

SECTION A

FOUNDATIONS AND BASIC COMMITMENTS

AA	SCHOOL DISTRICT LEGAL STATUS 06/12/23
AB	THE PEOPLE AND THEIR SCHOOL DISTRICT 6/12/23
AC	NONDISCRIMINATION 06/12/23
AC-R-B	CIVIL RIGHTS GRIEVANCE PROCEDURE 05/09/22
ACA	NONDISCRIMINATION ON THE BASIS OF SEX 06/12/23
ACAB	HARASSMENT POLICY 05/09/22
ACAB-R-A	TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCEDURES 05/09/22
ACAC	HARASSMENT POLICY – PROMOTING DIVERSITY
ACAC-R	PROCEDURES FOR DEALING WITH HARASSMENT
ACE	NONDISCRIMINATION ON THE BASIS OF DISABILITY 11/13/17
ADA	MISSION AND VISION OF THE FALL RIVER PUBLIC SCHOOLS
ADC	TOBACCO PRODUCTS ON SCHOOL PREMISES PROHIBITED 06/12/23
ADDA	BACKGROUND CHECKS
ADDA-R	DCJIS MODEL C.O.R.I. POLICY
ADDA-E-1	INFORMATION CONCERNING THE PROCESS IN CORRECTING A CRIMINAL RECORD
ADDA-E-2	C.O.R.I. REQUIREMENTS
ADF	WELLNESS POLICY 7/2017
AE	COMMITMENT TO ACCOMPLISHMENT

SECTION B

BOARD GOVERNANCE AND OPERATIONS

BAA	EVALUATION OF SCHOOL COMMITTEE OPERATIONAL PROCEDURES
BB	SCHOOL COMMITTEE LEGAL STATUS
BBA	SCHOOL COMMITTEE POWERS AND DUTIES 12/11/17
BBAA	SCHOOL COMMITTEE MEMBER AUTHORITY
BBBA/BBBB	SCHOOL COMMITTEE MEMBER QUALIFICATIONS/OATH OF OFFICE 11/13/17
BBBC	SCHOOL COMMITTEE MEMBER RESIGNATION
BBBE	UNEXPIRED TERM FULFILLMENT
BCA	SCHOOL COMMITTEE MEMBER ETHICS
BDA	SCHOOL COMMITTEE ORGANIZATIONAL MEETING
BDB	SCHOOL COMMITTEE OFFICERS
BDD	SCHOOL COMMITTEE-SUPERINTENDENT RELATIONSHIP 12/11/17
BDE	SUBCOMMITTEES OF THE SCHOOL COMMITTEE (amended 6/13/11)
BDF	ADVISORY COMMITTEES TO THE SCHOOL COMMITTEE 12/11/17
BDFA	SCHOOL COUNCILS
BDFA-E-1	SCHOOL IMPROVEMENT PLAN
BDFA-E-2	SUBMISSION AND APPROVAL OF THE SCHOOL IMPROVEMENT PLAN
BDFA-E-3	CONDUCT OF SCHOOL COUNCIL BUSINESS
BDG	SCHOOL ATTORNEY
BE	SCHOOL COMMITTEE MEETINGS
BEC	EXECUTIVE SESSIONS - 6/8/15
BEDA	NOTIFICATION OF SCHOOL COMMITTEE MEETINGS 11/13/17
BEDB	AGENDA FORMAT (amended 3/25/19)
BEDD	RULES OF ORDER

BEDF	VOTING METHOD
BEDG	MINUTES
BEDH	PUBLIC PARTICIPATION AT SCHOOL COMMITTEE MEETINGS - 9/13/21
BEE	SPECIAL PROCEDURES FOR CONDUCTING HEARINGS
BG	SCHOOL COMMITTEE POLICY DEVELOPMENT
BGB	POLICY ADOPTION
BGC	ANNUAL POLICY REVIEW
BGE	POLICY DISSEMINATION
BGF	SUSPENSION OF POLICIES
BHC	SCHOOL COMMITTEE-STAFF COMMUNICATIONS - 2/22/16
BHE	USE OF ELECTRONIC MESSAGING BY SCHOOL COMMITTEE MEMBERS 11/13/17
BIA	NEW SCHOOL COMMITTEE MEMBER ORIENTATION 11/13/17
BIBA	SCHOOL COMMITTEE CONFERENCES, CONVENTIONS, AND WORKSHOPS 12/11/17
BJ	SCHOOL COMMITTEE LEGISLATIVE PROGRAM
BK	SCHOOL COMMITTEE MEMBERSHIPS

SECTION C

GENERAL SCHOOL ADMINISTRATION

CA	ADMINISTRATION GOALS
CB	SCHOOL SUPERINTENDENT 11/13/17
CBD	SUPERINTENDENT’S CONTRACT 11/13/17
CBI	EVALUATION OF THE SUPERINTENDENT 12/11/17
CCB	LINE AND STAFF RELATIONS
CE	ADMINISTRATIVE COUNCILS, CABINETS, AND COMMITTEES 11/13/17
CH	POLICY IMPLEMENTATION 11/13/17
CHA	DEVELOPMENT OF PROCEDURES 11/13/17
CHC	PROCEDURES DISSEMINATION 11/13/17
CHCA	APPROVAL OF HANDBOOKS AND DIRECTIVES
CHD	ADMINISTRATION IN POLICY ABSENCE
CL	ADMINISTRATIVE REPORTS

SECTION D

FISCAL MANAGEMENT

DA	FISCAL MANAGEMENT GOALS 05/09/22
DB	ANNUAL BUDGET 05/09/22
DBC	BUDGET DEADLINES AND SCHEDULES 05/09/22
DBD	BUDGET PLANNING 05/09/22
DBG	BUDGET ADOPTION PROCEDURES 05/09/22
DBJ	BUDGET TRANSFER AUTHORITY 5/09/22
DD	FUNDING PROPOSALS AND APPLICATIONS 05/09/22
DEC	FEDERAL FUNDS SUPPLEMENT NOT SUPPLANT POLICY
DGA	AUTHORIZED SIGNATURES 05/09/22
DH	BONDED EMPLOYEES AND OFFICERS 05/09/22
DI	FISCAL ACCOUNTING AND REPORTING 05/09/22
DIE	AUDITS 05/09/22
DJ	PURCHASING 05/09/22
DJA	PURCHASING AUTHORITY 05/09/22
DJE	PROCUREMENT REQUIREMENTS 05/09/22
DK	PAYMENT PROCEDURES 05/09/22
DKC	EXPENSE REIMBURSEMENTS 05/09/22

SECTION E

SUPPORT SERVICES

EB	SAFETY PROGRAM 11/13/17
EBAB	PEST MANAGEMENT POLICY
EBB	EMERGENCY MEDICAL CARE
EBC	EMERGENCY PLANS
EBCBA	FIRE
EBCD	EMERGENCY EARLY DISMISSAL GUIDELINES
EBCFA	FACE COVERINGS aka MASK POLICY 05/09/22
EC	BUILDINGS AND GROUNDS MANAGEMENT 11/13/17
ECA	BUILDINGS AND GROUNDS SECURITY 12/11/17
ECAC	VANDALISM
ECAF	SECURITY CAMERAS IN SCHOOLS
EDC	AUTHORIZED USE OF SCHOOL-OWNED MATERIALS 11/13/17
EDE	RECYCLABLE MATERIALS 3/14/16
EEA	STUDENT TRANSPORTATION SERVICES
EEAA	WALKERS AND RIDERS
EEAE	SCHOOL BUS SAFETY PROGRAM
EEAEC	STUDENT CONDUCT ON SCHOOL BUSES
EEAG	STUDENT TRANSPORTATION IN PRIVATE VEHICLES
EFC	FREE AND REDUCED PRICE FOOD SERVICES 12/11/17

SECTION F

FACILITIES DEVELOPMENT

FA	FACILITIES DEVELOPMENT GOALS 12/11/17
FCB	RETIREMENT OF FACILITIES
FF	NAMING NEW FACILITIES

SECTION G

PERSONNEL

GA	PERSONNEL POLICIES GOALS
GBA	EQUAL EMPLOYMENT OPPORTUNITY 12/11/17
GBD	SCHOOL COMMITTEE-STAFF COMMUNICATIONS 2/22/16
GBEA	STAFF ETHICS/CONFLICT OF INTEREST 12/11/17
GBEB	STAFF CONDUCT 12/11/17
GBEBC	GIFTS TO AND SOLICITATIONS BY STAFF 6/8/15
GBEC	EMPLOYEE SUBSTANCE ABUSE POLICY 12/29/15
GBED	TOBACCO USE ON SCHOOL PROPERTY BY STAFF MEMBERS PROHIBITED 12/11/17
GBGB	STAFF PERSONAL SECURITY AND SAFETY
GBGE	DOMESTIC VIOLENCE LEAVE POLICY 12/11/17
GBGF	FAMILY AND MEDICAL LEAVE 12/11/17
GBI	STAFF PARTICIPATION IN POLITICAL ACTIVITIES 12/11/17
GBJ	PERSONNEL RECORDS
GBK	STAFF COMPLAINTS AND GRIEVANCES (reviewed 12/11/17)
GCA	PROFESSIONAL STAFF POSITIONS
GCBA	PROFESSIONAL STAFF SALARY SCHEDULES
GCBB	EMPLOYMENT OF PRINCIPALS
GCBC	PROFESSIONAL STAFF SUPPLEMENTARY PAY PLANS
GCE	PROFESSIONAL STAFF RECRUITING/POSTING OF VACANCIES
GCF	PROFESSIONAL STAFF HIRING
GCG	PART-TIME AND SUBSTITUTE PROFESSIONAL STAFF EMPLOYMENT
GCIA	PHILOSOPHY OF STAFF DEVELOPMENT
GCJ	PROFESSIONAL TEACHER STATUS

GCRD	TUTORING FOR PAY 6/8/15
GDA	SUPPORT STAFF POSITIONS
GDB	SUPPORT STAFF CONTRACTS AND COMPENSATION PLANS
GDBC	SUPPORT STAFF SUPPLEMENTARY PAY PLANS
GDE	SUPPORT STAFF RECRUITING/POSTING OF VACANCIES
GDF	SUPPORT STAFF HIRING

