



**MIDDLEBOROUGH
PUBLIC SCHOOLS**

Middleborough Public Schools

Title IX Training

August 31, 2020

Title IX Training

The information contained in this presentation is shared with the permission from the firm of Murphy, Hesse, Toomey, and Lehane and was adapted from materials shared at a training on August 19, 2020 and drafted by Felicia Vasudevan, Esq.

Any questions about this training can be directed to the District Title IX Coordinator: Carolyn Lyons, J.D.

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Title IX

August 19, 2020

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In this training module you will learn:

- What Title IX is and how it applies to public schools in K-12 education
- How Title IX regulations changed in August 2020
- How Complaints are handled and Investigated
- Resources for All Staff



What is Title IX?

Title IX is a federal civil rights law passed as part of the Education Amendments of 1972. This law protects people from discrimination **on the basis of sex** in educational programs or activities that receive federal funds.

Title IX obligations can include:

- recruitment, admissions, and counseling;
- financial assistance;
- athletics;
- sex-based harassment;
- treatment of pregnant and parenting students;
- discipline;
- single-sex education;
- and employment



Title IX Protects You from Retaliation

A recipient of federal funds, such as the school district, may not retaliate against any person for:

- Opposing an unlawful educational practice or policy;
- Making charges, testifying, or participating in any complaint action under Title IX.



Title IX and Sexual Misconduct

Definitions under MA State Law:

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.



Definitions Under Federal Law:

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 recipient conditioning the provision of an aid, benefit, or service of the recipient 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)



Please note:

- The Federal law defines sexual misconduct differently than the State law.
- Massachusetts law defines it more broadly which can make claims easier to make and prevail.
- Federal law defines it using a “reasonable person” standard which can make claims harder to make and prevail.



New Constraints of Title IX

- Title IX only applies to locations, events, and/ or circumstances in which the school district exercises substantial control.
 - Previously this law allowed investigation into off-campus conduct over which the school does not exercise substantial control.
- The investigatory event must have occurred in the school district program.
- Title IX does not apply to events that were alleged to have occurred outside the United States.
- 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, complainant must be participating or attempting to participate in a program or activity of the school district.



Title IX Complaint Elements

- Title IX complaint require actual knowledge.
 - “**Complainant**” is the person alleged to be the victim of the conduct of alleged sexual harassment
 - “**Respondent**” is the person who has been reported to be the perpetrator of the alleged sexual harassment.
- “Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to any employee of the district, except that this standard is not met when the only official of the district with actual knowledge is the respondent (where the respondent is an employee). Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.



Title IX Complaint Process

- If you have actual knowledge of an event or allegations that may constitute sexual harassment, contact the Title IX Coordinator, Carolyn Lyons.
- The Title IX Coordinator will then contact the complainant and do the following:
 - Discuss/offer supportive measures
 - Consider complainant's wishes about supportive measures
 - Explain that supportive measures can be received with or without filing a complaint
 - Determine whether a formal complaint will be filed
 - Review the purpose of filing a formal a complaint with complainant



What are Supportive Measures?

- “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.
- These are coordinated by the Title IX Coordinator.
- “Supportive 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 recipient’s educational environment, or deter sexual harassment.



What are Supportive Measures?

- 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 or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- All supportive measures will be maintained as confidential.
- This is new to the law and can possibly deter the filing of formal complaints. Any concerns about the filing of formal complaints should be directed to the Title IX Coordinator, Carolyn Lyons.



What is a Formal Complaint?

- A formal complaint is 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.
- The complaint process will generally take place between 30-60 days but can be extended for good cause.
- If the complainant declines to file a formal complaint, the Title IX Coordinator may decide to still do so.
 - This is appropriate when safety or similar concerns lead the district to investigate and potentially sanction a respondent.
 - If the Title IX Coordinator chooses to do this, the decision will be documented in writing with an explanation as to why.



Can a Formal Complaint be dismissed?

