

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCESS

Pursuant to Southern Worcester Country Regional Vocational Technical School District and Bay Path Regional Vocational Technical High School (the “District”) Policy 0876, Title IX of the Education Amendment Acts of 1972 (20 U.S.C. § 1681 et seq.) and its regulations (34 C.F.R. § 106.8), collectively “Title IX”, the District hereby adopts the following grievance process for handling complaints of sexual harassment over which it has jurisdiction.

A. Definitions

- *Actual knowledge* occurs when the District’s Title IX Coordinator or a District employee (other than a “respondent” or alleged harasser) receives a notice, report or information or becomes aware of sexual harassment or allegations of sexual harassment.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment; or retaliation for engaging in a protected activity.
- *Day* means a business day excluding days when the District’s main offices are closed (i.e., holiday, office-wide vacation), or any weekday during the school year on which school is not in session (e.g., snow days).
- *Decision Maker* means the person or persons tasked with: the responsibility of making initial determinations of responsibility (at times referred to as “initial decision maker”); or the responsibility to decide any appeal (at times “appeals decision maker) with respect to formal complaints of sexual harassment in accordance with the Title IX Grievance Process.
- *Formal Complaint* means a document submitted and signed by a complainant, the complainant’s parent/guardian, or the Title IX Coordinator, alleging sexual harassment or retaliation for engaging in a protected activity against a respondent, and requesting that the District investigate the conduct.
- *Investigator* means the person or persons charged by the District with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report.
- *Mandated Reporter* means an employee of the District who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator [and/or their supervisor or designee].¹
- *Remedies* are post-finding actions directed to a complainant or the community as mechanisms to address safety, prevent recurrence, and restore access to the District’s educational program.

¹ This mandated reporter designation is distinction from those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- *Sexual Harassment* for purposes of Title IX and this Policy means 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 (i.e., *quid pro quo* harassment);
 2. Unwelcome sex-based/related conduct 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 activity²; or
 3. Any instance of sexual assault as defined in 20 U.S.C. § 1092(f)(6)(A)(v) (the Clery Act), or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Conduct that satisfies this definition is not sexual harassment for purposes of this policy if the conduct occurred (1) outside the United States or (2) under circumstances in which the District did not have substantial control over both the harasser/respondent and the context in which the harassment occurred. Title IX protections extend to all programs and/or activities whether on or off-campus.

- *Supportive Measures* are free, non-disciplinary, non-punitive, individualized services offered to the complainant, and which may be offered to the respondent, as appropriate, before or after the filing of a formal complaint. These measures include but are not limited to: counseling; course modification; schedule change(s); and mentoring or supervision.
- *Title IX Coordinator* is an official designated by the District to ensure compliance with Title IX and the District's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

B. Title IX Coordinator.

The Title IX Coordinator shall respond promptly to all general reports and formal complaints of sexual harassment and coordinate the District's response in a manner that is prompt and equitable. In the event the Title IX Coordinator is unavailable, including unavailable due to a conflict of interest, the Superintendent shall designate another individual with appropriate training and qualifications to serve as the Title IX Coordinator in that case.

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² This standard requires consideration of all the facts and circumstances, including, but not limited to, the ages and disability status of the harasser and victim and the number of individuals involved and their authority.

In addition, the District has identified the following individuals as Deputy Title IX Coordinators. These individuals serve as members of the Title IX team and have been trained to accept notice or complaints on behalf of the District:

Mary Jane Rickson
Deputy Title IX Coordinator
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Daniel McGowan
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Inquiries may be made externally to:

Office for Civil Rights (OCR), Boston Office
U.S. Department of Education
5 Post Office Square, 8th floor
Boston, MA 02109-3921
Telephone: (617)289-0111
Facsimile: (617) 289-0150
Email: OCR.Boston@ed.gov
Web: <http://www.ed.gov/ocr>

C. Reports of Sexual Harassment and District Responses

1. Reporting Sexual Harassment Allegations

NOTE: A report does not initiate the formal Title IX Grievance Process. That process is initiated only after a formal complaint is received under the procedures set out in Section D(1).

