. “Good cause” provisions for temporary delay in Federal regulations are optional.</p>
Supportive Measures	<p>No-cost measures are designed to restore equal access to education or restore campus safety.</p> <p>Must be offered to all people who report sexual harassment even if no formal investigation is initiated.</p> <p>Must be non-punitive and not overly burdensome to respondent.</p> <p>34 C.F.R. § 106.30(a).</p>	<p>Must notify victim of their right to file criminal charges and assist with filing.</p> <p>Must inform victim of nearest hospital or medical facility that conducts Sexual Assault Forensic Exams (SAFE) and provide transportation. *Here is a list of SAFE programs near college and universities campuses - https://mcasa.org/assets/files/Collages_and_SAFE_Doc_2.1.2024.pdf</p> <p>Must offer campus counseling or a referral to a designated RCC.</p>	<p>No conflict. Schools can construct a policy that complies with both laws. The Maryland Code has more specific measures that must be offered, whereas the federal regulations contain broader statements that no-cost measures constructed by the school must be offered to all people who report sexual harassment and are not overly burdensome on the respondent. Federal regulations have no specific measures that schools are required to implement.</p>

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		<p>If feasible and upon request, transfer complainant's classes or housing.</p> <p>Md. Code, Educ. § 11-601(c).</p>	
Party Notification Requirements	<p>Respondent must receive notice of allegations, including identities, date, time, and location of incident.</p> <p>Both parties must be informed of their right to an advisor of their choice.</p> <p>Both parties must be informed there is a prohibition on making false statements.</p> <p>Both parties must be informed there is a presumption that the respondent is not responsible until a determination has been made.</p> <p>34 C.F.R. § 106.45, 106.46.</p>	<p>Both parties are entitled to written notice of the alleged violation, including the range of potential sanctions (Clery also requires this). Md. Code, Educ. § 11-601(d)(3)(iv).</p> <p>Both parties must be informed of their right to have an advocate of their choice and that they have the right to have a trained advocate or attorney. Md. Code, Educ. § 11-601(d)(3)(vi).</p> <p>Both parties must be informed of their right to have a support person present. Md. Code, Educ. § 11-601(d)(3)(vii).</p>	<p>No conflict. Maryland law has more notice requirements than the Federal regulations, but this is not an issue because the Federal regulations are a floor and not a ceiling and schools can add additional notification requirements.</p>
Right to a Support Person	<p>Silent on this matter – does not provide the right to a support person.</p> <p>Only says that any restrictions placed by a school must be placed equally on both parties.</p> <p>34 C.F.R. § 106.44(a), 106.45(b)(1)(i).</p>	<p>Both parties have the right to have no more than two people with them at anything where their virtual or physical presence is required (meetings, interviews, hearings, etc.) They can have an advocate plus one support person.</p>	<p>No conflict. Maryland law is restrictive in that it limits the number of support people to two persons max, which can include one advocate/advisor and one support person.</p>

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		<p>The support person can be anyone – a family member, a friend, a colleague, etc.</p> <p>Md. Code, Educ. § 11-601(d)(3)(vii).</p>	
Right to an Advisor/Attorney	<p>Both parties have the right to choose an advisor of their choice.</p> <p>Schools cannot limit a student's choice of advisor – it could be an attorney, a friend, or even a witness in the same case.</p> <p>34 C.F.R. § 106.45(b).</p>	<p>Both parties have the right to assistance by an attorney or advocate at all phases.</p> <p>This right is free of charge.</p> <p>Each party can have no more than two people, including an attorney or advocate, at any meeting, hearing, interview, whether in person or online.</p> <p>Md. Code, Educ. § 11-601(d)(3)(vi).</p>	No conflict. Both parties have a right to an advisor of their choice.
Cross Examination	<p>Colleges and universities must allow parties' advisors to conduct cross-examination at a live hearing.</p> <p>Cross examination is done by party's advisor and not by the party personally.</p> <p>may be done virtually so the parties are not in the same room (but must be done in real time)</p> <p>Before a party or witness answers the cross-examination, the trier of fact must first determine whether the question is relevant. The trier of fact must explain any decision to exclude a question as not relevant.</p>	<p>Schools cannot require parties to be in the physical presence of one another.</p> <p>States that both parties have the right to participate in the disciplinary proceedings, including submitting suggested specific questions to be posed to the other student involved in the disciplinary proceedings by investigators or the adjudicating official or body.</p> <p>Md. Code, Educ. § 11-601(d)(3)(v).</p>	Federal regulations require that cross-examination to be conducted at a live hearing. Maryland law does not address cross-examination and does not require parties to be in the <u>physical</u> presence of one another during the Title IX investigation and hearing process. Schools can comply with the Federal regulations and Maryland law by allowing for virtual hearings done in real time.