SECTION H

NEGOTIATIONS

HA	NEGOTIATIONS GOALS
HB	NEGOTIATIONS LEGAL STATUS
HF	SCHOOL COMMITTEE NEGOTIATING AGENTS

SECTION I

INSTRUCTION

IB	ACADEMIC FREEDOM
IC/ICA	SCHOOL YEAR/SCHOOL CALENDAR 10/19/20
ID	SCHOOL DAY 10/19/20
IE	ORGANIZATION OF INSTRUCTION 10/19/20
IGA	CURRICULUM DEVELOPMENT 10/19/20
IGB	SUPPORT SERVICES PROGRAMS 10/19/20
IGD	CURRICULUM ADOPTION 10/19/20
IHA	BASIC INSTRUCTIONAL PROGRAM 10/19/20
IHA-E	BASIC INSTRUCTIONAL PROGRAM
IHAI	CAREER TECHNICAL EDUCATION
IHAM	HEALTH EDUCATION 10/19/20
IHAM	HEALTH EDUCATION
IHAM-R	HEALTH EDUCATION
IHAMA	PARENTAL NOTIFICATION RELATIVE TO SEX EDUCATION
IHAMB	TEACHING ABOUT DRUGS, ALCOHOL, AND TOBACCO - 8/17/16
IHB	SPECIAL INSTRUCTIONAL PROGRAMS AND ACCOMMODATIONS 10/19/20
IHBA	PROGRAMS FOR STUDENTS WITH DISABILITIES
IHBAA	OBSERVATIONS OF SPECIAL EDUCATION PROGRAMS
IHBB	GIFTED AND TALENTED EDUCATION
IHBD	COMPENSATORY EDUCATION
IHBEA	ENGLISH LANGUAGE LEARNERS 10/19/20
IHBF	HOMEBOUND INSTRUCTION

IHBG	HOME SCHOOLING
IHBH	ALTERNATIVE SCHOOL PROGRAMS 12/11/17
IHBHE	REMOTE LEARNING 11/09/20
IHBHE-E	REMOTE LEARNING ADDENDUM 11/09/20
IHCA	SUMMER SCHOOLS
IHCDA	ADVANCED PLACEMENT POLICY SPECIAL REQUIREMENTS
IJ	INSTRUCTIONAL MATERIALS 12/11/17
IJ-R	RECONSIDERATION OF INSTRUCTIONAL RESOURCES
IJL	LIBRARY MATERIALS SELECTION AND ADOPTION
IJL-R	LIBRARY MATERIALS SELECTION AND ADOPTION
IJLA	LIBRARY RESOURCES 12/11/17
IJND	CURRICULUM AND INSTRUCTION – ACCESS TO ELECTRONIC MEDIA 11/23/15
IJNDB	EMPOWERED DIGITAL USE POLICY 11/23/15
IJNDB-R	ACCEPTABLE USE POLICY 11/09/20
IJNDC	INTERNET PUBLICATION 11/23/15
IJNDC-R	WEB SITE GUIDELINES AND PROCEDURES FOR APPROVAL
IJOA	FIELD TRIPS 11/13/17
IJOB	COMMUNITY RESOURCE PERSONS/SPEAKERS 11/13/17
IJOC	SCHOOL VOLUNTEERS
IK	ACADEMIC ACHIEVEMENT
IKAB	STUDENT PROGRESS REPORTS TO PARENTS/GUARDIANS 12/11/17
IKB	HOMEWORK 11/23/15
IKFBA	EIGHTH GRADE GRADUATION POLICY
IL	EVALUATION OF INSTRUCTIONAL PROGRAMS
IMA	TEACHING ACTIVITIES/PRESENTATIONS
IMB	TEACHING ABOUT CONTROVERSIAL ISSUES/CONTROVERSIAL SPEAKERS

IMD SCHOOL CEREMONIES AND OBSERVANCES

IMG ANIMALS IN SCHOOLS 12/11/17

SECTION J

STUDENTS

JA	STUDENT POLICIES GOALS
JA-E	STUDENT POLICIES GOALS
JB	EQUAL EDUCATIONAL OPPORTUNITIES 10/19/20
JBB	EDUCATIONAL EQUITY 11/09/20
JEB	ENTRANCE AGE 10/19/20
JF	SCHOOL ADMISSIONS 10/19/20
JF-E-1	SCHOOL ADMISSIONS
JF-E-2	SCHOOL ADMISSIONS
JFABD	HOMELESS EDUCATION POLICY AND PROCEDURES 5/09/22
JFABE	EDUCATIONAL OPPORTUNITIES FOR MILITARY CHILDREN 05/9/22
JFABF	EDUCATIONAL OPPORTUNITIES FOR CHILDREN IN FOSTER CARE 05/09/22
JFBB	SCHOOL CHOICE 11/13/17
JH	STUDENT ABSENCES AND EXCUSES 10/19/20
JHD	EXCLUSION AND EXEMPTIONS FROM SCHOOL ATTENDANCE 10/19/20
JI	STUDENT RIGHTS AND RESPONSIBILITIES
JIB	STUDENT INVOLVEMENT IN DECISION-MAKING
JIC	STUDENT DISCIPLINE
JICA	STUDENT DRESS CODE
JICAA	SPIRIT WEAR POLICY
JICC	STUDENT CONDUCT ON SCHOOL BUSES
JICDD	PROCEDURES FOR COURT ACTION ON HABITUAL SCHOOL OFFENDERS
JICE	STUDENT PUBLICATIONS
JICF	GANG ACTIVITY/SECRET SOCIETIES
JICFA	PROHIBITION OF HAZING 10/19/20

JICFA-E HAZING

JICFB BULLYING INTERVENTION - 10/18/21

JICH ALCOHOL, TOBACCO, AND DRUG USE BY STUDENTS PROHIBITED 10/19/20

JICI WEAPONS AND/OR FACSIMILES THEREIN

JICJA POLICY CONCERNING THE USE OF ELECTRONIC DEVICES

JICKA THREATS OF VIOLENCE

JIE PREGNANT STUDENTS

JIH SEARCHES AND INTERROGATIONS 10/19/20

JII STUDENT COMPLAINTS AND GRIEVANCES 10/19/20

JJ CO-CURRICULAR AND EXTRACURRICULAR ACTIVITIES

JJA STUDENT ORGANIZATIONS 10/19/20

JJF STUDENT ACTIVITY ACCOUNTS

JJG CONTESTS FOR STUDENTS

JJH STUDENT OVERNIGHT TRAVEL

JJH-R STUDENT TRAVEL REGULATIONS 10/19/20

JJIB INTERSCHOLASTIC ACTIVITIES AND/OR ATHLETICS

JK STUDENT CONDUCT - 4/15/15

JKA CORPORAL PUNISHMENT

JKAA RESTRAINT POLICY - 8/17/16

JKAA-E RESTRAINT REPORTING FORM - 8/17/16

JL STUDENT WELFARE

JLA STUDENT INSURANCE PROGRAM 10/19/20

JLC STUDENT HEALTH SERVICES AND REQUIREMENTS

JLCB IMMUNIZATION OF STUDENTS 11/09/20

JLCC COMMUNICABLE DISEASES 10/19/20

JLCD MEDICATION POLICY

JLD GUIDANCE PROGRAM 10/19/20

JLD-E GUIDANCE PROGRAM

JLI	STUDENT SAFETY PROTOCOL
JP	STUDENT GIFTS AND SOLICITATIONS 10/19/20
JQ	STUDENT FEES, FINES, AND CHARGES
JRA	STUDENT RECORDS 10/19/20
JRA-E	RELEASE OF INFORMATION ON STUDENTS
JRD	STUDENT PHOTOGRAPHS 10/19/20

SECTION K

COMMUNITY RELATIONS

KA	SCHOOL/COMMUNITY RELATIONS GOALS
KB	PARENT/COMMUNITY INVOLVEMENT POLICY STATEMENT
KBBA	NON-CUSTODIAL PARENTS' RIGHTS
KCB	COMMUNITY INVOLVEMENT IN DECISION-MAKING
KCD	PUBLIC GIFTS TO THE SCHOOLS 12/11/17
KDB	PUBLIC'S RIGHT TO KNOW 12/11/17
KDD	NEWS MEDIA RELATIONS/NEW RELEASES
KE	PUBLIC COMPLAINTS 12/11/17
KF	USE OF SCHOOL FACILITIES 05/09/22
KHA	PUBLIC SOLICITATIONS IN THE SCHOOLS
KHB	ADVERTISING IN THE SCHOOLS
KI	VISITORS TO THE SCHOOLS 12/11/17
KLG	RELATIONS WITH PUBLIC SAFETY AUTHORITIES
KLJ	RELATIONS WITH PLANNING AUTHORITIES
KLK	RELATIONS WITH LOCAL GOVERNMENTAL AUTHORITIES

SECTION L

EDUCATION AGENCY RELATIONS

LA	EDUCATION AGENCY RELATIONS GOALS
LB	RELATIONS WITH OTHER SCHOOLS AND SCHOOL DISTRICTS
LBC	RELATIONS WITH NONPUBLIC SCHOOLS
LDA	STUDENT TEACHING AND INTERNSHIPS 12/11/17

SECTION A

FOUNDATIONS AND BASIC COMMITMENTS

AA	SCHOOL DISTRICT LEGAL STATUS 06/12/23
AB	THE PEOPLE AND THEIR SCHOOL DISTRICT 6/12/23
AC	NONDISCRIMINATION 06/12/23
AC-R-B	CIVIL RIGHTS GRIEVANCE PROCEDURE 05/09/22
ACA	NONDISCRIMINATION ON THE BASIS OF SEX 06/12/23
ACAB	SEXUAL HARASSMENT POLICY 05/09/22
ACAB-R-A	TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCEDURE
ACAC	HARASSMENT POLICY – PROMOTING DIVERSITY
ACAC-R	PROCEDURES FOR DEALING WITH HARASSMENT
ACE	NONDISCRIMINATION ON THE BASIS OF DISABILITY 11/13/17
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ADDA	BACKGROUND CHECKS
ADDA-R	DCJIS MODEL C.O.R.I. POLICY
ADDA-E-1	INFORMATION CONCERNING THE PROCESS IN CORRECTING A CRIMINAL RECORD
ADDA-E-2	C.O.R.I. REQUIREMENTS
ADF	WELLNESS POLICY 7/2017
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SCHOOL DISTRICT LEGAL STATUS

The legal basis for public education in the District is vested in the will of the people as expressed in the Constitution of Massachusetts and state statutes pertaining to education.

Under the General Laws of Massachusetts,

"... Every town shall maintain... a sufficient number of schools for the instruction of all children who may legally attend a public school therein."

The public educational system of Fall River structurally is a department of the municipality operated under laws pertaining to education and under regulations of the Massachusetts Board of Education. The area served by the Fall River Public Schools is coterminous with the City of Fall River.

LEGAL REFS.: Constitution of Massachusetts, Part II, Chapter V, Section II
M.G.L. 71:1

CROSS REF.: BB, School Committee Legal Status

Historical Note: Massachusetts has the oldest public school system in the nation. Dating back to 1647, the laws of the Massachusetts Bay Colony required towns to provide for a program of public education.

SOURCE: MASC – Updated 2022

NOTE: A statement under this code is usually statutory and informational. This statement presents statutory information relating to Massachusetts school districts. Historical notes on the school district's organization and information on its areas or boundaries might also be included.

