

PUBLIC SCHOOLS OF BROOKLINE INTERIM TITLE IX POLICY AND GRIEVANCE PROCEDURES

(August 14, 2020)

Federal law prohibits discrimination on the basis of race, color or national origin (Title VI of the Civil Rights Act of 1964); sex (Title IX of the Education Amendments of 1972); or disability (Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990) in educational programs or activities receiving federal financial assistance.

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. The PSB desires to provide a safe environment that allows all students and employees equal access and opportunities in the district's academic and other educational support programs, services, and activities. District programs and activities shall be free from discrimination, harassment, intimidation, and bullying based on actual or perceived ancestry, age, color, mental or physical disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, marital or parental status, sex, sexual orientation; the perception of one or more of such characteristics; or association with a person or a group with one or more of these actual or perceived characteristics. This applies to all acts related to school activities or school attendance under the jurisdiction of the Superintendent.

With the aim of assuring equal rights and opportunities within our community and to comply with Federal Laws, State Laws, and State Department of Education regulations concerning these, the PSB reaffirms itself to be an Equal Rights and Opportunities School District. As an Equal Rights and Opportunities School District, it does not discriminate against individuals or groups because of race, color, national origin, religion, gender, sexual orientation, age, marital status, or handicaps and disabilities. The school district's commitment to nondiscrimination extends to students, employees, prospective employees, and the community.

WHAT IS TITLE IX?

Title IX of the Educational Amendments of 1972 states that no person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Sex discrimination under Title IX includes sexual harassment and sexual violence.

Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.
2. Any unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.
3. Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

DEFINITIONS

- In the employment context, sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment under Massachusetts law when:
 - Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's advancement (quid pro quo harassment);
 - Submission to or rejection of such conduct by an individual is used as the basis for employment decisions;
 - Such conduct interferes with an individual's job duties; or
 - The conduct creates an intimidating, hostile or offensive work environment.
- In the educational context, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct ("quid pro quo harassment");
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity ("hostile environment harassment"); or
 - "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)
- "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment or on whose behalf the Title IX Coordinator has filed a formal complaint.
- "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

ACTUAL KNOWLEDGE

The PSB must respond promptly to complaints when they have actual knowledge. "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to any employee or student of the district. The actual knowledge standard includes the reporting to any employee in the elementary and secondary schools. All employees are viewed as having authority to institute corrective measures by forwarding all reports to the Title IX Coordinator or Deputy. Complaints will be addressed promptly whenever the district has actual knowledge of the allegation.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of the alleged conduct that could constitute sex

discrimination or sexual harassment) in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator or Deputy, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time.

Other constraints

Title IX now only applies to locations, events, and/ or circumstances in which the school district exercises substantial control. The district no longer has the ability to investigate or address off-campus conduct over which the school does not exercise substantial control. It must have occurred in the school district program. It is important to note that school events held virtually (i.e. remote learning) are considered a circumstance in which the school district exercises substantial control.

Title IX does not apply to events that were alleged to have occurred outside the United States.

Time Limits

There is no time limit or statute of limitation on timing to file a formal complaint. However, at the time of filing a formal complaint, an alleged victim must be participating or attempting to participate in a program or activity of the school district.

Upon receipt of actual knowledge, the following will occur:

1. Employee notifies Title IX Coordinator or Deputy, or a person may file a complaint directly with Title IX Coordinator or Deputy.
2. The Title IX Coordinator or Deputy promptly contacts the Complainant upon receiving the complaint and will do the following:
 - a. Discuss the availability of supportive measures
 - b. Consider the Complainant's wishes with respect to supportive measures
 - c. Explain that supportive measures may be received with or without filing a formal complaint
 - d. Explain to the Complainant the purpose of filing a formal complaint, process for filing a formal complaint, and grievance procedures
 - e. Determine whether the Complainant wishes to file a formal complaint

Offer Supportive Measures

The Complainant and Respondents must be offered supportive measures even if they do not file a formal complaint.

“Supportive measures” means 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 the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment. Examples of supportive measures may include counseling, extensions of deadlines or other course-related

adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, increased security and monitoring of certain areas of the campus, and other similar measures. The district must maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures. The Title IX Coordinator or Deputy is responsible for coordinating the effective implementation of supportive measures.

The Title IX Coordinator or Deputy will document in writing the supportive measures offered/provided or why no supportive measures were offered/provided.

FORMAL COMPLAINTS

Formal complaint means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting that the district investigate the allegation of sexual harassment.

If the Complainant declines to file a formal complaint, the Title IX Coordinator must consider whether to sign a formal complaint and start an investigation despite the Complainant's preferences.

This decision may be appropriate when safety or similar concerns lead the Title IX Coordinator to conclude it must investigate and potentially sanction a Respondent.

A Title IX Coordinator's decision to override the Complainant's decision not to file a formal complaint must be documented in writing along with an explanation of why this decision was necessary.