Notice or complaints of sexual harassment and/or retaliation may be made by filing a complaint with, or giving verbal notice to, the Title IX Coordinator [or Deputy Title IX Coordinators]. Reports may also be made [online, using the reporting form posted at (insert URL); add any other campus reporting mechanisms]. While the District strongly encourages that reports of sexual harassment be made to the Title IX Coordinator [or Deputy Coordinators], the report may be made to any District staff member, including for instance, a counselor, teacher, or principal.

Any individual may report sexual harassment, regardless of whether s/he is the victim of the conduct alleged to constitute sexual harassment. **If any District employee – other than the employee harasser, or the Title IX Coordinator – receives information of conduct which may constitute sexual harassment under this Policy, s/he shall, without delay, inform the Title IX Coordinator of the alleged sexual harassment.** Failure to report may subject the employee to discipline up to and including dismissal.

Anonymous reports are accepted but can give rise to a need to investigate. The District is unable to offer supportive measures to the complainant who files an anonymous report.

Where a report involves an allegation of abuse or neglect, such conduct may also need to be reported to the state, or if the alleged respondent is a person holding a license or credential from the Massachusetts Department of Elementary and Secondary Education (DESE), the conduct or allegations may need to be reported to the DESE.

2. District Response to Reports of Sexual Harassment; Supportive Measures

Upon receiving actual notice of sexual harassment, a district is required to respond promptly and in a manner that is not deliberately indifferent. School districts will be deemed to have actual notice when an allegation is reported to **any** school employee. Schools are required to investigate formal complaints and respond meaningfully and promptly to known reports of sexual harassment.

The District shall treat complainants and respondents equitably by providing supportive measures to the complainant and by following the Title IX Grievance Process prior to imposing disciplinary sanctions or other actions other than supportive measures against a respondent.

Supportive measures will be made available with or without a formal complaint. Supportive measures are available to both complainants and respondents to preserve each party's equal educational access pending the outcome of the grievance process. Supportive measures shall remain confidential to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. Upon receiving a report or complaint of sexual harassment, the Title IX Coordinator or designee shall promptly contact the complainant to: discuss the availability of and offer 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 a formal complaint; and explain the process for filing a formal complaint.

The District will implement measures in a way that does not unreasonably burden the other party.

D. Grievance Process

1. Filing a Formal Complaint

A formal complaint may be filed by the complainant, the complainant's parent/guardian, or the Title IX Coordinator. A complainant does not need to file a complaint to receive/have access to supportive measures. If the complainant does not file a complaint, the Title IX Coordinator may sign a formal complaint, if doing so is not clearly unreasonable and the Title IX Coordinator determines that a grievance process is necessary to comply with the District's obligation not to be deliberately indifferent to known allegations of sexual harassment.

If no formal complainant is filed, no disciplinary action may be taken against the respondent based upon the conduct that would constitute sexual harassment under this policy.

There is no time limitation on filing a complaint, however, if the Respondent is no longer subject to the District's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be limited or impossible. Acting on notice/complaints significantly impacted by the passage of time is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

At a minimum, a formal complaint must: (1) Contain the name and address of the complainant and the student's parent or guardian if the complainant is a minor student; (2) Describe the alleged sexual harassment; (3) Request an investigation of the matter; and (4) Be signed by the complainant or otherwise indicate that the complainant is the person filing the complaint.

The complaint may be filed in person, by mail or email. [Complaint forms are available from the Title IX Coordinator or on the District's website.]

