



May 15, 2018

TO THE HONORABLE MEMBERS OF THE SCHOOL COMMITTEE:

Approval of Revisions to Cambridge Public Schools
Non-Discrimination Policy and Prohibition Against Sexual Harassment

Recommendation: That the School Committee approve the revisions to the Non-Discrimination Policy and Prohibition Against Sexual Harassment as detailed in the attached document.

Description: These revisions to the Non-Discrimination Policy and Prohibition Against Sexual Harassment are being made to update the list of protected categories to include pregnancy and pregnancy related conditions in accordance with the terms of Massachusetts' recently enacted Pregnant Workers Fairness Act, to provide for a consistent order in the listing of protected categories within the policy and across all policies involving protected categories, and to ensure more gender inclusive terminology is utilized within the policy.

This is a second reading of these proposed revisions to the Non-Discrimination Policy and Prohibition Against Sexual Harassment.

Supporting Data: Attached redline of revisions to Cambridge Public Schools Non-Discrimination Policy and Prohibition Against Sexual Harassment.

Respectfully submitted,

Kenneth N. Salim, Ed.D.
Superintendent of Schools

File: ACAB

CAMBRIDGE PUBLIC SCHOOLS NON-DISCRIMINATION POLICY AND PROHIBITION AGAINST SEXUAL HARASSMENT

I. Introduction

The Cambridge Public Schools has a commitment to maintaining an educational environment and workplace where bigotry and intolerance, including discrimination on the basis of ~~race, color, national origin, sex, sexual orientation, religious beliefs, disability, genetic information, gender identity, or age~~ race, color, national origin, ethnicity, ancestry, religion, age, disability, genetic information, veteran status, marital status, sex, gender, gender identity, sexual orientation, pregnancy, or pregnancy-related condition, are not tolerated and where any form of intimidation, threat, coercion and/or harassment that insults the dignity of others and interferes with their freedom to learn or work is unacceptable.

The Cambridge Public Schools strictly enforces a prohibition against harassment and discrimination, sexual or otherwise, of any of its students or employees by anyone, including any fellow student, teacher, supervisor, co-worker, vendor, or other third party, as such conduct is contrary to the mission of the Cambridge Public Schools and its commitment to equal opportunity in education and employment.

Discrimination and harassment consists of unwelcome conduct, whether verbal or physical, that is based on a characteristic protected by law, such as ~~sex~~, race, color, ~~ancestry~~, national origin, ~~ethnicity, ancestry~~, religion, age, disability, genetic information, veteran status, marital status, ~~genetic information, sex, gender, gender identity, or sexual orientation, pregnancy, or pregnancy-related condition~~. The Cambridge Public Schools will not tolerate harassing or discriminatory conduct that affects employment or educational conditions, that interferes unreasonably with an individual's school or work performance, or that creates an intimidating, hostile, or offensive work or school environment. Discrimination and/or harassment of employees or students occurring in the schools or workplace is prohibited by law and will not be tolerated by the Cambridge Public Schools. For purposes of this policy, "workplace" or "school" includes school-sponsored social events, trips, sports events, work-related travel or similar events connected with school or employment, including without limitation, extracurricular and athletic activities and programs, traveling to and from school or on a school-sponsored field trip. Further, any retaliation against an individual who has complained about discrimination, harassment or retaliation; or any retaliation against any individual who has cooperated with an investigation of a discrimination, harassment or retaliation complaint is similarly unlawful and will not be tolerated.

The Cambridge Public Schools takes allegations of discrimination and harassment seriously and will respond promptly to complaints. Where it is determined that inappropriate conduct has occurred, the Cambridge Public Schools will act promptly to eliminate the conduct and will impose corrective action as necessary, including disciplinary action where appropriate, which may include termination of employment or school-related discipline.