The cross reference is to a related policy in this reference manual and is offered as a suggestion for cross-referencing your own statement in this category.

THE PEOPLE AND THEIR SCHOOL DISTRICT

The School Committee has the dual responsibility for implementing statutory requirements pertaining to public education and local citizens' expectations for the education of the community's youth. It also has an obligation to determine and assess citizens' desires. When citizens elect delegates to represent them in the conduct of public education, their representatives have the authority to exercise their best judgment in determining policies, making decisions, and approving procedures for carrying out the responsibility.

The School Committee therefore affirms and declares its intent to:

1. Maintain two-way communication with citizens of the community. The public will be kept informed of the progress and problems of the school district, and citizens will be urged to bring their aspirations and feelings about their public schools to the attention of this body, which they have chosen to represent them in the management of public education.
2. Establish policies and make decisions on the basis of declared educational philosophy and goals. All decisions made by this Committee will be made with priority given to the purposes set forth, most crucial of which is the optimal learning of the children enrolled in our schools.
3. Act as a truly representative body for members of the community in matters involving public education. The Committee recognizes that ultimate responsibility for public education rests with the state, but individual School Committees have been assigned specific authority through state law. The Committee will not relinquish any of this authority since it believes that decision-making control over the children's learning should be in the hands of local citizens as much as possible.

SOURCE: MASC – Updated 2022

NONDISCRIMINATION POLICY INCLUDING HARASSMENT AND RETALIATION

The Fall River School Committee and Fall River Public Schools are committed to maintaining an education and work environment for all school community members. That is free from all forms of discrimination, including harassment and retaliation. The members of the school community include the School Committee, employees, administration, faculty, staff, students, volunteers in the schools, and parties contracted to perform work for the Fall River Public Schools.

Fall River Public Schools does not exclude from participation, deny the benefits of Fall River PS from or otherwise discriminate against, individuals on the basis of race*, color, sex, sexual orientation, gender identity, religion, disability, age, genetic information, active military/veteran status, marital status, familial status, pregnancy, or pregnancy-related condition, homelessness, ancestry, ethnic background, national origin, or any other category protected by state or federal law in the administration of its educational and employment policies, or in its programs and activities.

This commitment to the community is affirmed by the following statements. The School Committee commits to:

1. Promoting the rights and responsibilities of all individuals as set forth in the State and Federal Constitutions, pertinent legislation, and applicable judicial interpretations.
2. Encouraging positive experiences in human values for children, youth and adults, all of whom have differing personal and family characteristics and who come from various socioeconomic, racial and ethnic groups.
3. Working toward a more integrated society and enlisting the support of individuals as well as groups and agencies, both private and governmental, in such an effort.
4. Using all appropriate communication and action techniques to air and address the grievances of individuals and groups.
5. Carefully consider, in all the decisions made within the school district, the potential benefits or adverse consequences that those decisions might have on the human relations.
6. Initiating a process of reviewing policies and practices of the school district in order to achieve to the greatest extent possible the objectives of this statement.

The Fall River Public Schools requires all members of the school community to conduct themselves in accordance with this policy.

It shall be a violation of this policy for any member of the school community to engage in any form of discrimination, including harassment and retaliation, or to violate any other civil right of any member of the school community. We recognize that discrimination can take a range of forms and can be targeted or unintentional; however, discrimination in any form, including harassment and retaliation, will not be tolerated.

It shall also be a violation of this policy for any school community member to subject any other member of the school community to any form of retaliation, including, but not limited to, coercion, intimidation, interference, punishment, discrimination, or harassment, for reporting or filing a complaint of discrimination, cooperating in an investigation, aiding or encouraging another member of the school community to report such conduct or file a complaint, or opposing any act or practice reasonably believed to be prohibited by this policy.

*race to include traits historically associated with race, including, but not limited to, hair texture, hair type, hair length and protective hairstyles.

LEGAL REFS: Title VI, Civil Rights Act of 1964
Title VII, Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 Executive Order 11246, as amended by E.O. 11375
Equal Pay Act, as amended by the Education Amendments of 1972 Title IX, Education Amendments of 1972
Rehabilitation Act of 1973
Education for All Handicapped Children Act of 1975
No Child Left Behind Act of 2001, 20 U.S.C. § 7905 (The Boy Scouts of America Equal Access Act)
M.G.L. 71B:1 et seq. (Chapter 766 of the Acts of 1972)
Acts of 2022, Chapter 117 -
<https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter117>

CROSS REF: ACE, Nondiscrimination on the Basis of Disability
ACAB, Sexual Harassment
GBA, Equal Employment Opportunity
IJ, Instructional Materials
JB, Equal Educational Opportunities

SOURCE: MASC August 2022

Civil Rights Grievance Procedure

The Fall River Public Schools is committed to maintaining school environments free of discrimination, harassment or retaliation based on race, color, religion, national origin, gender, sexual orientation, gender identity, age or disability.

Harassment, discrimination, and retaliation in any form or for any reason is prohibited. This includes harassment or discrimination by administrators, personnel, students, vendors and other individuals in school or at school related events. Retaliation against any individual who has brought harassment or discrimination to the attention of school officials or who has cooperated in an investigation of a complaint under this procedure is unlawful and will not be tolerated by the Fall River Public Schools.

Persons who engage in harassment, discrimination or retaliation may be subject to disciplinary action, including, but not limited to reprimand, suspension, termination/expulsion or other sanctions as determined by the school district administration, subject to applicable procedural requirements.

Non-Applicability of This Procedure to Title IX Sexual Harassment Allegations

The *Civil Rights Grievance Procedure* shall not apply to reports of sexual harassment as defined under Title IX of the Education Amendment of 1972 and its implementing regulations (“Title IX”) effective August of 2020.

Allegations of conduct that could, if proven, meet the definition of sexual harassment under Title IX shall be addressed through the District’s *Title IX Sexual Harassment Grievance Procedures*. Similarly, allegations of conduct that meet the definition of sexual harassment under Title IX, and simultaneously meet the definitions of sexual harassment under Title VII (employees), M.G.L. c. 151B (employees), and/or M.G.L. c. 151C (students), will also be addressed through the *Title IX Sexual Harassment Grievance Procedures*. See **FRPS Policy ACAB-R-A**

Allegations of conduct that do not meet the definition of sexual harassment under Title IX, but could, if proven, meet the definition(s) of sexual harassment under Title VII (employees), M.G.L. c. 151B (employees), and/or M.G.L. c. 151C (students), will be addressed through the *Civil Rights Grievance Procedure*.

Definitions

For the purposes of this procedure:

- A. “Discrimination” means discrimination or harassment on the basis of race, age, color, national origin, sex, sexual orientation, gender identity, disability or religion by which an individual is excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity of the school district.

environment. A hostile environment on the basis of sex is created when the conduct is sufficiently severe or pervasive to alter the conditions of employment.

When determining whether an environment is hostile, the District shall consider the context, nature, frequency, and location of the incidents as well as the credibility of witnesses and the identity, number and relationships of the persons involved. The District must consider whether the alleged harassment was sufficient to have created such an environment for a reasonable person of the same age, gender, and experience as the Complainant, and under similar circumstances. Conduct does not constitute harassment where the incident occurs off-campus at a non-school sponsored activity and does not create a hostile environment at school for the victim.

- C. Retaliation: retaliatory acts against any individual who exercises his or her rights under the civil rights statutes covered by this procedure or the sexual harassment procedure are considered to be discrimination and are unlawful. Individuals are prohibited from coercing, intimidating, threatening, or interfering with an individual because the individual exercised any right granted or protected under this procedure and/or the Title IX Sexual Harassment Procedures.
- D. Complainant: An individual who is alleged to be the victim of conduct that could constitute discrimination, harassment, or retaliation under this procedure. Parents and/or legal guardians of a complainant are not considered a complainant but may file formal complaints on behalf of a minor child and act on behalf of the minor child in any civil rights matter.
- E. Party or Parties: The complainant and/or respondent.
- F. Principal: The Principal or Principal's designee.
- G. Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute discrimination, harassment, or retaliation under this procedure.

Complaint Reporting Procedure

Any school employee, independent contractor, or school volunteer who becomes aware or has a reasonable belief that harassment, bullying, discrimination, retaliation, or a hate crime has occurred or may have occurred on school property or in a school-related activity must promptly report the alleged incident(s) to a designated official. Any student or employee who believes that he/she has been discriminated against or harassed should report their concern promptly to the Principal. Students may also report incidents of harassing conduct to a teacher, administrator, or guidance counselor. Any complaint received by school personnel shall be promptly reported to

B. "Harassment" means unwelcome conduct on the basis of race, age, color, national origin, disability, or religion that is sufficiently severe, persistent or pervasive to create or contribute to a hostile environment for the individual at school. Harassment may include insults, name-calling, off color jokes, threats, comments, innuendoes, notes, display of pictures or symbols, gestures or other conduct which rises to the level of a hostile environment. A hostile environment is one which unreasonably interfered with an individual's participation in, denied the individual the benefits of, or otherwise subjected the individual to discrimination under any program or activity of the District.

a. Non-Title IX Sexual Harassment

M.G.L. c. 151B, § 1 - the term "sexual harassment" is defined as sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment. Discrimination on the basis of sex shall include, but not be limited to, sexual harassment.

M.G.L. c. 151C, § 1 - the term "sexual harassment" is defined as sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when: (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of the provision of the benefits, privileges or placement services or as a basis for the evaluation of academic achievement; or (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's education by creating an intimidating, hostile, humiliating or sexually offensive educational environment.

Title VII of the Civil Rights Act of 1964 - Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working

the Principal or Civil Rights Coordinator. Students or employees who are unsure whether discrimination, harassment, or retaliation has occurred are encouraged to discuss the situation with the Principal. There may be instances where another third-party, who has not experienced but is aware of the occurrence of prohibited conduct, may bring a complaint under this procedure. In such circumstances, that person is referred to as the “reporter.”