2. Notice to Parties

Upon receipt of a formal complaint of sexual harassment, the District shall provide written notice to all parties with sufficient time to allow the respondent to prepare a response prior to a formal interview. The written notice shall include the following information:

- Notice of the Grievance Process, including informal resolution options.
- Notice of the allegations, including sufficient detail (i.e., names of known parties, conduct alleged to be sexual harassment, date/location of conduct) to allow respondent to respond.
- A statement that respondent is presumed not responsible for the conduct and that a determination of responsibility will be reached at the conclusion of the grievance process.
- Notice that each party has the right to have an advisor present during the interview and relevant proceedings. The advisor may but is not required to be an attorney.
- That each party is entitled to inspect and review evidence.
- Reference to provisions in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Title IX Coordinator, or designee, will contact the complainant to discuss and offer supportive measures. The Title IX Coordinator, or designee, may contact the respondent to discuss, and or impose, non-disciplinary support measures.

3. Initial Assessment; Dismissal

The Title IX Coordinator will review the allegations in the formal complaint to determine whether, if assumed true, the allegations are sufficient to sustain a finding of Title IX sexual harassment under this policy.

If a formal complaint does not fall within the Title IX definitions of sexual harassment, or the conduct alleged to have been sexual harassment did not occur within the school's program or activity, the complaint shall be dismissed. **Dismissal of a formal complaint under this Policy does not preclude the District from taking any disciplinary action it deems appropriate if the conduct violates some other school policy or code of conduct.**

A complaint may also be dismissed upon notice to the Title IX Coordinator from a complainant that he or she wishes to withdraw the complaint. If a complaint is dismissed, written notice will be provided to both parties explaining the reasons for dismissal.

4. General Provisions Relative to Title IX Grievance Process.

A. Limitation on Disciplinary Action. In no case shall the District impose disciplinary consequences or sanctions against a respondent who has been accused of conduct which may constitute sexual harassment, until the Title IX Grievance Process has been completed.

B. Risk Analysis and Emergency Removal. The District can act to remove a student respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined there exists an immediate threat to the physical health or safety of a student or other individual arising from the allegations of sexual harassment that justifies removal.

At any point after receiving a report or formal complaint of sexual harassment, the Title IX Coordinator (or other District official charged with a specific function under this Policy or the Title IX process), may perform or obtain a risk analysis using standard objective risk assessment procedures, to determine whether the student presents an immediate threat. If it is determined that the student does present a threat, the student may be removed provided removal is in full compliance with the IDEA, and a student's IEP or 504 Plan, if applicable.

In all cases in which an emergency removal is imposed, the student will be given notice and an opportunity to appeal, and the District shall continue to offer educational programming until a final determination is made pursuant to the Title IX Grievance Process. This meeting is not a hearing on the merits of the allegation(s), it is an administrative process intended to determine solely whether the emergency removal is appropriate. An appeal must be requested in writing within 48 hours (2 days), or objections to the emergency removal will be deemed waived.

C. Administrative leave. Where the Respondent is an employee, the Superintendent may, in appropriate cases, place him or her on a non-disciplinary administrative leave during the pendency of the grievance process. The Title IX Coordinator shall keep the Superintendent of Schools informed of any employee respondents so that any necessary reports or required disclosures can be made to the Massachusetts Department of Elementary and Secondary Education.

D. Additional Allegations. If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that were not included in the previous notice, the District shall simultaneously provide notice of the additional allegations to the parties whose identities are known.

E. No Interference with Legal Privilege. At no point will the Title IX Coordinator, the investigator, any decision maker, or any other person participating on behalf of the District, require, allow, rely upon, or otherwise use questions or evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege (e.g., doctor/patient, attorney/client, clergy, etc.), unless the person holding such privilege (parent/guardian for minor student) has waived the privilege in writing to use the information with respect to the Title IX Grievance Process.

F. Consolidation of Complaints. The District may consolidate formal complaints of allegations of sexual harassment where the allegations of sexual harassment arise out of the same facts or circumstances and the formal complaints are against more than one respondent; or by more than one complainant against one or more respondents; or by one party against the other party.

G. Copies and Notices. Unless otherwise stated in the Policy, any document(s) or material(s) required to be delivered to a party or person assigned with responsibility under the District's Title IX Grievance Process, may be delivered using electronic mail, regular mail or such other manner reasonably calculated to assure prompt delivery with evidence thereof. Any document required to be delivered to a minor or other non-eligible student, must also be delivered to the minor's parent/guardian. Copies should also be sent to a party's Advisor if the information for the Advisor has been previously communicated to the sending party.

