

# Leading a Safe Place to Learn Civil Rights Discrimination and Harassment


PSB Employee Training

The Public Schools of Brookline  
2020-2021

# Leading a Safe Place to Learn


**The PSB is dedicated to creating and maintaining a safe 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.**



# Civil Rights

Federal law prohibits discrimination on the basis of race, color or national origin (Title VI and Title VII 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.



# Title VI and VII


Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.) “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e-2) prohibits discrimination in the terms, conditions or privileges of employment on the basis of an individual’s race, color, religion, sex, or national origin.

WHAT IS THE DIFFERENCE BETWEEN TITLE VI AND TITLE VII?

Title VI prohibits discrimination on the basis of race, color or national origin under any program or activity receiving federal financial assistance. Title VII prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.

# Title IX Spotlight

1. Updated PSB Policy to comply with Title IX (TIX) of the Educational Amendments of 1972
  2. General legal principles of new U.S. Dept. of Education Title IX Rule
  3. New definition of sexual harassment
    - a. Notice of sexual harassment
    - b. The District's obligation to respond
  4. Options to address sexual harassment
    - a. Supportive measures
    - b. The Formal Complaint and Grievance Process
  5. Employee roles in the process
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# TIX Legal Principles - Goals of New Rule Change

## Focus on Due Process

- Fairness to complainant and respondent
- Formal complaint process to provide these rights before discipline can be imposed
- Substantial information rights for victims and accused


## Eliminate Bias

- Between Complainants / Respondents
- Not based on stereotypes

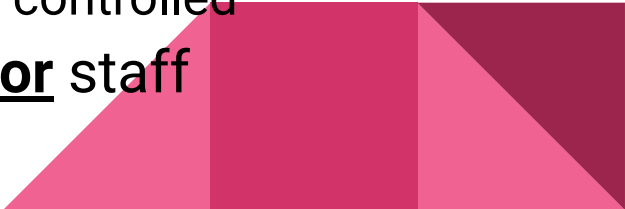
## Preserve Free Speech Rights



# TIX Legal Principles


- Title IX prohibits discrimination on the basis of sex in education
  - New Rule focuses on sexual harassment as discrimination
  - Sexual harassment denies students the benefits of and participation in school on the basis of sex
  - What is sexual harassment? New definition:
    1. “Quid pro quo” harassment
    2. Unwelcome conduct that is so severe, pervasive, **AND** objectively offensive that it effectively denies a person equal access to the school’s education program or activity
    3. “Sexual assault,” “dating violence,” “domestic violence” or “stalking” under the Clery Act and VAWA
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# TIX Jurisdiction

- Not all places, but not just “on campus” or “at school”
  - Must occur in the United States
  - Covers sexual harassment that happens in a school’s **“education program or activity”**
    - Locations, events, circumstances where a school exercises substantial control over the context of the harassment and the person accused of committing the harassment
    - At school, on school bus, on field trip, at school-sponsored activities (athletics), virtual environments that are school controlled
  - Includes harassment by or against students or staff
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# TIX Actual Knowledge


- School must respond to “actual knowledge” of harassment
  - When school personnel personally observe sexual harassment
  - When school is put on notice that person may have been victimized by sexual harassment
    - **ANY** person can put the school on notice (victim, parent, friend, bystander, etc.)
    - School is put on notice when **ANY** employee is put on notice of incident
  - **If you are put on notice, you must alert the school principal** (who will notify the Title IX Coordinator)
  - **Or, alert the district’s Title IX Coordinators directly**
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# Response to Sexual Harassment

What does a school do when it is put on notice of sexual harassment?

- It must respond in a way that is not “deliberately indifferent”
  - Response cannot be clearly unreasonable in light of the known circumstances
    - Most important thing you can do is take complaints seriously when you have notice of them - do not ignore a complaint or hope that it will just go away on its own
  - **Must respond promptly**
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# TIX Sexual Harassment Response Process

- Title IX Coordinators or Deputys can accept reports of sexual harassment (at any time) in person, by mail, by telephone, by email, or by any verbal or written means
  - Once a report is received, the Title IX Coordinator will
    - Promptly and confidentially reach out to complaintant to discuss options
    - Discuss the availability of supportive measures with or without a formal complaint
    - Discuss the right to file a formal complaint and how to do so
  - Title IX Coordinator will also provide and effectively implement supportive measures, including after the grievance process is completed
  - Preserve evidence or information
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# TIX Supportive Measures

- Must be offered with or without filing of formal complaint
- Must be offered to complainant, can be offered to respondent
- **What are supportive measures?**
  - Free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment
  - Designed to support student, cannot be punitive or disciplinary with respect to another student
  - Cannot unreasonably burden another person
- Title IX Coordinators will consider the victim's wishes regarding supportive measures
- Title IX Coordinators will keep supportive measures confidential to the extent possible, unless it impairs the ability to provide the supportive measure


# TIX Supportive Measures

- Example of range of supportive measures that can be offered:
    - Counseling by a school staff person, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in classroom transition routes, increased security and monitoring of certain areas of the school campus, and/or a combination of local interventions and supports
  - Title IX Coordinators or Title IX Deputies are responsible for determining appropriate supportive measures and effectively implementing the supportive measure
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# TIX Filing Formal Complaints

- Title IX Coordinator will inform student about the right to file a formal complaint
- The Title IX Coordinator will not encourage or discourage student to file a formal complaint
- Formal complaints can be filed by the student (or their parent or legal guardian)
- Formal complaints can also be filed by the Title IX Coordinator
- Formal complaint begins the formal process of adjudicating whether sexual harassment has occurred, and can result in discipline against the respondent and additional supportive measures for the complainant