II. Definition of Discrimination and Harassment

“Discrimination” and “Harassment” is defined as unwelcome conduct, whether verbal or physical, that is based on race, color, national origin, ethnicity, ancestry, religion, age, disability, genetic information, veteran status, marital status, sex, gender, gender identity, sexual orientation, pregnancy, or pregnancy-related condition. ~~race, color, national origin, ethnicity, sex, sexual orientation, religious beliefs, disability, veteran status, marital status, genetic information, gender identity or age.~~ Discrimination and/or harassment includes, but is not limited to:

- Display or circulation of written materials or pictures that are degrading to a person or group described above.
- Verbal abuse or insults about, directed at, or made in the presence of an individual or group described above.
- Any action or speech that contributes to, promotes or results in a hostile or discriminatory environment to an individual or group described above.
- Any action or speech that is sufficiently severe, pervasive or persistent that it either (i) interferes with or limits the ability of an individual or group (as described above) to participate in or benefit from employment or a program or activity of the Cambridge Public Schools; or (ii) creates an intimidating, threatening or abusive educational or working environment.

Many forms of harassment and discrimination have been recognized as violations of the civil rights laws (including Section 504 of the Rehabilitation Act of 1973, Title VI and Title IX) by federal courts, state courts, the U.S. Equal Employment Opportunity Commission, the U.S. Department of Education, Office for Civil Rights and the Massachusetts Commission Against Discrimination.

“Sexual harassment” is defined as unwelcome conduct of a sexual nature. It includes sexual advances, requests for sexual favors, and verbal, non-verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such advances, requests, or conduct is made either explicitly or implicitly as a term or condition of employment, academic standing, school-related opportunities or as a basis for employment decisions.
- Such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual’s academic or work performance by creating an intimidating, hostile, humiliating, or sexually offensive work or educational environment.

Sexual harassment includes acts of sexual violence, including without limitation, physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol, or is unable to give consent due to an intellectual impairment or other disability. A number of different acts fall into the category of sexual

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violence, including rape, sexual assault, sexual battery and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

Under the definition stated above, direct or implied requests by a teacher, supervisor or any individual in a position of work or school authority for sexual favors in exchange for actual or promised job or school benefits such as favorable reviews, salary increases, promotions, increased benefits, continued employment, better grades, recommendations or other advantages constitutes sexual harassment. Employees of the Cambridge Public Schools are expressly prohibited from engaging in any sexual relationship with a student. Such conduct is not allowed under any circumstances regardless of the student's age as such relationships are considered sexual violence whether the adult's behavior is unwanted or not.

While it is not possible to list all circumstances that may be considered sexual harassment, the following are examples of conduct that are inappropriate and that, if unwelcome, may constitute sexual harassment. In each case, such a determination will depend upon the totality of the circumstances, including the severity of the conduct and its pervasiveness. Sexual harassment includes, but is not limited to:

- Unwelcome sexual advances, whether they involve physical touching or not.
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments.
- Sexual epithets, jokes, written or verbal references to sexual conduct, comments about an individual's body, comments about an individual's sexual activity, deficiencies, or prowess.
- Discussions of one's own sexual activities or inquiries into others' sexual experiences.
- Displaying sexually suggestive objects, pictures, cartoons.

The definitions of discrimination, harassment and sexual harassment are broad. In addition to the above examples, other unwelcome conduct, whether intended or not, that has the effect of creating a school or work environment that is hostile, offensive, intimidating, or humiliating to either male, ~~or~~ female ~~or non-binary~~ students or workers also may constitute discrimination, harassment and/or sexual harassment.

III. Reporting Complaints of Discrimination and Harassment

If any Cambridge Public Schools student or employee believes, in good faith, that ~~he or she~~ ~~has~~ ~~they~~ ~~have~~ been subjected to sexual harassment or any other form of harassment or discrimination described above, the individual has a right to file a complaint with the Cambridge Public Schools through the Program Manager for Diversity Development or the Executive Director of Human Resources. This may be done verbally or in writing. Teachers or other staff members who observe incidents of harassment involving students shall report such incidents immediately to the student's Principal, Head of Upper School, Assistant Principal or Dean. Administrators aware of harassment involving any employee shall report such incidents to the

Program Manager for Diversity Development or the Executive Director of Human Resources.

If you wish to file a complaint, you may do so by contacting your immediate supervisor, the Executive Director of Human Resources or the Program Manager for Diversity Development in the case of employees; and your teacher, Principal, Head of Upper School, Assistant Principal, Dean, the Program Manager for Diversity Development or the Deputy Superintendent of Teaching and Learning, in the case of students.