- A. Any District employee who observes or receives a report of discrimination, harassment or retaliation shall promptly notify the Principal or Civil Rights Coordinator, identified below. Any District employee who observes discrimination, harassment or retaliation against a student should intervene to stop the conduct and report it to Principal. Upon receipt of a report of discrimination, harassment or retaliation, the Principal shall promptly inform the relevant Civil Rights Coordinator of the report, and the District will respond in a manner consistent with this Procedure. If the report involves an accusation against the Principal or Civil Rights Coordinator, the employee shall report the incident to the Superintendent or designee.
- B. Informal Reports: Individuals may wish to file a formal complaint of discrimination, harassment or retaliation, or to report informally (i.e., without initiating a formal complaint). Such informal reports may be made to the Principal or Civil Rights Coordinator. The District shall inform anyone making an informal report that he or she may initiate a formal complaint at any time, regardless of what steps are being or have been taken in response to an informal report.
- C. Anonymous Reports: Complainants and reporters should be aware that although the District will often be able to maintain confidentiality of reporting persons, the District may sometimes be required to take actions to protect the safety of the school community that may result in the identity of the reporting person being disclosed (to the police, for example). When reporters or Complainants seek to remain anonymous or have their identities kept confidential, they will be informed that honoring such a request may limit the ability of the District to respond fully to any reported event, including limitations on the ability to take disciplinary action against an Respondent.
- D. Informal Process: If the District concludes that it is possible to resolve a matter, whether after formal complaint or an informal report, in a prompt, fair and adequate manner through an informal process involving, and with the consent of, the Complainant and Respondent, the District may seek to do so. The informal process is voluntary, and the Complainant and/or Respondent may terminate or decline any informal process at any time, without penalty.

- E. **Formal Process:** A formal complaint shall state (if known to the reporter or Complainant) the name(s) of the persons involved and witnesses to the conduct, describe the conduct, and identify, to the extent possible, the dates and locations of the conduct. The complaint shall be signed and dated by the reporter and/or Complainant. Complaints will be investigated promptly and equitably by the Civil Rights Coordinator or Principal. Investigations may be initiated whenever warranted, in the absence of a formal complaint, or after a formal complaint has been withdrawn.
- F. **Initial Assessments:** The Civil Rights Coordinator or Principal will make an initial assessment following a complaint. Based on that assessment, the Civil Rights Coordinator or Principal may: (a) if the conduct, even if substantiated, would not constitute harassment, discrimination or retaliation, dismiss the complaint; (b) if the alleged conduct (or complaint) could not, even if true, constitute discrimination, harassment or retaliation, but is within the scope of another procedure, the Civil Rights Coordinator shall refer the matter to the appropriate personnel; (c) if the Civil Rights Coordinator or Principal concludes that it is possible to resolve the complaint in a prompt, fair and adequate manner through an informal process involving and with the consent of both parties, the Civil Rights Coordinator or Principal may seek to do so in accordance with Section D, above; or (d) if the alleged conduct, if substantiated, would constitute discrimination, harassment or retaliation, the Civil Rights Coordinator or Principal will initiate an investigation. The Civil Rights Coordinator or Principal may also identify and initiate any interim measures. See Section G.
- G. **Interim Measures:** The District will provide prompt and reasonable interim measures during the pendency of the investigation, if appropriate, to support and protect the safety of the parties, the educational environment, and the District and/or school community; to deter retaliation; and to preserve the integrity of the investigation and resolution process. Any interim measures will be monitored to ensure they are effective based on the evolving needs of the parties. Violations of the restrictions imposed by interim measures could be considered a violation of school rules and may be considered in determining whether discrimination, harassment or retaliation has occurred.
- H. **Timeframes:** The District will seek to complete any investigation within twenty (20) school days after receipt of a complaint and provide the written notice of the outcome of the investigation within twenty-five (25) school days. The investigator may impose reasonable timeframes on all parties to facilitate the timely completion of the investigation. The investigator may extend the investigation period beyond the time period identified due to extenuating circumstances, including but not limited to availability and cooperation of witnesses, complexity of the investigation, school

vacation periods, and the involvement of law enforcement and other outside agency investigations. If a complaint or report of discrimination, harassment or retaliation is received within three (3) weeks of the end of the academic school year, the investigator will attempt to complete the investigation by the end of the school year. In the event that the investigation extends beyond the last day of school, the District will make reasonable efforts to complete the investigation within the above-referenced time frame, but may extend the investigation period to account for the availability of witnesses during the summer vacation period. If the investigator extends the investigation, he or she will notify the Complainant and Respondent of the extension. A report to the law enforcement will not automatically delay an investigation; however, a request from law enforcement to delay the investigation may require a temporary suspension of an investigation, and the District will promptly resume its investigation upon being advised that law enforcement's evidence gathering is completed.

- I. Under the formal resolution procedure, the complaint will be investigated by the Principal, Civil Rights Coordinator or other individual designated by the Principal or Civil Rights Coordinator who has responsibility for seeking and gathering evidence relative to the investigation. A formal complaint against an employee who holds a supervisory position shall be investigated by a person who is not subject to that supervisor's authority. During the formal resolution procedure:
 1. The Complainant shall be provided with an opportunity to be heard and have the opportunity to identify witnesses and other relevant evidence to the investigator.
 2. The Respondent will be provided with an opportunity to be heard as part of the investigation including the opportunity to provide relevant information and identify witnesses for the investigator's consideration.
 3. The privacy rights of the parties shall be maintained in accordance with applicable state and federal laws.
 4. The investigator will keep a written record of the investigation process.
 5. The investigation will be completed within twenty (20) school days of the date of receipt of the complaint.
 6. The notification of the outcome of the investigation, including, if appropriate, a description of the remedies taken, will be provided to the parties within twenty-five (25) school days of the receipt of the complaint, unless extended for good cause.
 7. Nothing in this Procedure will preclude the investigator, in his or her discretion, from completing the investigation sooner than the time period described above.

- J. Standard of Proof: The investigation shall made factual findings based on a preponderance of the evidence standard.

K. If the investigator determines that discrimination, harassment or retaliation has occurred, the District shall take steps to eliminate the discriminatory or harassing environment, which shall include but not be limited to:

1. Identifying what steps are necessary to prevent recurrence of any discriminatory behavior, including but not limited to harassment or retaliation, and to correct its discriminatory effects if appropriate; and
2. Informing the Complainant and Respondent of the results of the investigation (in accordance with applicable state and federal privacy laws) in accordance with the above timelines.

The school district administration may also refer the offender for disciplinary procedures to be conducted in accordance with federal and state law. Nothing in the Procedure shall be interpreted as limiting or prohibiting the District's ability to take appropriate disciplinary action against the offender in accordance with the applicable code(s) of conduct or employment contracts or policies, where appropriate, prior to completion of the investigation, in accordance with the due process rights of employees and students, as applicable.

L. Appeal: If the Complainant or the Respondent is dissatisfied with the results of the investigation, an appeal may be made to the Superintendent or designee within seven (7) calendar days after receiving notice of the outcome of the investigation, except for circumstances in which the Respondent is subject to long-term suspension as a result of a finding of discrimination, harassment or retaliation. In such an instance, the appeal rights of the Respondent will be provided in a manner consistent with the disciplinary due process requirements applicable to the circumstances (e.g., M.G.L. c. 71, 37H, 37H ½ or 37H ¾). Appeals must be made in writing (email is sufficient) to the Superintendent, Fall River Public Schools, 417 Rock Street, Fall River, Massachusetts 02720. The Superintendent will decide the appeal within thirty (30) calendar days of the date of receipt of the written appeal.

M. Identification of Civil Rights Coordinator for complaints of discrimination, harassment, and retaliation under this procedure is:

Insert Name, Title and Contact Information

N. Employment Agency Information: federal employment discrimination enforcement agencies is as follows:

- 1) Federal - United States Equal Employment Opportunity Commission (EEOC)

John F. Kennedy Federal Building; 15 New Sudbury Street, Room 475;
Boston, MA 02203-0506; 1-800-669-4000;
EEOC Boston Area Office Website: <https://www.eeoc.gov/field-office/boston/location>;

2) State:

Massachusetts Commission Against Discrimination (MCAD); Boston Headquarters;
One Ashburton Place; Sixth Floor, Room 601
Boston, MA 02108; (617)-994-6000;

MCAD Website:

<https://www.mass.gov/orgs/massachusetts-commission-against-discrimination>.

Legal Ref: Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act of 1990; Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; the Age Act; M.G.L. c. 151B and c. 151C; M.G.L. c. 76, § 5; SC Policy JICFB, Bullying Prevention; SC Policy AC, Nondiscrimination.

Adopted by School Committee 05.09.22

NONDISCRIMINATION ON THE BASIS OF SEX

The School Committee, in accordance with Title IX of the Education Amendments of 1972, declares that the school district does not and will not discriminate on the basis of sex, sexual orientation or gender identity in the educational programs and activities of the public schools. This policy will extend not only to students with regard to educational opportunities, but also to employees with regard to employment opportunities.

The School Committee will continue to ensure fair and equitable educational and employment opportunities, without regard to sex, sexual orientation or gender identity, to all of its students and employees.

The Committee will designate an individual to act as the school district's Title IX compliance officer. All students and employees will be notified of the name and office address and telephone number of the compliance officer.

SOURCE: MASC – Updated 2022

LEGAL REFS.: Title IX of the Education Amendments of 1972
45 CFR, Part 86, (Federal Register, 6/4/75)
M.G.L. 76:5; 76:16 (Chapter 622 of the Acts of 1971)
BESE 603 CMR 26:00

REFERENCE: USDOE Notice of Interpretation - <https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity>

CROSS REF.: AC, Nondiscrimination Policy Including Harassment and Retaliation

SEXUAL HARASSMENT

The Fall River School Committee and Fall River Public Schools are committed to maintaining an education and work environment for all school community members. that is free from all forms of harassment, including sexual harassment. The members of the school community include the School Committee, employees, administration, faculty, staff, students, volunteers in the schools, and parties contracted to perform work for the Fall River Public Schools.

Sexual harassment is unwelcome conduct of a sexual nature. The definition includes unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity it also, includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment includes conduct by an employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct, often called quid pro quo harassment and, sexual assault as the Federal Clery Act defines that crime. Sexual violence is a form of sexual harassment. Sexual violence, as the Office of Civil Rights (OCR) uses the term, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse and sexual coercion. Massachusetts General Laws Ch. 119, Section 51 A, requires that public schools report cases of suspected child abuse, immediately orally and file a report within 48 hours detailing the suspected abuse to the Department of Children and Families. For the category of sexual violence, in addition to Section 51A referrals these offences and any other serious matters shall be referred to local law enforcement. Schools must treat seriously all reports of sexual harassment that meet the definition of sexual harassment and the conditions of actual notice and jurisdiction as noted above. Holding a school liable under Title IX can occur only when the school knows of sexual harassment allegations and responds in a way that is deliberately indifferent (clearly unreasonable in light of known circumstance).

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct, which if unwelcome, may constitute sexual harassment, depending on the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances—whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences; and,
- Discussion of one's sexual activities.

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating an

environment that is hostile, offensive, intimidating, to male, female, or gender non-conforming students or employees may also constitute sexual harassment.

Because the District takes allegations of harassment, including sexual harassment, seriously, we will respond promptly to complaints of harassment including sexual harassment, and following an investigation where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting an environment that is free of harassment including sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of harassment or sexual harassment.

