

## **SECTION J STUDENTS**

**6. Policy Against Discrimination, Sexual Harassment and Retaliation** (Voted 3/16/17, #17-28)  
(Replaced *Safe Schools Policy* (10/26/06, #06-98; Revised 5/5/11, #11-41))

### **General Statement of Policy**

The Public Schools of Brookline (PSB) is dedicated to creating and maintaining an educational and work environment that values the diverse backgrounds of all people.

This Policy applies to all sites and activities the PSB supervises, controls or where it has jurisdiction under the law, and to conduct involving school community members outside of school but arising from or connected to a school-related activity.

#### **I. Prohibited Discrimination**

Consistent with applicable law,<sup>1</sup> the PSB prohibits all forms of discrimination in all of its programs, activities and services based on a person's protected class under the law:

<b>Discrimination or discriminatory harassment or bullying, in other words, harassment or bullying on the basis of:</b>	<b>Any form of the following additional prohibited conduct:</b>
<ul style="list-style-type: none"><li>● race</li><li>● ethnicity</li><li>● color</li><li>● religion</li><li>● national origin</li><li>● sex/gender</li><li>● sexual orientation</li><li>● gender identity or expression</li><li>● disability or perceived disability</li><li>● age</li><li>● genetic information</li><li>● marital/parental status</li><li>● military/veteran status</li></ul>	<ul style="list-style-type: none"><li>● sexual violence<ul style="list-style-type: none"><li>○ rape</li><li>○ sexual assault</li><li>○ sexual exploitation</li><li>○ statutory rape</li><li>○ aiding the commission of sexual violence</li></ul></li><li>● sexual harassment</li><li>● dating violence</li><li>● stalking</li></ul>

Prohibited discrimination under this Policy includes discriminatory harassment or bullying.<sup>2</sup> Prohibited discriminatory harassment and bullying is motivated by or expresses a negative attitude toward a person's membership in a protected class or protected characteristic and creates an intimidating, hostile, or offensive environment. It may include, but is not limited to, written, verbal or electronic express or a physical act or gesture such as:

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<sup>1</sup> See Legal References at the end of this Policy.

<sup>2</sup> Bullying of students that is not discriminatory or retaliatory under this Policy is addressed by the PSB's Bullying Prevention Policy, Section J(5), PSB Policy Manual.

- use of epithets, slurs or nicknames that refer to a person's protected characteristic such as, but not limited to, race or sexual orientation,
- jokes that have the purpose or effect of demeaning or making fun of a person based on a protected characteristic,
- graffiti or other visual messages or displays that degrade a person based on a protected characteristic, and
- any other verbal or non-verbal conduct that has the purpose or effect creating a hostile work environment based on a person's protected characteristic.

The PSB also prohibits harassment or bullying of school community members or other harmful conduct for reasons that may be unrelated to protected class.

## **II. Prohibited Sexual Harassment**

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any one of the three following criteria is met:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of participation in the PSB's educational, employment, or other programs, services or activities;
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment, educational or programmatic decisions affecting such individual; **OR**
- (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or educational environment or creating an intimidating, hostile or offensive environment with regard to the PSB's employment or employment, educational or other programs, activities or services.

Sexual harassment may include conduct by one individual toward another irrespective of the sex or gender identity of either. Sexual harassment may include, but is not limited to:

- sexual advances or propositions or requests for sexual favors;
- preferential treatment or promises of preferential treatment for submitting to sexual conduct, or less favorable treatment or threats of less favorable treatment for not submitting to sexual conduct;
- unwelcome touching of a personal nature, ranging from hugging, kissing, pinching, patting, grabbing, brushing against, and poking to sexual assault/rape;
- sexual or obscene gestures, noises, whistling, remarks, suggestions, innuendo or jokes;
- comments or questions enquiring about a person's body or sexual abilities, deficiencies or experience;
- staring or leering;

- displaying (including, but not limited to, on walls, lockers, and computer screens), or by the reading or viewing, of sexually-suggestive or pornographic objects, pictures or other graphic or written material;
- disseminating sexually-suggestive or pornographic graphic or written material by voice mail, email, text, or websites; and
- any other verbal or non-verbal conduct of a sexual nature that has the purpose or effect of subjecting a person to an intimidating, hostile or offensive environment.

### **III. Prohibited Retaliation**

The PSB prohibits punitive action of any kind against a person for engaging in protected conduct such as complaining of, reporting, or opposing acts of discrimination, sexual harassment and/or retaliation, or for participating in an investigation into or proceeding relating to alleged discrimination, sexual harassment and/or retaliation. Prohibited retaliation may include, but is not limited to:

- disciplining a person, or taking any other adverse action against a person based on a person's protected conduct,
- discriminating against a person in the PSB services, programs and activities because of a person's protected conduct, and
- subjecting a person to harassment, bullying, shunning, hazing, or name-calling, or any other hostile verbal or non-verbal conduct on the basis of a person's protected conduct.

