

UNLAWFUL HARASSMENT OF STUDENTS

Harassment of students by other students, employees, vendors and other third parties will not be tolerated in Springfield Public Schools (“SPS” or the “District”). This policy applies to alleged harassment of students involving conduct that occurred within SPS’s own program or activity, such as when the conduct occurred on SPS property or when SPS substantially controlled the premises, exercised oversight, supervision or discipline over the location or participants, or funded, sponsored, promoted or endorsed an event where the alleged harassment occurred. This policy applies to conduct while students are on SPS’s grounds, property, school buses, or attending or engaging in school sponsored activities in the United States.

Harassment prohibited by SPS includes, but is not limited to, harassment on the basis of race, sex, gender identity, creed, color, national origin, sexual orientation, religion, marital or parental status, disability or homelessness. Students whose behavior is found to be in violation of this policy will be subject to disciplinary action up to and including suspension or expulsion pursuant to disciplinary codes. Employees who have been found to violate this policy will be subject to discipline up to and including, termination of employment, subject to contractual disciplinary obligations.

Employee-to-Student Harassment means conduct of a written, verbal or physical nature that is designed to embarrass, distress, agitate, disturb or trouble students when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of a student's education or of a student's participation in school programs or activities; or
- Submission to or rejection of such conduct by a student is used as the basis for decisions affecting the student.

Student-to-Student Harassment means conduct of a written, verbal, or physical nature that is designed to embarrass, distress, agitate, disturb or trouble students, when:

- Such conduct has the purpose or effect of unreasonably interfering with a student's performance or creating an intimidating or hostile learning environment.

Harassment as described above may include, but is not limited to:

- Written, verbal, or physical (including texting, blogging, or other technological methods) harassment or abuse;
- Repeated remarks of a demeaning nature;
- Implied or explicit threats concerning one's grades, achievements, or other school matter;
- Demeaning jokes, stories, or activities directed at the student.

By law, what constitutes harassment is determined from the perspective of a reasonable person with the characteristic on which the harassment is based. Individuals should consider how their words and actions might reasonably be viewed by others.

The District will promptly and reasonably investigate allegations of harassment through designation of Title IX Coordinator or building based employees, who may include principals or their designees. The superintendent will recommend, in consultation with the principals, opportunities to the designated recipients for appropriate training.

Sexual harassment is unwelcome conduct of a sexual nature. Under Title IX, the definition includes:

- unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to SPS's education program or activity;
- unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature;
- conduct by an SPS employee conditioning an educational benefit or service upon a student's participation in unwelcome sexual conduct, often called quid pro quo harassment;
- sexual assault as the Federal Clery Act defines that crime;
- sexual violence, as the Office of Civil Rights uses the term: physical sexual acts perpetrated against a student's will or where a student 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 51A, 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 herein. 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 may also constitute sexual harassment.

Because the District takes allegations of unlawful harassment, including sexual harassment, seriously, we will respond promptly to complaints of unlawful 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 the District's goals of promoting an environment that is free of unlawful harassment including sexual harassment, the policy is not designed or intended to limit the District's authority to discipline or take remedial action for conduct which the District deems unacceptable, regardless of whether that conduct satisfies the definition of unlawful harassment or sexual harassment.

Retaliation against individuals, because they have filed a unlawful harassment or sexual harassment complaint or assisted or participated in an unlawful 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 person reporting the sexual harassment does not have to be the person at whom the unwelcome sexual conduct is directed. The person, regardless of gender, may be a witness to and personally offended by such conduct.

NOTICE OF SEXUAL HARASSMENT

SPS is required to respond to sexual harassment when the District has actual notice of sexual harassment. Under Title IX, 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 unlawful sexual harassment and the conditions of actual notice and jurisdiction as noted herein whether or not the person who is the subject of the sexual harassment 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). Under Title IX, SPS is required to investigate every formal complaint and respond meaningfully to every known report of sexual harassment.

Title IX regulations highlight 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 FOR TITLE IX INVESTIGATIONS

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 Civil Rights Coordinator/Title IX Coordinator or investigator;
- 3) The preponderance of the evidence standard, 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, SPS 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. SPS can chose to conduct a hearing regarding the complaint. When a hearing is conducted, 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 the preponderance of the evidence standard. 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 harassment complaint.

SPS may establish an informal investigation process that may, upon the request of the person bring the complaint be followed by a formal process.

SPS's Superintendent, in consultation with the Civil Rights Coordinator/Title IX Coordinator, shall designate the principal of each SPS school, 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, SPS shall require that the Civil Rights Coordinator/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.

Except to the extent necessary to conduct an investigation, SPS must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witnesses.

RETALIATION

Retaliation against any individual who has brought a complaint of unlawful discrimination or harassment to the attention of the school or who has cooperated in an investigation of a complaint of unlawful discrimination or harassment is unlawful and will not be tolerated by the SPS.

With respect to reports or complaints of sexual harassment, any intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, constitutes retaliation.

RECORD KEEPING REQUIREMENTS

SPS must create and maintain for a period of seven years records documenting every Title IX sexual harassment investigation regarding students. This could include mediation, restorative justice, or other models of alternative dispute resolution. SPS 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 disseminated by SPS to its students, employees, student parent or guardian, unions and applicants for admission or employment.

NOTICE OF NONDISCRIMINATION

Kathleen O’Sullivan, Senior Administrator of Human Resources, who may be reached at 413-787-7100, ext. 55428, 1550 Main Street, Springfield, MA 01103 is SPS’s Civil Rights Coordinator/Title IX Coordinator. SPS’s Civil Rights Coordinator/Title IX Coordinator and the Principal of each SPS school can receive complaints of unlawful harassment, including complaints of sexual harassment.

Please note that the following entities have specified time limits for filing a claim. Complaints may also be filed with:

- The Mass. Commission Against Discrimination
436 Dwight Street, Room 220
Springfield, MA 01103.
Phone: 413-739-2145.
- 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. c. 151C, §2.
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 July 2020

APPROVED BY SCHOOL COMMITTEE: October 15, 2020

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