IV. Complaint Investigation

When the Cambridge Public Schools receives a complaint of discrimination or harassment, it will investigate the allegation in a fair and expeditious manner. If the complaint involves conduct that occurred off school grounds, outside of a school's education program or activity, the Cambridge Public Schools will, as part of its investigation, consider the effects of the off-school grounds conduct when evaluating whether there is a hostile environment on school grounds. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. If the individual filing the complaint of discrimination or harassment is under eighteen (18), the school will notify the parents/guardians/caregivers of the student before beginning the investigation. The investigation may include an interview with the person filing the complaint and also may include interviews with witnesses or other individuals who the Cambridge Public Schools believes would be useful to the investigation. The Cambridge Public Schools also will interview the person alleged to have committed the discrimination or harassment. When the Cambridge Public Schools has concluded its investigation, the Cambridge Public Schools will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of the investigation.

These complaint investigation procedures cover complaints alleging discrimination or harassment based on ~~race, color, national origin, ethnicity, ancestry, religion, age, disability, genetic information, veteran status, marital status, sex, gender, gender identity, sexual orientation, pregnancy, or pregnancy-related condition, race, color, national origin, ethnicity, sex, religion, age, sexual orientation, marital status, veteran status, genetic information, gender identity and disability~~. The procedures are designed to promote the sensitive handling of employee and student issues, the thorough investigation of complaints, and to facilitate a prompt and expeditious internal review and a fair and equitable resolution of complaints alleging discrimination based on ~~race, color, national origin, ethnicity, ancestry, religion, age, disability, genetic information, veteran status, marital status, sex, gender, gender identity, sexual orientation, pregnancy, or pregnancy-related condition, race, color, national origin, ethnicity, religion, sex, age, sexual orientation, veteran status, marital status, genetic information, gender identity or disability~~. An employee or student may select any of the routes identified above in section III or identified below in Section IV.B to discuss a concern or file a complaint of discrimination or harassment. Employees and students are encouraged to attempt resolution within their school or administrative office and may seek advice from appropriate individuals within their school or administrative office or from the Program Manager for Diversity Development or the Office of Human Resources without being required to file a formal complaint.

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Please note that while these procedures relate to the Cambridge Public Schools' policy of promoting a workplace and educational setting free from discrimination and harassment, including sexual harassment, as detailed further in this policy, these procedures are not designed nor intended to limit the Cambridge Public Schools' authority to discipline or take remedial action for workplace and educational conduct which the Cambridge Public Schools deems unacceptable.

A. General Policies

1. No reprisals or retaliation shall be invoked against any employee or any student for processing, in good faith, a complaint, either on an informal or formal basis, or for participating in any way in these complaint procedures.
2. No reprisals or retaliation shall be invoked against any employee or any student who, in good faith, has testified, assisted or participated in any manner in any investigation, proceeding, or hearing of a complaint or for otherwise participating in any way in these complaint procedures.
3. Whenever possible, a conference should be scheduled during a time that does not conflict with regularly scheduled work and/or school programs.
4. The Cambridge Public Schools will work with an individual who files a complaint of discrimination or harassment, including conducting an investigation and holding conferences, in order to fairly and expeditiously resolve the complaint.

B. Procedures

1. Informal Resolution of Discrimination and Harassment Concerns.

Before initiating the formal procedure, the student or employee should, if possible, resolve any complaint regarding an alleged discriminatory practice on an informal basis.

- a. ~~The~~ Students can raise the issue to ~~his or their~~ teacher, principal, head of upper school, dean, the Program Manager for Diversity Development or the Deputy Superintendent of Teaching and Learning.
- b. Employees can raise the issue to either ~~his or their~~ supervisor, or ~~to either~~ the Program Manager for Diversity Development, or the Executive Director of the Office of Human Resources. These offices are both located on the first floor of 159 Thorndike Street, Cambridge, Massachusetts. The telephone number of the Program Manager for

Diversity Development is 617-349-6456, and the telephone number of the Office of Human Resources is 617-349-6438.

The appropriate department or school administrators shall attempt, within his/her authority, to work with the individual to resolve the complaint fairly and expeditiously within ten (10) working days of receiving the complaint.

Whichever option is chosen, attempts will be made to resolve the matter to the satisfaction of the employee or student who has made the complaint. If the employee or student is not satisfied with the resolution, or if the employee or student does not choose informal resolution, then the employee or student can begin the formal complaint process.