	<p>The 2020 regs do not explicitly define relevance. However, they do require that evidence be relevant to the matter and allow the trier of fact to exclude irrelevant questions during cross-examination.</p> <p>In K12 investigations, the school must allow the parties to submit written questions for the school to ask of the other party and witnesses.</p> <p>34 C.F.R. §§ 106.45(b)(6)(i)-(ii).</p>		
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Evidence of Sexual History	<p>The complainant's sexual history is by definition not relevant in most instances.</p> <p>Questions and evidence about a complainant's sexual history is not relevant <u>unless</u>:</p> <ol style="list-style-type: none"> 1. it proves someone other than the respondent committed the conduct, or 2. it concerns specific incidents between the parties and is offered to prove consent. <p>34 C.F.R. § 106.45.</p>	<p>Questions and evidence about any party's sexual history with someone other than the opposing party may not be considered.</p> <p>There are a few exceptions that permit questions and evidence about the sexual history of respondents; it may be permitted where:</p> <ol style="list-style-type: none"> 1. it proves the source of the injury 2. it proves prior sexual misconduct 3. it supports a claim that a student has an ulterior motive 4. it is to impeach a student's credibility after they put their own sexual history at issue <p>Md. Code, Educ. § 11-601(d)(4)(iv).</p>	<p>The Federal regulations are more restrictive than Maryland law. Under the Federal regulations, the complaints sexual history is only relevant under two circumstances. The Federal regulations do not address the Respondent's sexual history, and therefore, nothing prohibits consideration of a respondent's sexual history for the purposes permitted under Maryland law.</p>

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Standard of Proof	<p>Schools are permitted to choose between clear and convincing <u>or</u> the preponderance of the evidence standard.</p> <p>Must use the same standard for all Title IX complaints, including those against faculty members.</p> <p>Schools are permitted to single out sexual harassment complaints and impose a different standard of proof than for other types of misconduct complaints (can subject sexual misconduct complaints to heightened scrutiny).</p> <p>34 C.F.R. § 106.45(b)(1)(vii).</p>	<p>Colleges and universities must apply the same standard to sexual harassment cases as to all other, similar types of misconduct cases that involve discrimination or harm to another person.</p> <p>Md. Code, Educ. § 11-601(d)(4)(ii).</p>	<p>No conflict. Schools and institutions can comply with the Federal regulations and Maryland law.</p> <p>The standard must be the same for complaints against employees <u>AND</u> students AND be the same for complaints of sexual harassment and other similar types of misconduct cases.</p>
Informal Resolution and Mediation	<p>Schools can use an informal resolution process, such as mediation or a restorative process, to resolve complaints of student-on-student sexual harassment.</p> <p>Informal resolution may never be required.</p> <p>Both parties must consent in writing and may withdraw at any time.</p> <p>Informal resolution may not be used where a student has made allegations against an employee.</p> <p>34 C.F.R. § 106.45(b)(9).</p>	<p>Mediation can only be offered if the complainant requests it.</p> <p>All parties must agree to mediation and either party may withdraw at any time.</p> <p>The school must have staff trained to handle mediations.</p> <p>Schools are prohibited from facilitating mediation in sexual assault and sexual coercion cases.</p> <p>Md. Code, Educ. § 11-601(d)(4) (iii), Md. Code, Educ. 11-601(d)(5).</p>	<p>No conflict. Federal regulations make mediation entirely optional, it can never be required, so Maryland law applies, and mediation may not be used for cases of sexual assault or coercion.</p>

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Protections for Gender Identity	The 2020 Title IX rule does not protect against gender-based discrimination. The ruling in <i>State of Tennessee v. Cardona</i> , No. 2:24-00072 (Jan. 9, 2025) specifically held that the 2024 rule's interpretation of sex as including gender identity was incorrect.	Bullying, harassment, or intimidation under the Maryland Education Code includes that on the basis of gender identity. Md. Code, Educ. § 7-424	The Federal regulations are more restrictive. Institutions can have sexual assault policies that are broader or separate from Title IX, addressing sexual misconduct that may not fall under Title IX's definition of "on the basis of sex" and provide protection against sex discrimination that apply to gender identity and sexual orientation.
Retaliation	Schools cannot retaliate against anyone to interfere with their Title IX rights or punish them for their participation or lack thereof in a sex discrimination proceeding. 34 C.F.R. § 106.71	Maryland anti-discrimination laws include anti-retaliation protections for students and parents that file a complaint alleging discrimination. Md. Code Regs. 13A.01.07.03 If students believe they are being discriminated against, they can file a complaint with the State Superintendent requesting the relief they are seeking. Md. Code, Educ. § 26-705	No conflict. The Federal regulations are broader. Following the Federal regulations will comply with the Maryland Code.
Appeals	Both parties have the right to appeal (including complainant appeal of an initial determination that complaint must be or may be dismissed without an investigation), on the basis of: <ul style="list-style-type: none"> • Procedural irregularity • New evidence not previously available • Conflict of interest or bias by a school actor • Any additional basis the school wants as long as it's offered equally to both sides. 34 C.F.R. § 106.45(b)(8)	Both parties have the right to appeal a determination or sanction. Md. Code, Educ. § 11-601(d)(3)(v)	No conflict. Federal regulations require appeal for specific bases. While the 2020 list specific grounds for appeal, institutions can choose to offer additional grounds for appeal, as long as they are offered equally to both parties.