

SEXUAL HARASSMENT

Sexual harassment in the education programs, activities and workplace of the Harvard Public Schools (“District”) is unlawful. All persons associated with the District including, but not limited to, School Committee members, District employees, volunteers, and students, are expected to conduct themselves at all times to maintain a workplace, education program, and activity free from sexual harassment.

Any person who engages in sexual harassment while participating in the education program or activity, or acting as a member of the school community, will be in violation of this policy.

Further, any retaliation against an individual who has complained about sexual harassment or retaliation against an individual for cooperating in an investigation of a sexual harassment complaint is unlawful and will not be tolerated.

Because the District takes allegations of sexual harassment seriously, it will respond promptly to complaints of sexual harassment and where it is determined that inappropriate conduct, whether or not such conduct constitutes sexual harassment, has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace and school environment that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace or school conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment.

Definitions:

Complainant – An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent – An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or a violation of this policy.

Sexual Harassment – Conduct on the basis of sex that satisfies one or more of the following:

1. A district employee conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct by a Committee member, employee, district volunteer or student determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District’s education program or activity; or

3. Sexual assault, dating violence, domestic violence and/or stalking by a Committee member, District employee, volunteer or student.

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 upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

1. Unwelcome sexual advances – whether they involve physical touching or not;
2. 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;
3. Displaying sexually suggestive objects, pictures, cartoons;
4. Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
5. Inquiries into one's sexual experiences; and
6. Discussion of one's sexual activities.

Supportive Measures – Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or to deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, school building/campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the building/campus, and other similar measures.

Formal Complaint – A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment.

Title IX Coordinator:

The Superintendent will annually appoint one or more Title IX Coordinators who will be vested with the authority and responsibility of managing all sexual harassment complaints. The District will annually notify applicants for employments, students, parents/guardians, and unions of the Title IX Coordinator's name(s), and the title, address, email address and phone number for each Title IX Coordinator.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment). Reports may be made at any time including during non-business hours. Reports may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Complaint Procedure:

Receipt of Formal Complaint

Upon actual knowledge of allegations of sexual harassment, the Title IX Coordinator will promptly and confidentially contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

The Title IX Coordinator shall respect a complainant's wishes that the allegations not be investigated unless the Title IX Coordinator determines that it would be unreasonable in light of the known circumstances not to initiate a formal complaint. The Title IX Coordinator must investigate the complaint and take appropriate action where required by state law.

The District may remove a respondent on an emergency basis after undertaking an individualized safety and risk analysis and determining that an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal. The District will provide the respondent with written notice and an opportunity to challenge the decision immediately following the removal in accordance with any applicable laws, collective bargaining agreements and student handbooks.

After a formal complaint has been filed, the Title IX Coordinator will provide written notice to all parties of the investigation process and sufficient details of the allegations known at the time. If the allegations are against more than one respondent or by more than one complainant, the District may consolidate multiple formal complaints where the allegations of sexual harassment arise out of the same facts or circumstances.

The Title IX Coordinator shall assign an individual to investigate the matter. The investigator shall have no conflicts with or biases against either the complainant or the respondent. If the District has appointed more than one Title IX Coordinator, the individual not assigned to be the Title Coordinator in the matter may serve as the investigator. The investigator will collect and review evidence, interview parties and witnesses, and complete an investigative report.

Informal Resolution

After a formal complaint is filed, the District may offer and facilitate an informal resolution process (such as but not limited to mediation or restorative justice) before a determination is made. This process is not available when the complaint alleges sexual harassment by a School Committee member, District employee or volunteer towards a student.

The parties must give voluntary, written consent to participate in this informal process. When both parties consent to an informal process, the District shall facilitate a resolution-based meeting within ten (10) school days, subject to the availability of the involved parties and any mediator or facilitator.

If informal resolution is unsuccessful, the complainant may choose to continue the investigation process by providing written notice to the Title IX Coordinator within five (5) school days of the unsuccessful informal resolution meeting. In this event, the investigator will commence or resume the investigation generally within five (5) school days from receipt of notice.

Investigation

All evidence will be weighed objectively using the preponderance of the evidence standard. Credibility determinations are not based on an individual's status as a complainant, respondent or witness. The investigator will presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the investigation process. However, nothing in this paragraph will limit the right of the District to remove a respondent on an emergency basis as provided in the Complaint Procedure of this policy.

The investigator shall strive to complete investigations within twenty-five (25) school days of the filing of the formal complaint or resumption of the investigation after an unsuccessful information resolution meeting.

During the investigation, the investigator shall take the following steps:

1. The investigator will interview the complainant to obtain a clear understanding of that complainant's allegations within five (5) school days of the filing of the formal complaint provided that the complainant is available to be interviewed by the investigator.
2. The investigator will interview the respondent to obtain a response to the complainant's allegations from the respondent within five (5) school days of the interview with the complainant provided that the respondent is available to be interviewed with the investigator.
3. The investigator will interview witnesses identified by the complainant or respondent within five (5) school days of being identified as a potential witness by the complainant or respondent provided the witness is available. The investigator will interview witnesses as the investigator deems necessary.

4. The investigator will hold as many meetings or interviews with the parties and any witnesses as is necessary to make factual findings.

