

GREATER LOWELL TECHNICAL HIGH SCHOOL POLICY ON TITLE IX-SEXUAL HARASSMENT

PURPOSE:

Greater Lowell Technical High School (“the District”) is committed to maintaining an educational and working environment that is safe, supportive and free from discrimination based on sex, including sexual harassment, in accordance with appropriate Federal and State laws.

POLICY:

Sex discrimination, including sexual harassment, of students and employees occurring in the school’s programs and activities, including locations, events, and/or circumstances in which the school district exercises substantial control, is unlawful and will not be tolerated by this organization. Further, any retaliation against an individual who has complained about sex discrimination including sexual harassment, or retaliation against an individual for cooperating with an investigation is unlawful and will not be tolerated. Similarly, if an investigation results in a finding that the complainant knowingly and falsely accused another person of discrimination or sexual harassment, the complainant will be subject to disciplinary action.

Because the School District takes allegations of sex discrimination including sexual harassment, seriously, we will respond promptly to complaints of such and where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective actions as is necessary, including disciplinary action up to and including termination of employment or dismissal of a student from the District where appropriate.

Please note that while this policy sets forth our commitment of maintaining an educational and working environment that is free of sex discrimination including sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct or student conduct we deem is unacceptable, regardless of whether that conduct satisfies the definition of sex discrimination including sexual harassment.

DEFINITIONS:

In the employment context, sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment under Massachusetts law when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's advancement (quid pro quo harassment);
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions;
- Such conduct interferes with an individual's job duties; or
- The conduct creates an intimidating, hostile or offensive work environment.

In the educational context, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct (“quid pro quo harassment”);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and

objectively offensive that it effectively denies a person equal access to the recipient's education program or activity ("hostile environment harassment"); or

- "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30)

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 upon 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 following additional definitions apply:

"Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to any employee of the district, except that this standard is not met when the only official of the district with actual knowledge is the respondent (where the respondent is an employee). Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. Complaints will be addressed whenever the district has actual knowledge of the allegation.

"Administrative leave" means placing an employee on leave pursuant to state law. Nothing in the Title IX regulations precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process, provided that Massachusetts laws are followed.

"Consent" means cooperation in act or attitude pursuant to an exercise of free will of a conscious person with informed knowledge of the nature of the act or actions. A current or previous relationship shall not be sufficient to constitute consent. Consent will not be found when submission to the act or actions is undertaken due the influence of fear, fraud, forcible compulsion, threats, and/ or the complainant possessed any legal incapacity to consent at the time of the act or actions. Consent is a defense to all types of sexual harassment.

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

"Deliberate indifference" means a response to sexual harassment that is clearly unreasonable in light of the known circumstances.

“Emergency removal” means the suspension or expulsion of a student on an emergency basis, consistent with state law. Nothing in the Title IX regulations precludes a district from removing a respondent from the district’s education program or activity on an emergency basis, provided that the district follows all procedures under Massachusetts law, undertakes an individualized safety and risk analysis, 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 provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

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

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

“Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures

COMPLAINTS AND REPORTS OF SEX BASED DISCRIMINATION INCLUDING SEXUAL HARASSMENT:

Students:

If any student believes that he or she has been subjected to sex-based discrimination, including sexual harassment, the student is encouraged to immediately report the conduct to any faculty member, school nurse, school counselor, coach or other trusted employee of the District, who will refer the matter to the Director of Guidance/Title IX Coordinator, Ms. Tracy Encarnacao. This may be done in writing or orally.

Upon receiving actual notice of alleged sexual harassment without a formal complaint, staff members must notify the Director of Guidance/Title IX Coordinator. The Director of Guidance/Title IX Coordinator will contact the complainant within two school days of receiving the complaint and do the following:

- Discuss and offer supportive measures;
- Consider the complainant’s wishes with respect to supportive measures;

- Explain that supportive measures may be received with or without filing a formal complaint;
- Determine whether the complainant wishes to file a formal complaint; and
- Explain to the complainant the purposes of filing a formal complaint.

Employees:

If any employee believes that he or she has been subjected sex-based discrimination, including sexual harassment, the employee is encouraged to immediately report the conduct to the Director of Human Resources, Jeff Carlson. This may be done in writing or orally.

The Director of Human Resources will:

- Discuss and offer supportive measures;
- Consider the complainant’s wishes with respect to supportive measures;
- Explain that supportive measures may be received with or without filing a formal complaint;
- Determine whether the complainant wishes to file a formal complaint; and
- Explain to the complainant the purposes of filing a formal complaint.