- Yes under these circumstances:
 - The action would not constitute sexual harassment as defined even if proved
 - The action did not occur in the district's educational program or activity
 - Did not occur against a person in the United States
- A dismissal of a Formal Complaint will include a written notice of dismissal signed by the Title IX Coordinator.



Written Notice of Complaint

- Prior to any investigation, the district will send written notice to both parties with details which include:
 - Identities of the parties if known
 - The conduct allegedly constituting sexual harassment
 - The 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 be, but is not required to be, an attorney, and may inspect and review evidence.



Written Notice of Complaint

- 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.
- Please note that these new requirements of written notice may deter a complainant from filing a formal complaint. Any concerns may be discussed with the Title IX Coordinator, Carolyn Lyons.



Informal Resolution

- This can occur after a formal complaint has been filed and written notice has been issued.
- The Title IX Coordinator can consider offering mediation; both parties must give written consent for this process.
- Informal resolution cannot be used if the allegation is against an employee respondent.
- The mediation offered must not be biased in any way or run by anyone who is biased in any way. This includes having a conflict of interest.
- Informal resolution is entirely voluntary.
- If both parties feel their grievances have been sufficiently addressed this ends the process.



Investigation

- The Title IX Coordinator will designate an investigator and a decision maker, who may not be the same person.
- The investigator must not be biased against any of the parties at the outset of the investigation.
- 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.
- The investigator must avoid all questions that are protected by legal privilege, unless the privilege has been waived, and should avoid asking about the complainant's sexual history unless it is directly relevant to prove consent to the conduct at issue or to prove that the conduct was committed by someone other than the respondent.



Investigation

- 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.
- 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 consider prior to completion of the investigative report.
- 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.



Investigative Report

- This is a formal report of the findings.
- This report will not include final determinations of responsibility for sexual harassment.
- A copy will be sent to the complainant and the respondent.
- It will also be sent to the decision-maker who will be the Superintendent of Schools or other designee as determined by the Title IX Coordinator.
 - The decision-maker will not be someone who is biased against either party.



Decision-Making

- 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.
 - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
 - The decision-maker(s) 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 discussed during the investigation.



Formal Decision

- After this process is complete, the decision-maker will create a written determination (formal decision) regarding whether sexual harassment has occurred using a preponderance of the evidence standard.
- A preponderance of the evidence means more likely than not.
- 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.



Formal Decision Elements

- 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 receipt 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 recipient's code of conduct to the facts;



Formal Decision Elements (Cont.)

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



Next Steps

- 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. Any disciplinary action will be in accordance with due process rights under State law and any applicable collective bargaining agreement.
- 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.



Right To Appeal

- Any party may appeal the decision in writing 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, investigator(s), or decision-maker(s) 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.
- All parties will be notified about any appeal.
- Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- The appeal will review the investigation for comprehensiveness and accuracy and issue written findings to both parties.



Records/Notice

- A record will be maintained for a period of seven years of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment and district staff will document the basis for the district's conclusion that its response was not deliberately indifferent.
- The school district must notify applicants for employment, parents, employees and all unions of the name or title of the Title IX Coordinator, his or her address, email address and telephone number. The Title IX Coordinator's information must be displayed prominently on the school district's website.



Retaliation is Prohibited

- Complainants and those who participate in the complaint resolution process or who otherwise oppose in a reasonable manner an act or policy believed to constitute discrimination are protected from retaliation by law and District policy.
- The coordinator or designee will inform all involved individuals that retaliation is prohibited, and that anyone who feels that they have experienced retaliation for filing a complaint or participating in the resolution process should inform the coordinator.
- The coordinator will investigate reports of retaliation and, where retaliation is found, take separate remedial and disciplinary action.



Questions?

- Any questions can be directed to the Title IX Coordinator:
 - Carolyn Lyons
 - Office of Pupil Personnel Services
 - clyons@middleboro.k12.ma.us
 - (508) 946-2013 x3588
- Legal references, FAQs, webpage:
 - https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html
 - <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/sex.html>