Retaliation against a complainant, because they have filed a harassment or sexual harassment complaint or assisted or participated in a harassment or sexual harassment investigation or proceeding, is also prohibited. A student or employee who is found to have retaliated against another in violation of this policy will be subject to disciplinary action up to and including student suspension and expulsion or employee termination.

The complainant does not have to be the person at whom the unwelcome sexual conduct is directed. The complainant, regardless of gender, may be a witness to and personally offended by such conduct.

NOTICE OF SEXUAL HARASSMENT

The regulations require a school district to respond when the district has actual notice of sexual harassment. School districts have actual notice when an allegation is made known to any school employee. Schools must treat seriously all reports of sexual harassment that meet the definition of harassment and the conditions of actual notice and jurisdiction as noted whether or not the complainant files a formal complaint. Holding a school liable under Title IX can occur only when the school knows of sexual harassment allegations and responds in a way that is deliberately indifferent (clearly unreasonable in light of known circumstances). Schools are required to investigate every formal complaint and respond meaningfully to every known report of sexual harassment.

The regulation highlights the importance of supportive measures designed to preserve or restore access to the school's education program or activity, with or without a formal complaint. Where there has been a finding of responsibility, the regulation would require remedies designed to restore or preserve access to the school's education program or activity.

DUE PROCESS PROTECTIONS

Due process protections include the following:

- 1) A presumption of innocence throughout the grievance process, with the burden of proof on the school;
- 2) A prohibition of the single investigator model, instead requiring a decision-maker separate from the Title IX Coordinator or investigator;
- 3) The clear and convincing evidence or preponderance of the evidence, subject to limitations;

- 4) The opportunity to test the credibility of parties and witnesses through cross examination, subject to “rape shield” protections;
- 5) Written notice of allegations and an equal opportunity to review the evidence;
- 6) Title IX Coordinators, investigators, and decision-makers must be free from bias or conflict of interest;
- 7) Equal opportunity for parties to appeal, where schools offer appeals;
- 8) Upon filing a formal complaint the school must give written notice to the parties containing sufficient details to permit a party to prepare for any initial interview and proceed with a factual investigation. For K-12 schools a hearing is optional but the parties must be allowed to submit written questions to challenge each other’s credibility before the decision-maker makes a determination. After the investigation, a written determination must be sent to both parties explaining each allegation, whether the respondent is responsible or not responsible, including the facts and evidence on which the conclusion was based by applying either the preponderance of the evidence or the clear and convincing standard; however, a school can use the lower preponderance standards only if it uses that standard for conduct code violations that do not involve sexual harassment but carry the same maximum disciplinary sanction. As long as the process is voluntary for all parties, after being fully informed and written consent is provided by both parties, a school may facilitate informal resolution of a sexual complaint.

A district may establish an informal investigation process that may, upon the request of the complainant be followed by a formal process.

The Superintendent in consultation with the Title IX Coordinator shall designate the principal of each school in the district, or their designee (or some other appropriate employee(s)) as the initial entity to receive the sexual harassment complaint. Also, in a matter of sexual harassment, the district shall require that the Title IX Coordinator be informed, as soon as possible, of the filing of the complaint. Nothing in this policy shall prevent any person from reporting the prohibited conduct to someone other than those above designated complaint recipients. The investigating officer may receive the complaint orally or in writing, and the investigation shall be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances and in compliance with applicable law. The investigation will be prompt, thorough, and impartial, and will include, at least, a private interview with the person filing the complaint and with witnesses. Also, the alleged harasser will be interviewed. When the investigation is completed, the complaint recipient will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

RECORD KEEPING REQUIREMENTS

Schools must create and maintain records documenting every Title IX sexual harassment complaint. This could include mediation, restorative justice, or other models of alternative dispute resolution. Schools must keep records regarding the school’s response to every report of sexual harassment of which it becomes aware even if no formal complaint was filed, including documentation of supportive matters offered and implemented for the complainant.

This policy, or a summary thereof that contain the essential policy elements shall be distributed by the **Fall River Public Schools** to its students and employees and each parent or guardian shall sign that they have received and understand the policy.

List the name and phone number of the District’s Title IX Coordinator

List the appropriate party by name and phone number to receive a complaint in each District School

Please note that the following entities have specified time limits for filing a claim.

The Complainant may also file a complaint with:

- The Mass. Commission Against Discrimination,
1 Ashburton Place, Room 601
Boston, MA 02108.
Phone: 617-994-6000.
- Office for Civil Rights (U.S. Department of Education)
5 Post Office Square, 8th Floor
Boston, MA 02109.
Phone: 617-289-0111.
- The United States Equal Employment Opportunity Commission,
John F. Kennedy Bldg.
475 Government Center
Boston, MA 02203.

LEGAL REF.: M.G.L. 151B:3A
Title IX of the Education Amendments of 1972
BESE 603 CMR 26:00
34 CFR 106.44 (a), (a)-(b)
34 CFR 106.45 (a)-(b) (1)
34 CFR 106.45 (b)(2)-(b)(3,4,5,6,7) as revised through June 2020

Note: A summary of the attached Policy, as adopted, must be sent to parents/guardians, students, employees, unions, and prospective employees of the school district including Title IX Coordinator(s), investigator(s) and the decision-maker. The above referenced employees must attend training sessions on the implementation of the Policy.

SOURCE: MASC December 2021

Title IX Sexual Harassment Grievance Procedures

OVERVIEW

The Fall River Public Schools is committed to maintaining school environments free of sexual harassment.

Sexual harassment in any form or for any reason is prohibited. This includes sexual harassment by administrators, personnel, students, vendors, and other individuals in school or at school related events.

The District does not discriminate on the basis of sex in its educational programs or activities and is required by Title IX not to discriminate on the basis of sex. Such non-discrimination also extends to admissions and the employment application process. Retaliation against any individual who has brought sexual harassment to the attention of school officials, or against an individual who has participated, or refused to participate, in the investigation thereof is unlawful and will not be tolerated by the Fall River Public Schools.

SCOPE

The Title IX Sexual Harassment Grievance Procedures have been developed in accordance with the revised Title IX regulations, 34 CFR Part 106, effective August 14, 2020, which established a new definition of sexual harassment under Title IX and which mandate specific procedures for responding to and investigating allegations of sexual harassment under Title IX.

The Title IX Sexual Harassment Grievance Procedures apply only to allegations of sexual harassment under Title IX, which includes harassment based on sex, sexual orientation, and/or gender identity, and is defined in the Definitions section below.

The Title IX Sexual Harassment Grievance Procedures apply to conduct that occurs within the United States in an education program or activity of the District, regardless of whether such District program or activity is conducted on or off school grounds. A District 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.

Allegations of conduct that meet the definition of sexual harassment under Title IX will be addressed through the Title IX Sexual Harassment Grievance Procedures. Allegations of conduct that meet the definition of sexual harassment under Title IX, and simultaneously meet the definitions of sexual harassment under Title VII of the Civil Rights Act of 1964 (employees), M.G.L. c. 151B (employees), and/or M.G.L. c. 151C (students), will also be addressed through the Title IX Sexual Harassment Grievance Procedures.

Allegations of conduct that do not meet the definition of sexual harassment under Title IX, but could, if proven, meet the definition(s) of sexual harassment under Title VII (employees), M.G.L. c. 151B (employees), and/or M.G.L. c. 151C (students), will be addressed through the

District's Civil Rights Grievance Procedures. (See exception under Section II, Part 4, Step 4 below). The definitions of sexual harassment under Title VII, M.G.L. c. 151B, and M.G.L. c. 151C are set out in the Civil Rights Grievance Procedures.

The District's Civil Rights Grievance Procedures is available in FRPS Policy AC- R-B at: **FRPS Policy AC-R-B** .

CONFIDENTIALITY

The District will keep the identity of complainants, respondents, and witnesses confidential, except as permitted by the Family Educational Rights and Privacy Act (FERPA), as otherwise required by law, and/or as necessary to carry out this Procedure.

DEFINITIONS

Complainant: An individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. Parents and/or legal guardians of a complainant are not considered a complainant but may file a Formal Complaint on behalf of a minor child and act on behalf of the minor child in any Title IX matter. For the purpose of this procedure the terms "complainant" and "alleged victim" shall have the same meaning.

Formal Complaint: A document or electronic submission filed by a complainant, that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the Formal Complaint, or a document signed by the Title IX coordinator, that:

- (1) alleges sexual harassment against a respondent; and
- (2) requests that the recipient investigate the allegation of sexual harassment.

At the time of filing a Formal Complaint, the complainant must be participating in or attempting to participate in the District's education program or activity with which the Formal Complaint is being filed.

Sexual Harassment: Under Title IX, the term "sexual harassment" includes three (3) types of misconduct based on sex:

- (1) any instance of quid pro quo harassment by a school employee;
- (2) unwelcome conduct on the basis of sex, including unwelcome conduct based on sex stereotyping or on the basis of traditional notions of masculinity and femininity, that is sufficiently severe and pervasive and objectively offensive conduct, effectively denying a person equal educational access; or
- (3) any instance of sexual assault, dating violence, domestic violence, or stalking as defined below.

Sexual Assault: An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting system and set out below:

- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim,

including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. In Massachusetts, pursuant to M.G.L. c. 265, § 13B, a child under the age of 14 is incapable of giving consent to indecent touching.

- Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. In Massachusetts, pursuant to M.G.L. c. 265, § 23, the statutory age of consent is 16 years of age.

For the purposes of the definition of sexual assault, the term “consent” shall be defined in a manner consistent with Massachusetts laws.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence: A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Stalking: Engaging in a “course of conduct” directed at a specific person that would cause a “reasonable person” to fear for the person’s safety or the safety of others or suffer “substantial emotional distress.”

For the purposes of this definition:

“Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

“Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.

“Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Party or Parties: The complainant and/or respondent.

Principal: The Principal or Principal’s designee.

Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Superintendent: The Superintendent or Superintendent's designee.

Supportive Measures: Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the Complainant or Respondent, while designed to ensure equal educational access, protect safety, and/or deter sexual harassment. Supportive Measures may be offered before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Supportive measures are individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party, while designed to ensure equal educational access, protect safety, and/or deter sexual harassment. Supportive measures available to complainants and respondents include, but are not limited to: 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; leaves of absence; increased security and monitoring of certain areas of the building and/or campus; and other similar measures. Violations of the restrictions imposed by supportive measures may be considered a violation of school rules and may also be considered in determining whether sexual harassment has occurred.

Title IX Coordinator: Employee(s) designated by the District to coordinate its efforts to comply with Title IX.