Mandated Dismissal of Formal Complaints

The Title IX Coordinator or Deputy may dismiss a complaint if:

- If the conduct alleged would not constitute sexual harassment as defined in § 106.30 even if proved
- If the conduct alleged did not occur in the school district's education program or activity. "Education program or activity" includes locations, events, or circumstances over which the district exercised substantial control over both the Respondent and the context in which the sexual harassment occurred
- If at the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the district with which the formal complaint is filed
- If the conduct alleged did not occur against a person in the United States

Discretionary Dismissal Grounds

The Title IX Coordinator or Deputy have the discretion to dismiss a complaint if:

- At any time during the investigation or hearing, a Complainant notifies the Title IX Coordinator or Deputy in writing that the Complainant would like to withdraw the formal complaint or any allegations therein
- The Respondent is no longer enrolled or employed by the district
- Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations

The Title IX Coordinator or Deputy will send written notice of any dismissal to the Complainant and Respondent.

Written Notice

Before any investigation can begin, the Title IX Coordinator or Deputy must send written notice to both parties including sufficient details. Sufficient details include:

- Identities of the parties involved in the incident, if known
- Conduct allegedly constituting sexual harassment
- Date and location of the alleged incident, if known

The written notice must include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

The written notice must inform the parties that they may have an advisor of their choice, who may inspect and review evidence.

The written notice must inform the parties that the District's Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If additional allegations are added during the course of the investigation, additional written notice must be provided.

INFORMAL RESOLUTION

Informal resolution is used when the parties agree to resolve a report informally rather than through formal investigation and resolution, and when the Title IX Coordinator or Deputy is able to support the resolution informally by providing agreed-upon remedies to resolve the situation.

Informal resolution may be used at any time prior to reaching a determination regarding responsibility. The district will facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. During informal resolution, both sides will be provided an opportunity to be heard and hear the other side.

The regulations permit informal resolution if the following procedural elements are met:

- A formal complaint must be filed
- The process may be used at any point prior to reaching a determination of responsibility
- The parties provide voluntary, written consent to use the informal process
- The parties are provided with a written notice that includes:
 - The reported misconduct/allegations;
 - The requirements of the informal resolution process, including the circumstances under which, once completed, it precludes the parties from changing their minds and reverting to a formal grievance process;
 - The right of the parties to withdraw from the informal resolution process and resume the formal grievance process;
 - Any consequences resulting from participating in the process, including what sanctions could result, as well as any records that will be maintained and/or could be shared; and
 - Whether the resolution would be binding on the parties.

The regulations preclude the use of informal resolution in employee-student cases. The district cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

If the Complainant and the Respondent feel that their grievances have been sufficiently addressed via informal resolution, then no further action needs to be taken. This voluntary conversation must occur within five (5) school days after receiving the complaint of discrimination or harassment, unless both parties agree otherwise. The results of an informal resolution shall be maintained by the facilitator, in writing.

INVESTIGATION

In an investigation, the Title IX Coordinator or Deputy will designate an investigator and a decision-maker, who may not be the same person.

The regulations require districts to ensure that coordinators, investigators, and decision-makers (including appeal decision-makers) do not have conflicts of interest or bias for or against Complainants and Respondents generally, or for or against an individual party. This requirement extends to any materials used to train coordinators, investigators, decision-makers, and others involved in the process.

The investigator will be responsible for interviewing parties and witnesses, finding facts, and making determinations related to credibility, all of which will go into a written report.

Complainants and Respondents have a right to have advisors of their choice participate in all aspects of the proceedings.

During the investigation, each party must be provided an equal opportunity to present both fact and expert witnesses.

Notice of Interviews or Meetings

The investigator will provide clear written notice to parties before any interview or other meeting in which their participation is invited or expected. The notice will be sent far enough in advance of the interview that the party has sufficient time to prepare to participate, including their advisor, if any. The format of the communication can be informal, such as an e-mail or form sent through the district's software platform. Specifically, the notice will include:

- Date
- Time
- Location
- Participants
- Purpose of the investigative interview or meeting

Prior to completion of the investigative report, the school district will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will take into consideration prior to completion of the investigative report.

The investigative report will summarize relevant evidence and include an explanation of evidence that was excluded based on being irrelevant.

School districts may not limit students' and employees' ability to discuss (i.e., speak or write about) the allegations under investigation, for example with a parent, friend, or other source of emotional support, or with an advocacy organization.

RETALIATION

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing.

Further, the regulations state that intimidation, threats, coercion, or discrimination, including charges against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Retaliation is a stand-alone offense, which will be addressed in a separate investigation and hearing that will be addressed promptly, thoroughly, and impartially. Under the regulations, retaliation protections are provided to anyone engaged with the Title IX process, a code process related to an original Title IX allegation, or what could have been a Title IX allegation. In addition to Complainants, this protection would extend to witnesses, reporters, and Respondents.

DECISION-MAKING

The decision-maker must not be biased against any of the parties at the outset of this process.