In addition, any other person may report sex discrimination, including sexual harassment, whether or not the person reporting is the person alleged to have been the victim of the conduct. A minor student’s parent or guardian (including the parent or guardian of a minor complainant, minor respondent, or minor third party) may act on the student’s behalf at any point in the District’s reporting, investigating, and/or grievance process.

Whether the complaint is reduced to writing by a student, parent, guardian, or employee/staff member, the written complaint should include the name of the complainant, the name of the alleged victim (if different), the name of the respondent, the description of the conduct including date, time and location where the alleged discriminatory action occurred, names of any witnesses, and the corrective action the complainant is seeking.

The Director of Guidance/Title IX Coordinator (for student complaints) or Director of Human Resources (for employee complaints) will document in writing the supportive measures offered/provided or why no supportive measures were offered/provided. The complainant and respondent must be offered supportive measures even if they do not file a formal complaint.

If the complainant declines to file a formal complaint, the Director of Guidance/Title IX Coordinator (for student complaints) or Director of Human Resources (for employee complaints) must consider whether to sign a formal complaint and start an investigation despite the complainant’s preferences. This decision may be appropriate when safety or similar concerns lead the District to conclude that a non-deliberately indifferent response to actual knowledge of Title IX sexual harassment could reasonably require the school district to investigate and potentially sanction a respondent. The Director of Guidance/Title IX Coordinator’s decision or that of the Director of Human Resources, to override the complainant’s decision not to file a formal complaint must be documented in writing along with an explanation of why this decision was necessary in order to avoid deliberate indifference.

FORMAL COMPLAINT:

A formal complaint is a written document or electronic submission (such as an email) that alleges sexual harassment against a respondent and requests the District conduct an investigation into the allegation. A complainant can file a formal complaint with the Director of Guidance/Title IX Coordinator (for students) or Director of Guidance (for employees) in person, by mail, telephone, or by email. The Director of Guidance/Title IX Coordinator or Director of Human Resources can also sign a formal complaint on behalf of a complainant.

There is no time limit or statute of limitation on timing to file a formal complaint. However, at the time of filing a formal complaint, an alleged victim must be participating or attempting to participate in a program or activity of the school district. Additionally, the district has discretion to dismiss a formal complaint where the passage of time would result in the district's inability to gather evidence sufficient to reach a determination regarding responsibility, or when the district loses responsibility for the respondent (ie. the respondent no longer attends or is employed by the district.)

The District will dismiss a formal complaint if the conduct alleged would not constitute sexual harassment as defined in this policy even if proved, did not occur in the school district's education program or activity, or did not occur against a person in the United States. It could investigate the conduct under other school policies and procedures. The District may dismiss the formal complaint or any allegation in the complaint, if at any time during the investigation or appeal: a complainant notifies the Director of Guidance/Title IX Coordinator (for students) or Director of Human Resources (for staff) in writing that the complainant would like to withdraw the formal complaint or any allegations in the complaint. The school district must sent written notice of any dismissal.

WRITTEN NOTICE

Before any investigation begins, the District will provide prior written notice to both parties including sufficient details. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sex-based discrimination or sexual harassment, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.

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

OPTION FOR INFORMAL RESOLUTION:

Where appropriate after notice has been given, the district may consider offering the parties an option for informal resolution (ie. mediation), that does not involve a full investigation and adjudication. Informal resolution may only be offered after a formal complaint is filed, and the parties must give written consent to engage in this process. Complainants may elect to pursue formal procedures at any step in the process of making their complaint, even if informal resolution has already begun. Respondents may elect to follow formal procedures and decline informal resolution.

Informal resolution may not be used if the allegation is against an employee respondent. Facilitators of informal resolution will be designated by the Director of Guidance/Title IX Coordinator and must not be biased against any of the parties.

If the complainant and the respondent feel that their complaint has been sufficiently addressed through informal resolution, then no further action needs to be taken. This voluntary informal resolution must occur within five (5) school days after receiving the complaint of discrimination unless both parties agree otherwise. The results of the informal resolution will be maintained by the facilitator, in writing.

INVESTIGATION

If informal resolution is not offered to or accepted by the parties, the Title IX Coordinator will designate an investigator and a decision maker, who may not be the same person. The Title IX Coordinator is free to cast himself/ herself in either role, where appropriate.

The investigator must not be biased against any of the parties at the outset of the investigation. The investigator will be responsible for interviewing parties and witnesses, finding facts, and making determinations related to credibility, all of which will go into a written report. The investigator must avoid all questions that are protected by legal privilege, unless the privilege has been waived, and should avoid asking about the complainant's sexual history unless it is directly relevant to prove consent to the conduct at issue or to prove that the conduct was committed by someone other than the respondent.