I. REPORTING SEXUAL HARASSMENT

- A. Who May Report Sexual Harassment: Anyone may report an allegation of sexual harassment.
- B. How to Report Sexual Harassment: Individuals are encouraged to report allegations of sexual harassment to the Title IX Coordinator or the Principal, but any District employee who receives a report of sexual harassment will respond to the report as outlined below.
- C. Internal Reporting: Any District employee who receives a report of sexual harassment shall respond by promptly informing the Principal or Title IX Coordinator of the report. Any District employee who observes sexual harassment of a student should intervene to stop the conduct and shall promptly inform the Principal or Title IX Coordinator of the incident. If a report involves an allegation against the Principal or Title IX Coordinator, the District employee shall instead report the allegation to the Superintendent.

Any Principal who receives a report of sexual harassment shall promptly inform the relevant Title IX Coordinator of the report.

- D. District's Response to Report: The District will respond to all reports of sexual harassment promptly and equitably, and in a manner consistent with this Procedure

and any other relevant District procedures and policies. Upon receipt of a report, the Title IX Coordinator shall:

- (1) Promptly and confidentially contact the complainant to discuss the availability of supportive measures;
 - (2) Inform the complainant of the availability of supportive measures with or without the filing of a Title IX Formal Complaint;
 - (3) Consider the complainant's wishes with respect to supportive measures;
 - (4) If the District does not provide the complainant with supportive measures, document the reasons why such response was reasonable; and
- (5) Explain to the complainant the process for filing a Title IX Formal Complaint. Only the filing of a Title IX Formal Complaint will trigger the Title IX Formal Complaint grievance process, outlined in Section II.

II. FILING A TITLE IX FORMAL COMPLAINT

Only the filing of a Title IX Formal Complaint will trigger the Title IX Formal Complaint grievance process, outlined below.

A. **Who may file a Title IX Formal Complaint:** Although anyone may report sexual harassment, only a complainant or a Title IX Coordinator may file a Title IX Formal Complaint. If a complainant chooses not to file a Formal Complaint, the complainant's choice to not initiate an investigation will generally be respected, unless the Title IX Coordinator determines that signing a Formal Complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. The Title IX Coordinator will take into account concerns articulated by the parties, the best interests of the community, fairness to all concerned, and the District's legal obligations under applicable state and federal laws. Where the Title IX Coordinator signs the Formal Complaint, the Title IX Coordinator is not a complainant or a party during the grievance process and must comply with the requirement to be free from conflicts or bias.

B. **Processing of a Title IX Formal Complaint:** Title IX Formal Complaints will be investigated promptly and equitably by the Title IX Coordinator or designee, as follows:

Step 1: Title IX Formal Complaint is filed:

- (1) A Formal Complaint shall state (if known to the reporter or alleged victim) the name(s) of the persons involved, witnesses to the conduct, if any, a description of the conduct, and to the extent possible, the dates and locations of the conduct. A Formal Complaint will not be dismissed solely because it was not completely filled out or it was filled out incorrectly.

- (2) A Formal Complaint may be filed at any time, including during non-business hours. Formal Complaints submitted outside of normal business hours will be deemed received on the following school working day.
- (3) At the time of the filing of the Formal Complaint, the alleged victim must be participating in or attempting to participate in the education program or activity of the school with which the Formal Complaint is filed.
- (4) A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information for the Title IX Coordinator listed in this procedure, and by any additional method designated by the school.
- (5) Consolidation of Formal Complaints: Schools may consolidate Formal Complaints where the allegations arise out of the same facts.
- (6) Consideration of the use of the Informal Resolution Process with the consent of the parties. See Section II(D).
- (7) Throughout this process, there shall be a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Step 2: Consider Supportive Measures for both the complainant and the respondent: Once a Formal Complaint is filed, the Title IX Coordinator will ensure that supportive measures are considered for both parties. See Section I(E).

Step 3: Written Notice of Allegations: Upon receipt of a Formal Complaint, the District shall send written notice of the allegations, including the identity of the parties, to both the complainant and the respondent, if their identities are known. The written notice must include: (1) a statement prohibiting knowingly submitting false information; (2) sufficient details known at the time to allow the respondent the opportunity to respond to the allegations; (3) a statement that the respondent is presumed not responsible for the alleged conduct; (4) that a determination regarding responsibility is made at the conclusion of the grievance process; (5) that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney; and (6) that the parties/advisors may inspect and review evidence in accordance with this procedure. If, in the course of the investigation, the District decides to investigate allegations of sexual harassment that are not included in the initial written notice of allegations, the District shall provide notice of the additional allegations to the parties whose identities are known.

Step 4: Consider Whether Dismissal of Formal Complaint Warranted: Some Formal Complaints will be subject to mandatory or discretionary dismissal under Title IX.

- (1) Mandatory Dismissal of Formal Complaint: The Title IX Coordinator shall dismiss a Formal Complaint under Title IX when the conduct alleged:
 - a. even if proved, would not meet the definition of sexual harassment under Title IX;
 - b. did not occur in an education program or activity of the District; or
 - c. did not occur against a person in the United States.

- (2) Discretionary Dismissal of Formal Complaint: The Title IX Coordinator may dismiss a Formal Complaint or allegations therein for purposes of Title IX at any time if:
- a. the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the Formal Complaint or allegations;
 - b. the respondent is no longer enrolled or employed by the District; or
 - c. specific circumstances prevent the District from gathering sufficient evidence to make a determination.
- (3) The Title IX Coordinator must provide the parties with written notice of any dismissal of a Formal Complaint and the reasons for the dismissal.
- (4) Dismissal of a Formal Complaint for purposes of Title IX shall not preclude the District from addressing the allegations under any other relevant District policies or procedure(s), including but not limited to, the Civil Rights Grievance Procedures, the Bullying Prevention and Intervention Plan, the Student Code of Conduct, and/or a collective bargaining contract, nor will it preclude the District from addressing the allegations pursuant to the grievance process set out in Section II of this Procedure. The Title IX Coordinator shall have the discretion to make any such referrals and proceed as appropriate in regard to the allegations.

Step 5: Initial Investigation: All Formal Complaints will be investigated by the Title IX Coordinator or other individual designated to serve as the investigator by the Title IX Coordinator. The investigator shall be responsible for seeking and gathering evidence relative to the investigation. Any Formal Complaint against an employee who holds a supervisory position shall be investigated by a person who is not subject to that supervisor's authority. During the Formal Complaint resolution process:

- (1) Standard of Proof: The investigator shall make factual findings based on a preponderance of the evidence standard.
- (2) The burden for gathering evidence and the burden of proof remains on the District, not on the parties.
- (3) The District shall provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- (4) The District shall not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no "gag" orders).
- (5) Each party may have one (1) advisor of their own selection and at their own expense participate in this grievance process. In the case of a student under the age of 18, this advisor may be in addition to the student's parents/guardians. Any restrictions on the participation of an advisor will be applied equally to each party. The advisor may, but is not required to, be an attorney. Any evidence received by an advisor in this process is subject to confidentiality and may be used only for the purpose of the grievance process. Advisors are prohibited from disseminating or disclosing such evidence outside of the grievance process.
- (6) The District shall send prior written notice to the parties of any investigative interviews, meetings, or hearings in which their participation is invited or expected.

- (7) Privacy of Medical Treatment and Mental Health Treatment Records: The District may not access or use either the complainant's or the respondent's medical, psychological, or similar treatment records unless the District obtains the party's written consent to do so.
- (8) The investigator may impose reasonable timeframes on all parties as required to facilitate the timely completion of the investigation. The investigator may extend any of the timeframes beyond the time periods identified in this procedure for good cause. If a complaint or report of sexual harassment is received within three (3) weeks of the end of the academic school year, the investigator will attempt to complete the investigation by the end of the school year. In the event that the investigation extends beyond the last day of school, the District will make reasonable efforts to complete the investigation within the above-referenced time frame, but may extend the investigation period to account for the unavailability of witnesses while school is not in session. If the investigator extends the investigation, the investigator will notify the parties of the extension and the reasons therefore in writing.

Step 6: Opportunity for Parties to Respond to Evidence: The District must send the parties, and their advisor(s) (if they have one) evidence directly related to the allegation, in electronic format or hard copy. Parties shall be afforded ten (10) calendar days to inspect, review and respond to the evidence. The District shall not require, allow, rely upon, or otherwise use evidence that constitutes information protected from disclosure by a legally recognized privilege, unless it has been waived by the holder of the privilege.

- (1) Prior to providing evidence to the parties, the investigator may redact confidential information that is not directly related to the allegations or that is otherwise barred from use under Title IX or by privilege (e.g., treatment records), the Family Educational Rights and Privacy Act and/or 603 CMR 23.00. Information that is directly related to the investigation, and that is not expressly barred from disclosure under Title IX (e.g., treatment records), the Family Educational Rights and Privacy Act, and/or 603 CMR 23.00, must be made available for review by both parties.
- (2) The parties and their advisors shall be prohibited from dissemination of any of the evidence for any purpose not directly related to this grievance procedure.

Step 7: Completion of the Investigative Report: The District must send the parties, and their advisor, an Investigative Report that fairly summarizes relevant evidence but does not reach any conclusions regarding responsibility, in electronic format or hard copy, within twenty-five (25) school days of receipt of the Formal Complaint, unless otherwise extended for good cause. A copy of the Investigative Report will also be sent to the decision-maker.

Step 8: Parties' Opportunity to Respond to Investigative Report: The District shall provide each party ten (10) calendar days for the parties to respond to the investigative report. The Investigative Report will notify the parties of the opportunity to submit to the decision-maker directed questions of the other party and/or any witness within that same ten (10) calendar days. (See Step 9).

Step 9: Directed Written Questions from the Parties: After the Investigative Report has been sent to the parties, but prior to reaching a determination regarding responsibility, the decision-maker shall afford both the complainant and the respondent the opportunity to submit to the decision-maker written, relevant questions of the other party or any witness, provide the party with the other party's and/or witness's written responses to said written questions, and allow for additional, limited follow-up questions from each party in writing. Questions that seek disclosure of information protected under a legally recognized privilege, Family Educational Rights and Privacy Act, and/or 603 CMR 23.00 shall not be permitted, unless the person holding the privilege has waived the privilege.

- (1) The complainant shall be protected from answering questions about the complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove the complainant's consent to the conduct under investigation.
- (2) Upon receipt of the Investigative Report, each party shall have ten (10) calendar days to submit directed relevant questions to the decision-maker in writing.
 - a. All questions must be posed in a respectful manner (e.g., without profanity and without attacking a person's character or motivations).
 - b. Questions that are not relevant will be excluded, and the decision-maker shall explain to the party posing the question the reason(s) for excluding any question.
- (3) Upon receipt of the directed questions from the District, each party and witness shall have five (5) calendar days to respond to those questions in writing.¹
- (4) After receipt of the answers by the parties, any follow-up questions by the parties shall be submitted to the decision-maker in writing within three (3) calendar days, and those follow-up questions shall be responded to in writing within three (3) calendar days of receipt.
- (5) Each party will be provided a copy of the other party's or witness's written answers.