The decision-maker will offer both the Complainant and Respondent the opportunity to submit proposed relevant, written questions to ask of any party or witness, to respond to questions posed by another party, and to offer additional limited follow-up.

The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.

The decision-maker must consider what is relevant, using the same criteria of relevancy as outlined for the investigation.

After this process is complete, the decision-maker will create a written determination regarding whether sexual harassment has occurred using a preponderance of the evidence standard.

A school district must think about how a reasonable person would view the conduct when determining whether the conduct constitutes sexual harassment. In making this determination, school districts may consider the age and number of parties involved.

The written determination must be issued to both parties simultaneously and must include:

- Identification of the allegations potentially constituting sexual harassment;
- A description of the procedural steps taken from the district of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the district's Code of Conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
- The district's procedures and permissible bases for the Complainant and Respondent to appeal (a copy of, or direct reference to, this policy will suffice).

The decision-maker shall further recommend what action, if any, is required.

If there is a finding that sexual harassment occurred, the school district will provide remedies to the Complainant designed to restore or preserve equal access to the school district's education program or activity. Such remedies may include supportive measures.

Formal disciplinary actions may be imposed in the event that the preponderance of the evidence indicates a violation of this policy, up to and including expulsion or termination (for employees). Any disciplinary action will be in accordance with due process rights under State law and any applicable collective bargaining agreement (for employees).

School district cannot take discipline in the absence of following this formal process. It does not limit the District from removing a student or employee from a program or activity on an emergency basis based on immediate threats to people's physical health or safety or placing an employee on administrative leave during the pendency of the investigation.

Standard of Proof

The standard of proof is a term which describes the standard used to weigh evidence and determine whether a student or employee is responsible for violating policy. The PSB uses the "preponderance of the evidence" as its standard of proof in determining whether a student or employee is responsible for violating policy. The preponderance of the evidence standard has alternatively been described as "the greater weight of evidence" (picture the scales of justice, tipped slightly one way or the other), as what is more likely than not, 50.01 percent, or 50 percent plus a "feather." A feather can weigh as much as a real feather, or as much as a cinder block, depending on the nature of the evidence, but it must be there, or there is no policy violation. The question is not so much what happened, but what can be proven or shown by the evidence. If the evidence is 50/50, the tie goes to the Respondent.

PROCESS FOR APPEALS

Either the Complainant or Respondent may appeal the decision in writing to the Title IX Coordinator or Deputy within fifteen (15) school days of receipt of the findings of the formal procedure or a dismissal on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Deputy, investigator(s), or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

When the Title IX Coordinator or Deputy receives a request for an appeal, they must notify each party in writing and give the parties a reasonable equal opportunity of 5 school days to submit a written statement in support of, or challenging the outcome. Deadlines may be extended, equitably, for good cause.

The Title IX Coordinator or Deputy will appoint an appeal decision-maker, who cannot be the Title IX Coordinator or Deputy or the investigator or decision-maker who participated in the case. Appeal decision-makers must meet the same bias-free and conflict of interest-free standards as for initial decision-maker.

The appeal decision-maker, as a further impartial decision-maker, will review the comprehensiveness and accuracy of the investigation and the conclusions, and issue written findings to both the complainant and respondent within thirty (30) school days of the appeal.

Appeals are not a "do-over" of the original hearing. Appeals are properly confined to a review of the written record of the original hearing and the written documents submitted by the parties, investigator(s), and/or decision-maker (if applicable), on appeal.

As with original determinations, appeal decisions will result in a written decision describing the result of the appeal and the rationale supporting it, authored by the appeal decision-maker. The parties will receive the written decision simultaneously.

FILING A COMPLAINT

Any student or employee who believes they have been discriminated against or harassed under Title IX may file a complaint with a building-based Title IX Deputy (names may be found in the Office of the Principal/Head of School). In addition to Title IX Deputies, complaints may also be filed with the district Title IX Coordinators listed below.

Student Complaints

In particular, a student who believes that he/she is the victim of harassment should report the matter to any school employee including a teacher, counselor, or administrator who in turn will notify the Title IX Coordinator. As an alternative, a student may report directly to the Title IX Coordinator. Each school's Title IX Deputy will be posted in a prominent location in the school. All employees of the Public Schools of Brookline are required to respond to complaints by students of harassment by notifying the building principal or Title IX Coordinator. Employees are required to take every report of harassment seriously.

The Deputy Superintendent for Student Services, the Deputy Superintendent for Teaching and Learning, and the Deputy Superintendent for Administration and Finance are also available to provide information about this policy and the Public Schools of Brookline complaint process.

Maria Letasz, Ed.D.

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Inquiries regarding compliance with civil rights may be made to: [Office for Civil Rights \(OCR\)](#), Boston Office, US Department of Education, 8th Floor, 5 Post Office Square, Boston, MA 02109-3921
Telephone: 617-289-0111
FAX: 617-289-0150; TDD: 800-877-8339
Email: OCR.Boston@ed.gov