2. **Formal Resolution of Discrimination and Harassment Concerns.** Both employees and students may direct the complaint to the Program Manager for Diversity Development or the Office of Human Resources for investigation. Employees and students are expected to direct the complaint no later than twenty (20) calendar days after the alleged discriminatory practice occurred in order for an expeditious investigation to be conducted, unless extenuating circumstances exist. The employee or student shall fill out a Discriminatory Practice Review Form that will state the name of the individual and the location of the school/department where the alleged discriminatory practice occurred, the basis for the complaint and the corrective action the employee or student is seeking.

After filing the formal written complaint, the Program Manager for Diversity Development or the Office of Human Resources shall promptly give written notification to the appropriate school/department identified in the complaint. This written notification shall be a copy of the complaint filed with the Program Manager for Diversity Development or the Office of Human Resources. The Program Manager for Diversity Development or the Office of Human Resources will conduct the necessary investigation promptly after receiving the complaint. In the course of its investigation, the Program Manager for Diversity Development or the Office of Human Resources shall contact those individuals that have been referred to as having pertinent information related to the complaint. This process shall include, at a minimum, contacting the complainant, the complainant's parent/guardian/caregiver if the complainant is under the age of 18, and the person against whom the complaint was filed and/or the principal/head of upper school or appropriate authority involved. If further documentation is needed, the Program Manager for Diversity Development or the Office of Human Resources shall present to the appropriate authorities, written requests for additional information pertaining to the complaint. Strict timelines cannot be set for conducting the investigation because each set of circumstances is different. For example, sometimes the employees or students that are involved in the complaint are not immediately available. The Program Manager for Diversity Development or the Office of Human Resources, however, will make sure that the

complaint is handled as quickly as is feasible and will strive to complete the investigation within thirty (30) working days. When more than thirty (30) working days is required for the investigation, the Program Manager for Diversity Development or the Office of Human Resources shall inform the employee or student who filed the complaint, in writing, that the investigation is still on-going.

After completing the formal investigation of the complaint, the Program Manager for Diversity Development or the Office of Human Resources shall request a meeting with the person against whom the complaint was filed and/or the principal/head of upper school or appropriate authority involved, to discuss the findings of the Program Manager for Diversity Development or the Office of Human Resources, and, at the same time, to give the person against whom the complaint was filed and/or the principal/head of upper school, supervisor or appropriate authority involved, an opportunity to respond to the findings, and to seek to resolve the complaint. When feasible and appropriate, the Program Manager for Diversity Development or the Office of Human Resources will make every attempt to resolve the issue within the time parameters of this initial meeting; however, more than one meeting may be necessary. The Program Manager for Diversity Development or the Office of Human Resources will strive to complete both the investigation and the resolution of the complaint within thirty (30) working days. When more than thirty (30) working days is required for the investigation and resolution process, the Program Manager for Diversity Development or the Office of Human Resources shall inform the employee or student who filed the complaint and the individual against whom the complaint was filed and/or the principal/head of upper school or appropriate authority involved, in writing, that additional time is needed for the resolution process.

If the Program Manager for Diversity Development finds that there is reasonable cause, based upon a preponderance of the evidence (i.e., more likely than not), for believing that a discriminatory or harassing practice has occurred, the Program Manager for Diversity Development will refer the matter to the Executive Director of Human Resources of the Cambridge Public Schools or to the Superintendent of Schools for the Cambridge Public Schools and/or ~~his or her~~ designee for appropriate action, up to and including termination for employees or expulsion for students. The Program Manager for Diversity Development will notify, in writing, both the complainant and the individual against whom the complaint was filed of the outcome of the investigation. If the Office of Human Resources finds that there is reasonable cause, based upon a preponderance of the evidence (i.e., more likely than not), for believing that a discriminatory or harassing practice has occurred, the Office of Human Resources will refer the matter to the Superintendent of Schools for the Cambridge Public Schools and/or ~~his or her~~ designee for appropriate action, up to and including termination for employees or expulsion for students. The Office of Human Resources will notify, in writing, both the complainant and the individual against whom the complaint was filed of the outcome of the investigation.