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

The investigator must avoid making any final determinations of responsibility for sexual harassment.

Findings should be written in a factual way in an investigative report. Credibility determinations may not be based on an individual's status as complainant, witness, or respondent.

During the investigative process and any further hearings, complainants and respondents have a right to have advisors of their choice participate in all aspects of the proceedings. The district will provide both parties with written notice of investigative interviews, meetings, and hearings, with sufficient time to prepare. Findings of Responsibility:

After the investigator has completed the investigation, the designated decision maker will be assigned to determine final responsibility or lack thereof for violating this policy. The decision maker must not be biased against any of the parties.

Before the district may determine responsibility, an investigative report will be sent to the parties and the decision maker will offer both the complainant and respondent the opportunity to submit proposed relevant, written questions to ask of any party or witness, to respond to questions posed by another party, and to offer additional limited follow-up. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the

respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

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

A "preponderance of the evidence" means that it is more likely than not that the alleged conduct occurred. The decision-maker shall further recommend what action, if any, is required. If it is determined that sexual harassment occurred, the District will take steps to prevent the recurrence of the harassment and correct its discriminatory effect on the complainant and others if appropriate.

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

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

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

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

As indicated above, these procedures do not limit the District from removing a student or employee from a program or activity on an emergency basis based on immediate threats to people's physical health or safety or placing an employee on administrative leave during the pendency of the investigation.

Records

A record will be maintained for a period of seven years of any actions, including supportive measures, taken in response to a report or formal complaint of sex-based discrimination or sexual harassment and district staff will document the basis for the district's conclusion that its response was not deliberately indifferent.

Training

The district will ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sex-based discrimination including sexual harassment, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

The district will ensure that decision-makers receive training on any technology to be used in interviews and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant,.

The district also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sex-based discrimination including sexual harassment.

These training materials will be posted on the school district's website.

Appeals

Either party may appeal the decision to dismiss a formal complaint or from the decision maker's determination of responsibility in writing to the Superintendent-Director within fifteen (15) calendar days of receipt of the notice of dismissal or determination of responsibility. Appeals will only be allowed for the following reasons:

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

The school district will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

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

The Superintendent-Director may be reached at (978) 441-4700.

External Grievance Procedure

Any student, parent or employee who chooses not to use the District's internal grievance procedures or who is not satisfied with the District's internal grievance procedures may file a complaint of discrimination or harassment with an appropriate state or federal agency.

The Office for Civil Rights, US Department of Education
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
Telephone: 617-289-0111, FAX: 617-289-0150, TDD: 877-521-2172

The Massachusetts Commission Against Discrimination
One Ashburton Place
Sixth Floor, Room 601
Boston, MA 02108
Phone 617-994-6000, TTY: 617-994-6196

The Equal Employment Opportunities Commission
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
Phone: 1-800-669-4000

Referral to Law Enforcement, Other Agencies

Some alleged conduct may constitute both a violation of District policies and criminal activity. The Assistant Superintendent-Principal, Superintendent-Director, or designee will refer matters to law enforcement and other agencies as appropriate under the law or District policy, and inform the complainant/ alleged victim of the right to file a criminal complaint.

Cooperating With An Investigation

Retaliation:

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

It is expected that employees and students will cooperate fully in the investigation of a complaint of sex-based discrimination including sexual harassment, harassment and discrimination. Employees are expected to do all that they can to prevent and discourage sexual harassment, harassment and discrimination from occurring.

NONDISCRIMINATION ON THE BASIS OF SEX
Title IX-Sexual Harassment

It is the policy of the Greater Lowell Technical High School District (“the District”) not to discriminate on the basis of sex in the educational program and activities of the school district. This policy will extend to students, with regard to educational opportunities, and employees with regard to employment opportunities and third parties.

The District will continue to ensure fair and equitable educational and employment opportunities, without regard to sex, to all its students and employees. If you believe that you or someone else has been harassed or discriminated against on the basis of sex, please refer to GREATER LOWELL TECHNICAL HIGH SCHOOL POLICY ON TITLE IX-SEXUAL HARASSMENT which includes the grievance procedure.

A copy of the policy including grievance procedure is available in other languages at the office of the Director of Guidance and Counseling Services (Title VI and Title IX Coordinator) at the Greater Lowell Technical High School, 250 Pawtucket Boulevard, Tyngsboro, Massachusetts 01879, Telephone: (978) 441-4955.