H. Timeframe of Grievance Process. The District shall make a good faith effort to conduct a fair, impartial grievance process in a timely manner that provides all parties with a prompt and equitable resolution. It is expected that in most cases, the grievance process will be concluded, at least through the determination of responsibility within 30-45 days after the formal complaint is filed. More complex cases may take longer. A party may request that the Title IX Coordinator obtain a status report and update the parties on the investigator's progress towards completion no more than once a month. In the case of an extension or delay, the Superintendent or Title IX Coordinator will provide written notice to the parties of the delay/extension and the reason(s).

5. Investigation

The Title IX Coordinator will coordinate the investigation. The Title IX Coordinator may conduct the investigation, or s/he may designate another qualified person to investigate.

The District investigator shall comply with the following requirements when investigating a formal complaint of sexual harassment:

- The burden of proof shall be on the school/district rather than on the parties. The school/district shall be responsible for gathering all evidence.
- Provide each party with an opportunity to present evidence and witnesses. The school or institution may not restrict or impede a party's ability to discuss allegations or gather and present evidence.
- Allow parties to have an Advisor during the proceedings (the investigator may restrict others from participating as long as the restrictions apply equally to both parties).
- Provide both parties with sufficient written notice of the date, time, participants, purpose, and location of any investigative interview or hearing.
- Provide both parties and their Advisors equal opportunities to review all evidence that is directly related to the allegations in the formal complaint. Evidence must be provided prior to the completion of the investigation report with 10 days for the parties to respond (see below).
- Prepare a written investigation report that summarizes the relevant evidence and provide the report to the parties and their Advisors, with 10 days to respond (see below).

Prior to the completion of the investigative report, the District, through the Title IX Coordinator must send to each party and the party's Advisor, if any, the evidence for inspection and review, and provide the parties 10 days to submit a written response, which the investigator will consider prior to completing the investigative report.

The investigator must prepare a written investigation report that fairly summarizes the relevant evidence, including without limitation, witness credibility, discrepancies, inculpatory and exculpatory information, and relevant District policies, rules and regulations, and the manner in which the same were made known to the pertinent school populations or specific parties. The report shall include a description of the procedural steps taken, starting with the receipt of the formal complaint and including notices to parties, interview with witnesses, site visits and methods used to gather evidence.

The investigator shall provide a copy of the report to the Title IX Coordinator, to each party and to each party's Advisor, if any. Each party will have 10 days from receipt to provide the Title IX Coordinator a written response to the investigative report.

6. Determination of Responsibility and Initial Decision Maker

The decision maker shall issue a written determination of responsibility applying the **preponderance of the evidence standard**. The preponderance of the evidence standard is met when the party with the burden convinces the fact finder (the initial decision maker) that there is a greater than 50% chance that the claim is true (more likely than not true).

Prior to making a determination of responsibility, the initial decision maker shall afford each party 10 days to submit written, relevant questions that they want asked of any party or witness. The initial decision maker may exclude a question that is not relevant provided s/he explains why it is not relevant. Questions regarding a complainant's prior sexual history or sexual predisposition will not be considered relevant, unless offered to prove that someone other than the respondent committed the conduct alleged to be sexual harassment or offered to prove consent.

The questions will be provided to the parties/witnesses who will have 10 days to provide written responses that will be shared with all parties. An additional 5 days may be provided for limited, supplementary follow-up questions and 5 days for written responses/answers.

The written "Initial Determination of Responsibility" must be provided to the Title IX Coordinator, the Superintendent, and the parties simultaneously. The decision-maker will ensure that the written determination regarding responsibility does the following:

- Identifies the allegations alleged to be sexual harassment;
- Describes the procedural steps taken from receipt of the formal complaint through determination, including a description of the notice sent to the parties, interviews with the parties and witnesses, site visits, methods used to gather evidence and any hearings held (not required K-12);
- Makes findings of fact that support the determination;
- Makes conclusions regarding how the District's code of conduct applies to the facts;
- Makes a statement of and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanction to be imposed on the respondent, and whether remedies will be provided to the complainant; and
- Describes the appeal process.