The timelines above are subject to the District's goal to complete investigations generally within twenty-five (25) school days, but may be extended for good cause upon written notice to the complainant and respondent. The timeline for investigation may be suspended during any informal resolution procedure or meeting. Each party is entitled to be accompanied in interviews by an advisor, who may be a parent/guardian or an attorney, but who may only have limited participation in interviews. Translators will be provided upon request.

After all interviews are conducted and evidence is obtained, the parties and if applicable, their advisors, will have an equal opportunity to inspect, review and respond to any evidence obtained.

Prior to completion of the investigative report, the investigator will send each party all evidence subject to inspection and review and provide each party at least ten (10) business days to provide a response to the investigator. Evidence to be shared may be redacted to protect confidential information under the Family and Educational Rights and Privacy Act ("FERPA") or other federal or state laws and regulations.

The investigator will draft an investigation report that fairly summarizes the relevant evidence including, but not limited to, interviews with parties and witnesses, written evidence, audio/video recordings, and site visits. The investigator will then send the completed investigation report to each party and: (1) afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness; (2) provide each party with the answers; and (3) allow for limited follow-up questions. The investigator may limit the number of questions and, if certain questions are submitted that are not relevant to the investigation, may choose not to provide those questions to the other party. If the investigator chooses not to provide certain questions, the investigator will inform the party who submitted such questions that they will not be asked as they are not relevant.

Determinations:

The investigator will provide the decision maker with a report including all evidence obtained during the course of the investigation. The decision maker assigned will have no conflicts with or biases against either the complainant or the respondent and the decision maker will not be the Title IX Coordinator assigned in the matter or the investigator for the complaint. The decision maker shall review all of the evidence and issue a written determination within fifteen (15) school days of receipt of the matter from the investigator, absent extenuating circumstances. If the decision maker substantiates the allegations of sexual harassment, the decision maker may recommend or impose discipline against the respondent. If the decision maker does not substantiate the allegations of sexual harassment, the complaint will be dismissed.

The decision maker shall provide the written determination to the parties simultaneously. The

written determination shall include: (1) identification of the allegations potentially constituting sexual harassment; (2) a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather evidence; (3) findings of fact supporting the determination; (4) conclusions as to whether District policies were violated; (5) a statement of the result of each allegation, including a determination regarding responsibility, disciplinary action to be imposed on the respondent, and whether remedies designed to preserve equal access to the District's education program or activity will be provided to the complainant; and (6) the District's procedures and permissible bases for appeal. Confidential student record information and personnel information may be redacted consistent with and as required by state and federal law.

An employee found responsible for engaging in sexual harassment is subject to discipline up to and including termination. A student found responsible for engaging in sexual harassment is subject to discipline consistent with state law and applicable student handbook.

Dismissals under Title IX:

If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in the District's education program or activity or workplace, or did not occur in the United States, then the District will dismiss the formal Title IX complaint with regard to that conduct for purposes of sexual harassment under Title IX. However, such a dismissal does not preclude the investigation or imposition of disciplinary action pursuant to state law, other District policies and/or the student handbook.

The District may dismiss the formal Title IX complaint or any of the allegations in the complaint, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in the complaint; the respondent is no longer enrolled or employed by the District; or specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

Upon a dismissal of this section, the District will promptly send written notice of the dismissal and reason(s) to the parties.

Withdrawal:

While Title IX allegations may be withdrawn, the District may investigate under other state and federal laws and District policies.

Appeals:

Either party may appeal the outcome of the investigation for one of the following reasons:

1. Procedural irregularity affected the outcome;
2. New evidence that was not reasonably available at the time that the determination was made which could affect the outcome;
3. The Title IX Coordinator, investigator, and/or decision-maker had a conflict of interest or bias.

Appeals must be submitted to the Title IX Coordinator within five (5) business days of receipt of the written determination and contain a written statement in support or challenge of the outcome.

When an appeal is filed, the District shall notify the other party and ensure that the individual deciding the appeal is not the same person as the decision maker who reached the determination regarding responsibility and that the individual has no conflicts of interests and is free of bias.

The non-appealing party shall have five (5) school days from the date of receipt of the notice of the appeal to submit a written statement to support or oppose the outcome.

The individual deciding the appeal shall issue a written decision describing the result of the appeal and rationale for the decision and provide the decision to both parties generally within ten (10) school days of receipt of the non-appealing party's written statement, or in the event no statement is submitted, the date the statement would have been due.

In addition to the above, if you believe you have been subjected to sexual harassment, you may file a complaint with any of the governing agencies set forth below.

1) United States Department of Education Office for Civil Rights – Region 1
J.W. McCormack Post Office and Court House
Post Office Square
Boston, MA 02108
(617) 289 – 0111

2) Equal Employment Opportunity Commission
JFK Federal Building
15 New Sudbury Street, Room 475
Boston, MA 02203
(800) 669 – 4000

3) The Massachusetts Commission Against Discrimination (“MCAD”)
One Ashburton Place – Room 601
Boston, MA 02108
(617) 994 – 6000

SOURCE: MASC

LEGAL REFS.: Title VII, Section 703, Civil Rights Act of 1964 as amended 45

Federal Regulation 74676 issued by EEO Commission
Education Amendments of 1972, 20 U.S.C. 1681 et seq. (Title IX)
Board of Education 603 CMR 26:00

ADOPTED: June 11, 2007

AMENDED: May 20, 2013

AMENDED: September 28, 2020