Step 10: Determination of Responsibility/Findings of Fact by the Decision-Maker:

- (1) The decision-maker shall issue a written determination regarding responsibility with a description of the procedural steps taken, findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, the range of disciplinary sanctions to which the respondent may be subject, whether remedies will be provided to the complainant, and procedures and bases for appeal. The decision-maker's written determination shall not be completed by the Title IX Coordinator or the investigator.
- (2) Standard of Proof: The decision-maker shall make factual findings based on a preponderance of the evidence standard.
- (3) The decision-maker's findings shall be based on an objective review of all relevant evidence, inculpatory and exculpatory, and avoid credibility

¹ The parent or guardian may act on behalf of the party in drafting questions and submitting written answers. In the case of young children, reasonable accommodation based on disability, and/or other good cause, either party and/or any witness may request and have their oral responses reduced to writing by the investigator or Title IX Coordinator.

determinations based on a person's status as a complainant, respondent, or witness.

- (4) The decision-maker shall not draw inferences about the determination of responsibility based solely on a party's failure or refusal to answer questions.
 - (5) The written determination must be sent simultaneously to both parties.
 - (6) This determination shall be sent within twenty (20) school days of the issuance of the investigative report unless an extension is agreed upon by the parties or if the process is otherwise reasonably delayed. Except where the parties have agreed to an extension of the timeline or where the process is otherwise reasonably delayed, the written determination shall be issued within sixty (60) school days of receipt of the Formal Complaint.
- B. Remedies: If the decision-maker determines that sexual harassment has occurred, the District administration shall take steps to eliminate the harassing environment, which may include but not be limited to providing remedies to a complainant that are designed to restore or preserve the complainant's equal access to the District's education programs and/or activities. These remedies may be the same individualized services as the supportive measures outlined in Section I(E) above and/or may consist of alternative interventions and/or punitive or disciplinary sanctions that burden the respondent.
- C. Discipline: Persons who engage in sexual harassment or retaliation may be subject to disciplinary action, including, but not limited to, reprimand, suspension, termination, expulsion (if applicable under M.G.L. c. 71, §§ 37H or 37H ½), or other sanctions as determined by the District administration, subject to applicable procedural requirements.
- (1) Although the respondent may, in accordance with Title IX, be subject to emergency removal at any time, the respondent may not be subject to disciplinary sanctions for the misconduct defined under this procedure until after this grievance process has been completed.
- D. Informal Process: Only after a Formal Complaint is filed may the District opt to offer and facilitate informal resolution options, such as mediation or restorative justice. Both parties must give voluntary, informed, written consent to attempt any offered informal resolution. Any informal resolution under this procedure will be facilitated by trained personnel.
- (1) The informal resolution process is not available to resolve allegations that an employee sexually harassed a student.
 - (2) The informal process is voluntary, and the alleged victim and/or respondent may terminate or decline any informal process at any time and resume the Formal Complaint grievance process.
 - (3) The informal process shall not exceed thirty (30) calendar days.
- Participation in the informal process will stay the timelines of the Formal Complaint process.
- E. Emergency Removal under Title IX: The District may remove a respondent on an emergency basis at any time provided that the District: (1) undertakes an individualized safety and risk analysis; (2) determines that an immediate threat to the physical health or

safety of any student or other individual arising from the allegations of sexual harassment justifies removal and that there is no alternative to the respondent's emergency removal to mitigate the threat presented; and (3) provides the respondent with notice and the opportunity to challenge the decision immediately following the removal.

- F. **Anonymous Reports:** The District may be on notice of an allegation of sexual harassment through receipt of an anonymous report. In cases of anonymous reports, the District's obligation is to respond in a manner that is not clearly unreasonable in light of the known circumstances. If the anonymous reporter is the complainant and they request confidentiality, the District can and should offer supportive measures to the extent consistent with maintaining the request for confidentiality. If an anonymous report is received without a disclosure of the complainant's identity, the District will be unable to provide the complainant supportive measures in response to that report. The District may in conformance with applicable state laws and regulations be required to report sexual harassment identified in an anonymous complaint to state and/or local authorities such as the Massachusetts Department of Children and Families in conformance with state statutes and regulations and/or take actions to protect the safety of the school community (contacting the police, for example) that may result in the identity of the reporting person being disclosed. Although the District shall respond to anonymous reports of sexual harassment in accordance with this Procedure, a Formal Complaint cannot be filed anonymously.
- G. **Appeals:** The complainant or respondent may appeal from a determination regarding responsibility and/or from the District's dismissal of a Formal Complaint or any allegations therein, only on the following bases:
- (1) procedural irregularity that affected the outcome of the matter;
 - (2) newly discovered evidence that could affect the outcome of the matter; and/or
 - (3) Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.

An appeal may be made to the Superintendent or designee within five (5) calendar days after receiving the determination of responsibility or dismissal. The Superintendent will decide the appeal no later than thirty (30) calendar days of the date of receipt of the written appeal. In cases in which it has been determined that a respondent student is subject to long-term suspension as a result of a finding of sexual harassment in accordance with this procedure, the respondent may elect to exercise their appeal under the disciplinary due process requirements applicable to the circumstances (e.g., M.G.L. c. 71, §§ 37H, 37H ½ or 37H ¾) in place of this appellate procedure. Appeals must be made in writing (email is sufficient) to the Superintendent, Fall River Public Schools, 417 Rock Street, Fall River, Massachusetts 02720.

The Title IX Formal Complaint grievance process is deemed complete when either the time period for appeal has lapsed or upon the issuance of the Superintendent's decision on a timely filed appeal.

- H. Recordkeeping: Records related to this Procedure will be maintained for a period of seven (7) years.
- I. Employment Agencies: The contact information for state and federal employment discrimination enforcement agencies is as follows: 1) Federal - United States Equal Employment Opportunity Commission (EEOC); John F. Kennedy Federal Building; 15 New Sudbury Street, Room 475; Boston, MA 02203-0506; 1-800-669-4000; EEOC Boston Area Office Website: <https://www.eeoc.gov/field-office/boston/location>; 2) State: Massachusetts Commission Against Discrimination (MCAD); Boston Headquarters; One Ashburton Place; Sixth Floor, Room 601; Boston, MA 02108; (617)-994-6000; MCAD Website <https://www.mass.gov/orgs/massachusetts-commission-against-discrimination>.
- J. Identification of key personnel involved in Title IX process for reports and/or Formal Complaints of sexual harassment:
- Title IX Coordinator:
Thomas Coogan-HR Director or Michael Losche, Asst. Superintendent
 - Investigator(s):
Principal or Assistant Principal at each site. Title IX Coordinator at Central – possible individual(s) to serve as the investigators would be the Title IX Coordinator, Assistant Principal or Title IX Coordinator's designee. We recommend that both the Principal and Assistant Principal be trained in this role to provide flexibility in conducting the investigation with limited staff. Keep in mind, however, if the Principal is the investigator, he/she cannot then serve as the decision maker.
 - Decision-maker:
Assistant Superintendent- Central, Principal at each site.
possible individual(s) to serve as the decision-maker would be the Principal or Principal's designee (neither the Investigator nor the Title IX Coordinator can serve in this role).
 - Appeal Officer:
For Students, the Assistant Superintendent is the Appeal Officer
For Employees, and Assistant Superintendent or the Superintendent.
possible individual(s) to serve as the appellate review would be the Superintendent or designee. Or Assistant Superintendent
 - Informal Resolution Facilitator:
For Students: Director of Guidance, or an Assistant Superintendent
For Employees: Assistant Superintendent or Superintendent
possible individual(s) to serve to facilitate the informal resolution process would be the Director of Guidance, Assistant Superintendent, or Director of Student

Services. The Title IX Coordinator may serve in this role so long as he/she is free from bias/conflict. If the Title IX Coordinator is serving as the investigator, we do not recommend that he or she serve as Informal Resolution Facilitator.

The District will notify students, employees, applicants for admission or employment, parents and legal guardians of students, and unions of the name, title, office address, email address and telephone number of the Title IX Coordinator(s). This information will be prominently displayed on the District's website.

Legal Refs: Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act of 1990; Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act; Title IX of the Education Amendments of 1972; the Age Act; M.G.L. c. 151B and c. 151C; and M.G.L. c. 76, § 5; SC Policy JICFB, Bullying Prevention; SC Policy AC, Nondiscrimination.

Adopted by School Committee 05.09.22

HARASSMENT POLICY: PROMOTING DIVERSITY

This country is strong because of its ethnic and cultural diversity. Fall River has a proud tradition of embracing diverse groups and weaving them into the fabric of our community. The Fall River School Department is committed to the advocacy of all students and staff in order to maximize their personal, creative and academic potentials as they move toward becoming lifelong learners and responsible world citizens. Given these beliefs, the Fall River School Department strongly prohibits harassment of any kind related to one's race, color, sex, religion, national origin, sexual orientation, or disability.

Such harassment includes any related comments, behaviors or actions which are unwanted, offensive, or intimidating to others. Adults and students must refuse to engage in speech or other behaviors which demean others. Slurs of an ethnic, racial or sexual nature should never be tolerated. In addition, individuals should refrain from jokes which are insulting to minorities or others who might be perceived in some way as different. Such acts may contribute to a hostile environment. In determining the existence of a hostile environment, school officials must examine the context in which such conduct occurs.

Anyone who witnesses such behavior should intervene, first through discussions with the offending person, or, if such talks are not possible or are unsuccessful, through referral to a person in authority.

Other behaviors which may contribute to a hostile environment, and are also prohibited, include: intimidation or an implied threat, physical acts of aggression, and other criminal offenses which are motivated by race, color, national origin or sexual orientation, including the use of technology in the harassment.

Research suggests that creating a supportive school climate is the most important step in preventing harassment. This policy seeks not only to curtail harassing behavior, but also to promote an atmosphere of mutual respect where learning can be optimized. Differences should not just be tolerated or accepted, but celebrated.

This policy should be disseminated to all students and staff annually. In addition it should be posted in teacher's rooms, principal, vice principal and guidance offices. A copy should also be posted in a well traveled area where it will be-visible to students.

Procedures for dealing with harassment, (student to student).

1. Each school will designate one or more ombudsman for all such complaints. The identities of these individuals should be disseminated to all students and parents, and be posted for all to see. Office staff should be informed of the identities of these individuals and be able to direct parents accordingly. Wherever possible every effort will be made to include individuals who reflect the racial/ethnic background of the school.
2. All complaints regarding harassment should be referred to the ombudsman who will meet initially with the victim and any other person of his/her choice. The ombudsman will then notify the building principal/vice principal before proceeding.
3. Informal Resolution. Informal resolution is the first step for dealing with harassment. This step is reserved for less severe cases in which the student might be unaware that he/she is engaging in conduct or speech that is offensive. It is very important that staff members be diligent in reporting such cases before they can escalate into more severe behavior. Often such cases can be resolved without disciplinary action.