The determination regarding responsibility becomes final either on the date the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

7. Appeal Process

Both parties must be offered an appeal from a determination regarding responsibility and from a District imposed dismissal of a complaint or any allegations therein, on the following grounds:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- c. Conflict of interest or bias on the part of the Title IX Coordinator, investigator, or decision-maker that affected the outcome.
- d. Additional bases as the District may determine as long as offered equally to both parties.

A written appeal must be received by the Superintendent within 10 days of the Initial Determination of Responsibility or written notice of dismissal provided to the parties.

As to appeals, the District must: (1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties; (2) Ensure that the decision maker for the appeal is not the same person as the initial decision-maker, Title IX Coordinator, or investigator; (3) Ensure that the decision-maker for the appeal complies with the preponderance of the evidence standard; (4) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome; (5) Issue a written decision describing the result of the appeal and rationale for the result; and (6) Provide the written decision simultaneously to parties.

8. Informal Resolution

At any time prior to reaching a determination regarding responsibility, the District may offer parties the opportunity to participate in an informal resolution process (e.g., mediation, arbitration, etc.). The right to the adjudication of a formal complaint may not be waived as a condition of enrollment, continuing enrollment, employment, or continuing employment.

Both parties must provide voluntary written consent to participate in the informal resolution process. Either party has the right to withdraw from the informal resolution process and resume the grievance process at any time prior to reaching a resolution. Informal resolution is only available after a formal complaint has been filed.

In the event that a resolution is reached during the informal resolution process and agreed to in writing by the parties, then the formal complaint will be dismissed, and the complainant is precluded from filing a second complaint concerning the original allegation, however, patterns of conduct will be considered in subsequent complaints involving the same respondent.

The informal resolution process **will not** be available to resolve allegations that an employee sexually harassed a student.

9. Remedies, Disciplinary Sanctions and Remedial Actions.

If a determination is made that the respondent is responsible for the allegations, the following remedies are available to the complainant: additional supportive measures and a range of restorative practices.

Disciplinary sanctions are consequences imposed on a respondent when s/he is found responsible for sexual harassment under this Policy. Remedial actions are actions intended to restore or preserve a complainant's equal access to the educational programs and activities of the District.

- a. "Disciplinary sanctions" against an employee respondent may include any sanction available for the discipline of employees, up to and including dismissal or non-renewal as allowed under state or federal laws or regulations and the individual's employment contract or collective bargaining agreement.
- b. "Disciplinary sanctions" against a student respondent may include any available discipline or sanction, up to and including expulsion, under the policies, rules and procedures that establish the District's code of conduct.

Remedial Actions may be individual or collective/environmental. Remedial actions imposed on a respondent after a final finding of responsibility, whether employee or student, may include the additional non-disciplinary measures appropriate for effecting a remedy for sexual harassment. These include such measures as no-contact orders, scheduling adjustments, removal or exclusion from extracurricular activities, class reassignments, limits on future class registrations, restrictions on access to various spaces in the school buildings, reassignment of attendance, and similar measures fine-tuned to respond appropriately to the circumstances.

Remedial actions may also involve school or district wide recommendations or initiatives, including training, education programs, and other measures as determined appropriate to protect the safety of the educational environment and deter sexual harassment.

10. Records and Recordkeeping

The District must maintain for a period of seven years records of: (a) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recordings or transcripts, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity; (b) Any appeal and the result therefrom; (c) Any informal resolution and the result therefrom; (d) Records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment; (e) An explanation of why the District's response in a particular situation was not deliberately indifferent. If no supportive measures were provided, the District must explain the reason why its response was not deliberately indifferent or clearly unreasonable in light of the known circumstances; and (f) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The materials will be made available on the District's website.