# TIX Grievance Process


- The grievance process protects the rights of both the complainant and the respondent
    - District cannot discipline respondent for sexual harassment without going through the grievance process
    - Respondent is entitled to a presumption of innocence
    - District always bears the burden to prove sexual harassment by a preponderance of the evidence
  - All parties have the right to give and review evidence
  - Title IX Investigator will impartially and fairly gather all evidence and provide an investigative report to the parties
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# TIX Grievance Process

- The Title IX Decision-maker will objectively review the evidence and make a written determination regarding responsibility
  - Both parties have the right to file an appeal to an appellate decision-maker
- Appeals are limited to 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
  - The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter
- The full process is contained for your review in the Interim Title IX Policy and Grievance Procedures
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# TIX Employee Obligations

- Know who the District Title IX Coordinators are
  - Recognize a potential Title IX incident
  - Report any potential Title IX incident to the principal or Title IX Coordinator the same day you receive notice of it
  - Review the PSB Interim Title IX Policy and Grievance Procedures
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# Section 504

Section 504 of the Rehabilitation Act of 1973 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education. Section 504 provides:


"No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."




# ADA

Title II of the Americans with Disabilities Act (ADA) became law in 1990. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.


The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else. The ADA gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.




# Overview of the New 504 Grievance Procedure

- In accordance with Section 504 and Title II, any program participant (student or staff member), who has reason to believe that they have been mistreated, denied services, or discriminated against by any student, staff member, or third party in any aspect of services or employment because of a disability may file a grievance.
  - The PSB has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and Title II.
  - A copy of the laws and regulations is available in the Public Schools of Brookline Central Office.
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# 504/Title II Grievance: Purpose

- “The following grievance procedure provides for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 or Title II. The procedure listed below are provided as a vehicle to fairly and expeditiously resolve concerns when they arise.”
  - “It is against the law for the Public Schools of Brookline or any staff member or student to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.”
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# 504/Title II Grievance: How/Where to File

- Any complaints regarding disability-based discrimination should be filed with the District Section 504/Title II Coordinator
  - The District Section 504/Title II Coordinator will investigate all complaints of disability-based discrimination
  - If the complaint involves the District Section 504/Title II Coordinator or the Superintendent, the grievance should be filed with the Deputy Superintendent for Student Services
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# 504/Title II Grievance: Procedures

Per the 504 Grievance Procedure, the Grievance must:

- Be in writing
- Contain the name and address of the person filing it
- Describe the action alleged to be discriminatory
- Describe the action or relief sought by the complainant
- If a complainant is unable to draft the written request and/or complaint, they may have their complaint taken orally by the Section 504 Coordinator who will then reduce the complaint to writing
- Must be filed with the Section 504 Coordinator within 60 days after the
- person filing the grievance became aware of the alleged discrimination prohibited by the regulations.
  - This time frame may be waived by the Section 504 Coordinator if extenuating circumstances existed which justifies an extension.


# 504/Title II Grievance: Investigation

- The District Section 504 Coordinator or designee shall conduct an impartial investigation of the grievance
- The investigation may be informal, but must be thorough
- Both parties will be provided with notice of the substance of the complaint and the right to present evidence and witnesses
- The investigation will allow all interested persons an opportunity to submit relevant evidence and present witnesses







# 504/Title II Grievance: Investigation

- The District Section 504 Coordinator will provide interim measures, if appropriate, while the investigation is ongoing
  - Confidentiality will be maintained (to the extent possible) throughout the investigation
  - The complainant, the subject to the complaint, and any witnesses will be informed that it is unlawful to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance
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# 504/Title II Grievance: Finding

- The District Section 504 Coordinator shall issue a written decision on the grievance to both the complainant and the person(s) who is subject to the complaint no later than 30 days after its filing
  - The written decision will provide the complainant with:
    - the facts found,
    - documentation reviewed,
    - witnesses interviewed,
    - analysis and conclusion based on the appropriate legal standards
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# 504/Title II Grievance: Finding

- Should the District Section 504 Coordinator determine that discrimination occurred, the District Section 504 Coordinator will also provide the remedies for the complainant
  - The District will take steps to prevent any recurrence of any harassment and will work to correct any discriminatory effects on the complainant or others, if appropriate
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# 504/Title II Grievance: Appeal

- Either party may request in writing that the Superintendent review the decision of the Section 504 Coordinator.
- The request must be made within 5 days of receipt of the decision by the District Section 504 Coordinator.
- The Superintendent will only review the following as a part of the appeal:
  - whether there was a procedural irregularity affected the outcome of the matter;
  - whether new evidence has been discovered and was not reasonably available at the time of the determination; or
  - whether there was a conflict of interest affected the outcome.
- The Superintendent shall have an additional 15 days to review the underlying evidence and decision and issue a written decision to the complainant and the person who is subject to the complaint.

# Filing with other agencies

Regardless of district policies and procedures, a person can file a complaint of discrimination or harassment with:

- The United States Department of Education's Office for Civil Rights (OCR)
- The Department of Elementary and Secondary Education's complaint resolution office
- The Bureau of Special Education Appeals



# Questions or issues regarding discrimination and civil rights should be brought to the attention of the district discrimination and civil rights coordinators:

Maria Letasz, Ed.D.  
Director of Guidance and Clinical  
Services  
District Title IX and Title VI  
Coordinator (students)  
and District Section 504  
Coordinator/Title II  
2 Clark Road  
Brookline, MA 02445  
(617) 308-6400

Joseph Russo  
Interim Director of Human Resources  
District Title IX Coordinator  
(employees)  
Town Hall, 333 Washington Street,  
5th Fl  
Brookline, MA 02445  
(617) 730-2410

