

File: ACAB – SEXUAL **& SEX-BASED** HARASSMENT **AND RETALIATION**

The _____ School Committee and _____ Public Schools are committed to maintaining an education and work environment for all school community members. that is free from all forms of harassment, including sexual **and sex-based** harassment as provided under MA and Federal law. The members of the school community include the School Committee, employees, administration, faculty, staff, students, volunteers in the schools, and parties contracted to perform work for the _____ Public Schools.

Because the District takes allegations of harassment, including sexual harassment, seriously, ~~we will~~ **the District shall** respond **promptly and meaningfully to every known report of sexual harassment and shall investigate every formal** complaint of harassment including sexual **and sex-based** harassment as well as retaliation and following an investigation where it is determined that such inappropriate conduct has occurred, the **District shall** ~~we will~~ act promptly to eliminate the conduct and impose corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth ~~our~~ **the District's** goals of promoting an environment that is free of harassment including sexual **and sex-based** harassment, the policy is not designed or intended to limit ~~our~~ **the District's** authority to discipline or take remedial action for conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of harassment or sexual **or sex-based** harassment.

Definitions of Sexual Harassment

TITLE IX

Sex-based harassment prohibited by Title IX is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including as described in § 106.10 of Title IX, that is:

(1) Quid pro quo harassment. An employee, agent, or other person authorized by the District to provide an aid, benefit, or service under the District'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 District's education program or activity (i.e., creates a hostile environment).

(3) Specific offenses. (i) Sexual assault (ii) Dating violence; (iii) Domestic violence; (iv) Stalking

TITLE VII

Title VII of the Civil Rights Act of 1964 prohibits sexual harassment which is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. A hostile environment on the basis of sex is created when the conduct is sufficiently severe or pervasive to alter the conditions of employment.

M.G.L. c. 151B

M.G.L. c. 151B, § 1 - the term "sexual harassment" is defined as sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment. Discrimination on the basis of sex shall include, but not be limited to, sexual harassment.

M.G.L. c. 151C

M.G.L. c. 151C, § 2 (g) prohibits the sexual harassment of students in any program or course of study in any educational institution and M.G.L. c. 151C, § 1 (e) defines "sexual harassment" as sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when: (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of the provision of the benefits, privileges or placement services or as a basis for the evaluation of academic achievement; or (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's education by creating an intimidating, hostile, humiliating or sexually offensive educational environment.

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating an environment that is hostile, offensive, intimidating, to male, female, or gender non-conforming students or employees may also constitute sexual harassment.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct, which if unwelcome, may constitute sexual harassment, depending on the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances-whether they involve physical touching or not;

- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences;
- Discussion of one's sexual activities; and
- Sexual violence, including rape, sexual assault, sexual battery, sexual abuse and sexual coercion as well as 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)

Sexual harassment

is unwelcome conduct of a sexual nature. The definition includes unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity it also, includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment includes conduct by an employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct, often called quid pro quo harassment and, sexual assault as the Federal Clery Act defines that crime. Sexual violence is a form of sexual harassment. Sexual violence, as the Office of Civil Rights (OCR) uses the term, 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). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse and sexual coercion.

Massachusetts General Laws Ch. 119, Section 51 A , requires that public schools report cases of suspected child abuse, immediately orally and file a report within 48 hours detailing the suspected abuse to the Department of Children and Families. For the category of sexual violence, in addition to Section 51A referrals these offences and any other serious matters shall be referred to local law enforcement. Schools must treat seriously all reports of sexual harassment that meet the definition of sexual harassment and the conditions of actual notice and jurisdiction as noted above. Holding a school liable under Title IX can occur only when the school knows of sexual harassment allegations and responds in a way that is deliberately indifferent (clearly unreasonable in light of known circumstance).

Retaliation against a complainant, because they have filed a harassment or sexual harassment complaint assisted or participated in a harassment or sexual harassment investigation or proceeding, is also prohibited. A student or employee who is found to have retaliated against

another in violation of this policy will be subject to disciplinary action up to and including student suspension and expulsion or employee termination.

The complainant does not have to be the person at whom the unwelcome sexual conduct is directed. The complainant, regardless of gender, may be a witness to and personally offended by such conduct.

~~NOTICE OF SEXUAL HARASSMENT~~ **NOTE * Portion of this is in 2nd paragraph t the beginning of this file & a portion is in new File TBD – ACA-R????**

~~The regulations require a school district to respond when the district has actual notice of sexual harassment. School districts have actual notice when an allegation is made known to any school employee. Schools must treat seriously all reports of sexual harassment that meet the definition of harassment and the conditions of actual notice and jurisdiction as noted whether or not the complainant files a formal complaint. Holding a school liable under Title IX can occur only when the school knows of sexual harassment allegations and responds in a way that is deliberately indifferent (clearly unreasonable in light of known circumstances). Schools are required to investigate every formal complaint and respond meaningfully to every known report of sexual harassment.~~

