Sexual and Sex-Based Harassment and Retaliation

Policy Information

Series A - Foundations and Commitments

Sexual and Sex-Based Harassment and Retaliation Policy

Policy # ACAB

FILE: ACAB

SEXUAL & SEX-BASED HARASSMENT AND RETALIATION

The Bourne School Committee and Bourne 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 and sex-based harassment as provided under MA and Federal law. 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 Bourne Public Schools.

Because the district takes allegations of harassment, including sexual harassment, seriously, the district shall respond promptly and meaningfully to every known report of sexual harassment and shall investigate every formal complaint of harassment including sexual and sex-based harassment as well as retaliation and following an investigation where it is determined that such inappropriate conduct has occurred, the District shall 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 the District's goals of promoting an environment that is free of harassment including sexual and sex-based harassment, the policy is not designed or intended to limit the District's 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 or sex-based harassment.

Definitions of Sexual Harassment

TITLE IX

Sex-based harassment prohibited by Title IX is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including as described in § 106.10 of Title IX, that is:

(1) Quid pro quo harassment. An employee, agent, or other person authorized by the District to

provide an aid, benefit, or service under the District's education program or activity explicitly or Impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the District's education program or activity (i.e., creates a hostile environment).

(3) Specific offenses. (i) Sexual assault (ii) Dating violence; (iii) Domestic violence; (iv) Stalking

TITLE VII

Title VII of the Civil Rights Act of 1964 prohibits sexual harassment which is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature 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 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.

M.G.L. c. 151B

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

M.G.L. c. 151C, § 2 (g) prohibits the sexual harassment of students in any program or course of study in any educational institution and M.G.L. c. 151C, § 1 (e) defines "sexual harassment" 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.

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.

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;
• Discussion of one's sexual activities; and
• Sexual violence, including rape, sexual assault, sexual battery, sexual abuse and sexual coercion as well as 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)

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).

Retaliation against a complainant, because they have filed a harassment or sexual harassment complaint 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.

Allegations of conduct that meet the definition of sexual discrimination, including sex-based harassment under Title IX will be addressed through the Title IX Sexual Discrimination

Grievance Procedure. Allegations of conduct that meet the definition of sexual discrimination, including sex-based 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 Discrimination-Grievance Procedure. The District's Title IX Grievance Procedure is available at: [Title IX Grievance Procedure].

Allegations of conduct that do not meet the definition of sexual discrimination, including sex based 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 Procedure. (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 Procedure. The District's Civil Rights Grievance Procedure is available at: [Civil Rights Grievance Procedure].

This policy, or a summary thereof that contains the essential policy elements shall be distributed by the Bourne School District 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

Title IX Sexual Discrimination Grievance Procedure

Civil Rights Grievance Procedure

SOURCE: MASC July 2024
Approved 11/6/24