On the first complaint, the ombudsman may assist the victim in communicating to the harasser, in writing or verbally, a description of the harassing behaviors, how the behavior made the victim feel; noting any consequences to school performance, and a request to stop the harassment. The ombudsman will be present when such communication is made and should record the date, time and substance of said communication for later reference.

If the victim chooses, the communication to the harasser may be made by the ombudsman alone. Care should be taken not to place the total onus for this communication on the victim. In either case the ombudsman must inform the alleged harasser of the consequences should the harassment not cease or if retaliation should follow the communication.

Note: When harassment of any kind is judged to be so severe that the potential to incite violence or other physical confrontation is likely, a referral will be made to the principal/vice principal for a formal investigation and appropriate disciplinary action. Such action could result in short term suspension, not to exceed ten days. Repeated violations or violent acts following a suspension could result in a referral for expulsion proceedings.

IF AT ANY TIME DURING THE PROCESS A SCHOOL OFFICIAL IS MADE AWARE OF BEHAVIOR WHICH MAY CONSTITUTE A CRIMINAL OFFENSE, HE/SHE IS OBLIGED BY LAW TO REPORT SUCH ACTIONS TO THE LEGAL AUTHORITIES, AS DESCRIBED IN THE DISCIPLINE CODE.

4. Formal Investigation. When a person brings a second complaint or in more serious cases as described above, a referral will be made to the principal/vice principal to determine if disciplinary action is warranted. This investigation, in which evidence is gathered and the due process rights of the accused are maintained, will determine if the harasser should be suspended.

5. If the principal/vice principal finds sufficient cause, the harasser may be suspended from school as outlined above.

When a harassment complaint is made regarding a member of the staff, the ombudsman will immediately notify the building principal and superintendent of schools before proceeding.

1. In less severe cases the ombudsman will attempt to resolve the complaint informally as described above.
2. In more severe cases, or in the case of repeated incidents or retaliation after an informal resolution, a meeting will be held with the ombudsman, the harasser, and the building principal. At this meeting the staff member has the right to representation as outlined in the appropriate contractual agreement.
3. After this meeting the superintendent will be notified and a decision will be made regarding any disciplinary action to be taken. Such action could include a formal reprimand (oral or written) a suspension, or in the most severe of cases, termination.

NOTE WELL: SLURS OF AN ETHNIC, RACIAL OR SEXUAL NATURE WILL NOT BE TOLERATED IN OUR SCHOOLS WHETHER OR NOT AN IDENTIFIABLE VICTIM IS PRESENT. ANY STAFF MEMBER WHO WITNESSES SUCH BEHAVIOR IS ENCOURAGED TO INTERVENE APPROPRIATELY. SUCH INTERVENTION MAY INCLUDE AN INFORMAL DISCUSSION WITH THE PERSON MAKING THE INAPPROPRIATE COMMENTS, OR A MORE FORMAL REFERRAL TO THE OMBUDSMAN, PRINCIPAL, OR VICE PRINCIPAL.

The following state and federal agencies may also provide assistance in matters pertaining to harassment. Phone numbers are included for your convenience:

Commonwealth of Massachusetts
Commission Against Discrimination
1 Ashburton Place, Room 601
Boston, Mass. (617) 727-3990

U.S. Department of Education Office for Civil Rights
J.W. McCormack POCH, Room 701
Boston, Massachusetts 02109 617 223-9662

NONDISCRIMINATION ON THE BASIS OF DISABILITY

Title II of the Americans With Disabilities Act of 1992 requires that no qualified individual with a disability shall, because the District's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, and activities of the District or be subject to discrimination. Nor shall the District exclude or otherwise deny services, programs, or activities to an individual because of the known disability of a person with whom the individual is known to have a relationship or association.

Definition: A "qualified individual with a disability" is an individual with a disability who, with or without reasonable modification to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the District.

Reasonable Modification: The District shall make reasonable modification in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the District can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Communications: The District shall take the appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. To this end, the District shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy benefits of, a service, program, or activity conducted by the District. In determining what type of auxiliary aid or service is necessary, the District shall give primary consideration to the requests of the individuals with disabilities.

Auxiliary Aids and Services: "Auxiliary aids and services" includes (1) qualified interpreters, note takers, transcription services, written materials, assisted listening systems, and other effective methods for making aurally delivered materials available to individuals with hearing impairments; (2) qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods for making visually delivered materials available to individuals with visual impairments; (3) acquisition or modification of equipment or devices and (4) other similar services and actions.

Limits of Required Modification: The District is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. Any decision that, in compliance with its responsibility to provide effective communication for individuals with disabilities, would fundamentally alter the service, program, or activity or unduly burden the District shall be made by the School Committee after considering all resources available for use in funding and operating the program, service, or activity. A written statement of the reasons for reaching that conclusion shall accompany the decision.

Notice: The District shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of Title II of the American with Disabilities Act (ADA) and its applicability to the services, programs, or activities of the District. The information shall be made available in such a manner as the School Committee and Superintendent find necessary to apprise such persons of the protections against discrimination assured them by the ADA.

Compliance Coordinator: The District shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II of ADA, including any investigation of any complaint communicated to it alleging its noncompliance or alleging any actions that would be prohibited under ADA. The District shall make available to all interested individuals the name, office address, and telephone number of the employee(s) so designated and shall adopt and publish procedures for the prompt and equitable resolution of complaints alleging any action that would be prohibited under the ADA. The school system receives federal financial assistance and must comply with the above requirements. Additionally, the School Committee is of the general view that:

1. Discrimination against a qualified disabled person solely on the basis of disability is unfair; and
2. To the extent possible, qualified disabled persons should be in the mainstream of life in the school community. Accordingly, employees of the school system will comply with the above requirements of the law and policy statements of this Committee to ensure nondiscrimination on the basis of disability.

SOURCE: MASC July 2016

LEGAL REFS.: Rehabilitation Act of 1973, Section 504, as amended

Education for All Disabled Children Act of 1975

M.G.L. [71B:1](#) et seq. (Chapter 766 of the Acts of 1972)

Title II, Americans with Disabilities Act of 1992, as amended

Board of Education Chapter 766 Regulations, adopted 10/74, as amended through 3/28/78

CROSS REFS.: [IGB](#), Support Services Programs

NOTE: Due to federal and state laws, many school committees are adopting policies and extensive regulations pertaining to Nondiscrimination on the Basis of Handicap. At times, policy, regulations, and specific plans for action are combined in one long statement presented as policy. Other school systems present policy and regulatory statements separately.

MISSION AND VISION OF THE FALL RIVER PUBLIC SCHOOLS

Mission

The Fall River School System is committed to providing all students with opportunities for learning that will enable them to reach their maximum potential. As members of a diverse community, we provide rigorous instruction, with high expectations, that embraces the whole child and encourages students to be life-long learners and contributing citizens.

Our Mission requires a true learning community, with a coordinated partnership-between the school community, parents, businesses, and government officials and agencies.

Vision

The Fall River School District shall be one where students are safe and prepared for college and/or careers, where individualization and personalization is strived for, where excellence for all is expected, and where collaboration and communication among all stakeholders is the norm.

Approved 4/15/15 by the FRSC

BACKGROUND CHECKS

It shall be the policy of the school district that, as required by law, a state and national fingerprint criminal background check will be conducted to determine the suitability of full or part time current and prospective school employees, who may have direct and unmonitored contact with children. School employees shall include, but not be limited to any apprentice, intern, or student teacher or individuals in similar positions, who may have direct and unmonitored contact with children. The School Committee shall only obtain a fingerprint background check for current and prospective employees for whom the School Committee has direct hiring authority. In the case of an individual directly hired by a school committee, the chair of the School Committee shall review the results of the national criminal history check. The Superintendent shall also obtain a state and national fingerprint background check for any individual who regularly provides school related transportation to children. The School Committee, Superintendent or Principal, as appropriate, may obtain a state and national fingerprint criminal background check for any volunteer, subcontractor or laborer commissioned by the School Committee, school or employed by the city or town to perform work on school grounds, who may have direct and unmonitored contact with children. School volunteers and subcontractors/laborers who may have direct and unmonitored contact with children must continue to submit state CORI checks.

The fee charged by the provider to the employee and educator for national fingerprint background checks will be \$55.00 for school employees subject to licensure by DESE and \$35.00 for other employees, which fee may from time to time be adjusted by the appropriate agency. The employer shall continue to obtain periodically, but not less than every 3 years, from the department of criminal justice information services all available Criminal Offender Record Information (CORI) for any current and prospective employee or volunteer within the school district who may have direct and unmonitored contact with children.

Direct and unmonitored contact with children is defined in DESE regulations as contact with a student when no other employee who has received a suitability determination by the school or district is present. "Contact" refers to any contact with a student that provides the individual with opportunity for physical touch or personal communication.

This policy is applicable to any fingerprint-based state and national criminal history record check made for non-criminal justice purposes and requested under applicable federal authority and/or state statute authorizing such checks for licensing or employment purposes. Where such checks are allowable by law, the following practices and procedures will be followed.

Requesting CHRI (Criminal History Record Information) checks

Fingerprint-based CHRI checks will only be conducted as authorized by state and federal law, in accordance with all applicable state and federal rules and regulations. If an applicant or employee is required to submit to a fingerprint-based state and national criminal history record check, he/she shall be informed of this requirement and instructed on how to comply with the law. Such instruction will include information on the procedure for submitting fingerprints. In addition, the applicant or employee will be provided with all information needed to successfully register for a fingerprinting appointment.

Access to CHRI

All CHRI is subject to strict state and federal rules and regulations in addition to Massachusetts CORI laws and regulations. CHRI cannot be shared with any unauthorized entity for any purpose, including subsequent hiring determinations. All receiving entities are subject to audit by the Massachusetts

TOBACCO PRODUCTS ON SCHOOL PREMISES PROHIBITED

Use of any tobacco products, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes or other similar products that rely on vaporization or aerosolization, within the school buildings, school facilities, on school grounds or school buses, or at school sponsored events by any individual, including school personnel and students, is prohibited at all times.

A staff member determined to be in violation of this policy shall be subject to disciplinary action.

A student determined to be in violation of this policy shall be subject to disciplinary action pursuant to the student discipline code.

This policy shall be promulgated to all staff and students in appropriate handbook(s) and publications.

Signs shall be posted in all school buildings informing the general public of the District policy and requirements of state law.

SOURCE: MASC - Updated 2022

LEGAL REF: M.G.L. [71:37H](#); [270:6](#)

CROSS REFS.: GBED, Tobacco use on School Property by Staff Members Prohibited
JICH, Alcohol, Tobacco and Drug Use by Students Prohibited