~~**DUE PROCESS PROTECTIONS**~~ **NOTE * This is in new File TBD – ACA-R????**

Due process protections include the following:-

- ~~1) A presumption of innocence throughout the grievance process, with the burden of proof on the school;~~
- ~~2) A prohibition of the single investigator model, instead requiring a decision maker separate from the Title IX Coordinator or investigator;~~
- ~~3) The clear and convincing evidence or preponderance of the evidence, subject to limitations;~~
- ~~4) The opportunity to test the credibility of parties and witnesses through cross examination, subject to "rape shield" protections;~~
- ~~5) Written notice of allegations and an equal opportunity to review the evidence;~~
- ~~6) Title IX Coordinators, investigators, and decision makers must be free from bias or conflict of interest;~~
- ~~7) Equal opportunity for parties to appeal, where schools offer appeals;~~
- ~~8) Upon filing a formal complaint the school must give written notice to the parties containing sufficient details to permit a party to prepare for any initial interview and proceed with a factual investigation. For K-12 schools a hearing is optional but the parties must be allowed to submit written questions to challenge each other's credibility before the decision maker makes a determination. After the investigation, a written determination must be sent to both parties explaining each allegation, whether the respondent is responsible or not responsible, including the facts and evidence on which the conclusion was based by applying either the preponderance of the evidence or the clear and convincing standard; however, a school can use the lower preponderance standards only if it uses that standard for conduct code violations that do not involve sexual harassment but carry the same maximum disciplinary sanction. As long as the process is voluntary for all parties, after being fully informed and written consent is provided by both parties, a school may facilitate informal resolution of a sexual complaint.~~

A district may establish an informal investigation process that may, upon the request of the complainant be followed by a formal process.

NOTE * The below is in new File TBD – ACA-R????

The Superintendent in consultation with the Title IX Coordinator shall designate the principal of each school in the district, or their designee (or some other appropriate employee(s)) as the initial entity to receive the sexual harassment complaint. Also, in a matter of sexual harassment, the district shall require that the Title IX Coordinator be informed, as soon as possible, of the filing of the complaint. Nothing in this policy shall prevent any person from reporting the prohibited conduct to someone other than those above designated complaint recipients. The investigating officer may receive the complaint orally or in writing, and the investigation shall be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances and in compliance with applicable law. The investigation will be prompt, thorough, and impartial, and will include, at least, a private interview with the person filing the complaint and with witnesses. Also, the alleged harasser will be interviewed. When the investigation is completed, the complaint recipient will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

NOTE * A revised version of the below is in new File TBD – ACA-R????

Schools must create and maintain records documenting every Title IX sexual harassment complaint. This could include mediation, restorative justice, or other models of alternative dispute resolution. Schools must keep records regarding the school's response to every report of sexual harassment of which it becomes aware even if no formal complaint was filed, including documentation of supportive matters offered and implemented for the complainant.

Allegations of conduct that meet the definition of **sexual discrimination, including sex-based harassment** ~~sexual harassment~~ under Title IX will be addressed through the Title IX Sexual **Discrimination Harassment** Grievance Procedure. Allegations of conduct that meet the definition of **sexual discrimination, including sex-based harassment** ~~sexual harassment~~ under Title IX, and simultaneously meet the definitions of sexual harassment under Title VII of the Civil Rights Act of 1964 (employees), M.G.L. c. 151B (employees), and/or M.G.L. c. 151C (students), will also be addressed through the Title IX Sexual **Discrimination Harassment** Grievance Procedure.

The District's Title IX Grievance Procedure is available at: [Title IX Grievance Procedure].

Allegations of conduct that do not meet the definition of sexual **discrimination, including sex-based harassment** ~~Harassment~~ under Title IX, but could, if proven, meet the definition(s) of sexual harassment under Title VII (employees), M.G.L. c. 151B (employees), and/or M.G.L. c. 151C (students), will be addressed through the District's Civil Rights Grievance Procedure. (See exception under Section II, Part 4, Step 4 below). The definitions of sexual harassment under Title VII, M.G.L. c. 151B, and M.G.L. c. 151C are set out in the Civil Rights Grievance Procedure.

The District's Civil Rights Grievance Procedure is available at: [Civil Rights Grievance Procedure].

This policy, or a summary thereof that contain the essential policy elements shall be distributed by the (**Name of District**) School District to its students and employees and each parent or guardian shall sign that they have received and understand the policy.

List the name and phone number of the District's Title IX Coordinator

List the appropriate party by name and phone number to receive a complaint in each District School

Please note that the following entities have specified time limits for filing a claim.

The Complainant may also file a complaint with:

- The Mass. Commission Against Discrimination, 1 Ashburton Place, Room 601
Boston, MA 02108.
Phone: 617-994-6000.
- Office for Civil Rights (U.S. Department of Education)
5 Post Office Square, 8th Floor
Boston, MA 02109.
Phone: 617-289-0111.
- The United States Equal Employment Opportunity Commission,
John F. Kennedy Bldg.
475 Government Center
Boston, MA 02203.

LEGAL REF.: M.G.L. [151B:3A](#)

Title IX of the Education Amendments of 1972

BESE 603 CMR [26:00](#)

34 CFR 106.44 (a), (a)-(b)

34 CFR 106.45 (a)-(b) (1)

34 CFR 106.45 (b)(2)-(b)(3,4,5,6,7) as revised through June 2020

[Title IX Sexual Harassment Grievance Procedure](#) **Change to “Title IX Sexual Discrimination Grievance Procedure”**

[Civil Rights Grievance Procedure](#)

SOURCE: MASC **July 2024**

~~**Note: A summary of the attached Policy, as adopted, must be sent to parents/guardians, students, employees, unions, and prospective employees of the school district including Title IX Coordinator(s), investigator(s) and the decision maker. The above referenced employees must attend training sessions on the implementation of the Policy.**~~

~~SOURCE: MASC December 2021~~