If no satisfactory resolution can be reached through either the informal or formal resolution procedures detailed above the student or employee has the right to take the complaint to an appropriate state or federal agency. Moreover, it should be noted that using the Cambridge Public School's complaint process does not prohibit you from filing a complaint with these agencies. For students, complaints may be taken to the Office for Civil Rights, U.S. Department of Education, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921 Phone: 617-289-0111; Fax: 617-2889-0150; TDD: 1-800-877-8339; Email: OCR.Boston@ed.gov; the Program Quality Assurance Services, Massachusetts Department of Elementary and Secondary Education, 75 Pleasant Street, Malden, MA 02148-4906; Phone: 781-338-3700; Fax: 781-338-3710; TTY: N.E.T. Relay: 1-800-439-2370; Email: compliance@mass.edu; at the Massachusetts Commission Against Discrimination (MCAD) at the addresses listed below; or other appropriate state or federal agency. For employees or applicants for employment, complaints may be taken to the Massachusetts Commission Against Discrimination, One Ashburton Place, Boston, Massachusetts 02108; Phone: 617-994-6000; TTY: 617-994-6196; Fax: 617-994-6024; Email: assistanttochairman@state.ma.us or other MCAD offices listed below; U.S. Equal Employment Opportunity Commission, John F. Kennedy Federal Building, 475 Government Center, Boston, Massachusetts 02203; Phone: 1-800-669-6820; TTY: 1-800-669-6820; fax: 617-565-3196; ASL Video: 844-234-5122; or other appropriate state or federal agency.

V. Disciplinary Action

If it is determined that inappropriate conduct has been committed by a Cambridge Public Schools employee or student, the Cambridge Public Schools will take action that is appropriate under the circumstances. Action may range from counseling to termination of employment or discipline, up to and including expulsion.

VI. State and Federal Remedies

In addition to the above, employees who believe they have been subjected to discrimination and/or harassment, may file a formal complaint with the respective state agency and/or the United States Equal Employment Opportunity Commission (EEOC). Using the Cambridge Public School's complaint process does not prohibit you from filing a complaint with these agencies. Each agency has a specific time period for filing a claim. The United States Equal Employment Opportunity Commission (EEOC) allows at least 180 days (may be longer in some circumstances) to file a complaint, and the Massachusetts Commission Against Discrimination (MCAD) allows at least 300 days to file a complaint.

1. The United States Equal Employment Opportunity Commission (EEOC)

JFK Federal Building
475 Government Center

131 M Street, N.E.
Fourth Floor, Suite 4NW02F

Boston, MA 02203
 Phone: 617-565-3200
 TTY: 617-565-3204
 Fax: 617-565-3196
 ASL Video: 844-234-5122

Washington, DC 20507
 Phone: 1-800-669-4000
 TTY: 202-663-4494
 Fax: 202-419-0734
 ASL Video: 844-234-5122

2. Massachusetts Commission Against Discrimination (MCAD)

Boston Office:
 One Ashburton Place
 Suite 601
 Boston, MA 02108
 Phone: 617-994-6000
 TTY: 617-994-6196
 Email: assistanttochairman@state.ma.us

Springfield Office:
 436 Dwight Street
 Suite 220
 Springfield, MA 01103
 Phone: 413-739-2145
 Fax: 412-784-1056
 Email: assistanttochairman@state.ma.us

Worcester Office:
 484 Main Street
 Room 320
 Worcester, MA 01608
 Phone: 508-453-9630
 Fax: 508-755-3861
 Email: assistanttochairman@state.ma.us

New Bedford Office:
 800 Purchase Street
 Room 501
 New Bedford, MA 02740
 Phone: 508-990-2390
 Fax: 508-990-4260
 Email: assistanttochairman@state.ma.us

3. Students may also file complaints with the Massachusetts Commission Against Discrimination (MCAD) at the addresses listed above, the Program Quality Assurance Services, Massachusetts Department of Elementary and Secondary Education at the address listed above and with the United States Department of Education, Office for Civil Rights at the address listed above.
4. In some cases, the conduct complained of may constitute sexual harassment under Title IX and criminal activity. If you believe that the conduct also constitutes a crime you have a right to file a criminal complaint at any time, including during or after the school's investigation into your complaint.

CROSS REFS.: ACA & ACE Non-Discrimination subcategories
 AC-R Uniform Grievance Procedures

Adopted: *September 5, 2017*