### **IV. Reasonable Accommodation**

The PSB will reasonably accommodate persons with disabilities and with religious observance or practice requirements. A reasonable accommodation is one that would not pose an undue financial or administrative burden on the PSB by being unduly costly, extensive, substantial or disruptive, or by fundamentally altering the nature or operation of the PSB's programs, services or activities. Depending on the facts, examples of reasonable accommodations may include, but are not limited to, a modified work or break schedule, altering how or when job duties are performed, reasonable modifications to policies and procedures, supplying an auxiliary aid or service to permit effective communication, and providing assistive technology or removal of an architectural barrier.

Persons seeking reasonable accommodations should direct their request to the applicable Coordinator designated in Section VII below.

Students seeking a Section 504 accommodation or special education services in order to access the PSB's educational programs should contact the Office of the Deputy Superintendent for Student Services for more information about any special procedures (including complaint procedures) applicable to Section 504 accommodations and special education services.

### **V. Other Prohibited Actions**

Also prohibited by this Policy is knowingly making a false accusation of discrimination, sexual harassment or retaliation, or interfering with the investigation into such conduct by, for example, pressuring, goading, or encouraging false denials or covering up such conduct.

## **VI. Duties/Responsibilities**

- a. In each school, the Principal is responsible for receiving complaints/reports of violations of this Policy at the school level. The Superintendent is responsible for receiving complaints/reports of violations by a Principal or a Deputy Superintendent. The Chair of the School Committee is responsible for receiving complaints/reports of violations by the Superintendent. Any other person designated by the Principal, Superintendent, or School Committee Chair to receive complaints/reports shall forward them to the person responsible for receiving them under this paragraph. A Coordinator identified in Section VII below will be consulted regarding next steps consistent with this Policy and applicable law.
- b. PSB staff, independent contractors and school volunteers who witness or become aware of discrimination, sexual harassment and/or retaliation shall immediately report such conduct to the Principal/Superintendent/School Committee.
- c. Each member of the school community is responsible for cooperating with the PSB's investigation of reports or complaints of violations of this Policy and with the PSB's efforts to prevent, respond effectively to, and eliminate any such conduct.
- d. The Superintendent is responsible for:
- developing procedures to implement this Policy, which shall be consistent with legal requirements and PSB Policy and procedures, including, but not limited to, the Bullying Prevention Policy and procedures, the Student Discipline Policy, and applicable collective bargaining agreements.
  - Otherwise developing guidelines to effectively implement this Policy and comply with applicable law, which may include guidelines regarding:
    - i. publication of this Policy and Notices of Rights to the entire school community in an age appropriate manner and in the languages most prevalent within the school community, including in School Handbooks, and
    - ii. in-service training; and
    - iii. student training.

## **VII. Policy Coordinators/Notice of Rights**

Inquiries about this Policy or applicable law (including Title VI, Title IX, Section 504, and the Americans with Disabilities Act) may be directed to the PSB's Coordinators, who are the following:

- **Regarding complaints of violations of a student's rights:** Deputy Superintendent of Student Services.
- **Regarding complaints of violations of an adult's rights (staff, visitors, contractors, etc.):** PSB's Director of Human Resources.

The Coordinators and their contact information (telephone number, office address, email address) shall be made identified in a Notice of Rights for each school and a separate one for the District that shall be posted, as applicable, on the school and district website, in each school building and within public areas of PSB administrative facilities.

Coordinators are responsible for consulting regarding the handling of complaints for consistency with this Policy and applicable procedures and legal requirements, and for identifying and addressing any patterns or systemic problems that arise during the review of such complaints.

Inquiries about prohibited discrimination, sexual harassment retaliation may also be directed to: the United States Department of Education for Civil Rights, 5 Post Office Square, 8<sup>th</sup> Floor, Boston, MA 02109 (617) 289-0111.

### **VIII. Investigations/Corrective Action/Reporting**

The PSB shall take prompt and effective steps reasonably calculated to end any discrimination, sexual harassment or retaliation and prevent any such conduct from recurring. The decision to discipline, the nature of any disciplinary action, and the disciplinary procedures followed shall comply with the PSB's disciplinary policies (including, but not limited to, Section J(8), PSB Policy Manual), applicable collective bargaining agreements, and federal and Massachusetts state law (including, but not limited to, M.G.L. c. 71, §§ 37H, 37H ½, and 37H ¾, and in the case of students with disabilities, the federal Individuals with Disabilities Education Act).

The Coordinators will each prepare an annual report to the Superintendent (without identifying information) regarding the number and resolution of any complaints or reports of violations of this Policy, and noting any measures taken in the prior year and anticipated for the coming year to systemically address and prevent violations of this Policy. The Superintendent will annually submit to the School Committee a report containing this information.

### **LEGAL REFERENCES**

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and its implementing regulations, 34 C.F.R. Part 100; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, and its implementing regulations, 28 CFR Parts 104 and 300; Title II of the Americans with Disabilities Acts (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulations, 28 C.F.R. Part 35; the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.*, and its implementing regulations, 29 C.F.R. 1625 and 1626 *et seq.*; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.* and its implementing regulations, 34 C.F.R. Part 110; the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. 2000ff *et seq.*, and its implementing regulations, 29 C.F.R. Part 1635 *et seq.*; the Uniformed Services and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301 *et seq.*, and 20 C.F.R. Part 1002; Massachusetts General Laws (M.G.L.) Chapter 76, § 5; M.G.L. c. 151B; and M.G.L. Chapter 151C.