



Superintendent's Circular

School Year 2011-2012

NUMBER:
EQT-6

DATE:
September 1, 2011

SEXUAL HARASSMENT POLICY

This policy supersedes all previously issued policies relating to sexual harassment.

INTRODUCTION

It is the goal of the Boston Public Schools to provide an educational environment and/or workplace free from sexual harassment and discrimination on the basis of sex. Under both Title VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972, sexual harassment is considered to be unlawful discrimination on the basis of sex. In addition, discrimination on the basis of sex is prohibited by the Massachusetts Constitution. Finally, sexual harassment by an individual may constitute a crime or child abuse under the Massachusetts Criminal Code.

The Boston Public Schools takes allegations of sexual harassment seriously, and will promptly investigate all complaints of sexual harassment. Where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting an educational environment and/or workplace that is free of sexual harassment, the policy is not designed nor intended to limit the Boston Public Schools' authority to discipline or take remedial action for conduct which is deemed to be unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment.

Sexual harassment of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by this organization.

DEFINITIONS OF SEXUAL HARASSMENT

In Massachusetts, the legal definition for "sexual harassment" is similar as it relates to students in an educational environment and employees in the workplace. Below, we present the issues separately to provide the precise legal definitions as they relate to students and employees and to provide more specific examples of unacceptable conduct.

Sexual harassment can occur adult-to-student, student-to-adult, student-to-student, male-to-female, female-to-male, female-to-female and male-to-male.

If you are unsure as to whether you have been a victim of sexual harassment or have knowledge of an incident of sexual harassment, you should contact your school principal/headmaster or other appropriate school administrator with any questions that you may have.

Harassment in the Workplace

In the employment context, "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; or
- (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. *Mass. Gen. Laws Ch. 151B §1(18)*.

Examples of Unacceptable Conduct in the Workplace

The legal definition of sexual harassment is broad. Under the definitions above, direct or implied requests by a supervisor of sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

In addition, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating, or humiliating to male or female workers 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 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, or 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.

Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated.

Harassment against Students (Including Peer Harassment)

In the education context, "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. *Mass. Gen. Laws Ch. 151C §1(e)*.

Boston Public School employees or third parties should never engage in sexual advances, requests, or conduct with students under any circumstances. Further, Boston Public School employees should report concerns regarding sexual harassment between students to their school principals/headmasters even in instances where they have not received a complaint from a student.

Examples of Unacceptable Conduct Involving Students

This policy covers sexual harassment of students by other students (peer sexual harassment) or by employees or third parties (i.e., school visitors, vendors, etc.).

Examples of school-related conduct that is considered unacceptable and may constitute sexual harassment include, but are not limited to, the following:

- Sexual invitations or requests for sexual activity in exchange for grades, promotions, preferences, favors, selection for extracurricular activities, job assignments or homework by District employees, vendors, or other third parties;
- Unwelcome and offensive public sexual display of affection between student peers, including kissing, making out, groping, fondling, petting, inappropriate touching of one's self or others or sexually suggestive dancing and massages;
- Unwelcome communication that is sexually suggestive, sexually degrading or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual jokes; sexual gestures; public conversations about sexual activities or exploits; sexual rumors and "ratings" lists; pressuring for sexual favors or dates; howling; catcalls, whistles; or sexually graphic computer files, messages and games;
- Unwelcome and offensive name calling or profanity that is sexually suggestive, sexually degrading, implies sexual intentions, or that is based on sexual stereotypes or sexual preference;
- Unwelcome physical contact or physical closeness that is sexually suggestive, sexually degrading, or sexually intimidating such as the unwelcome touching of another's body parts; cornering or blocking an individual; standing too close to an individual; spanking, pinching, patting, squeezing or brushing against another's body; following an individual, stalking an individual, frontal-body hugs or any other kind of unwelcome physical contact.

As noted above, retaliation against an individual who has complained of sexual harassment and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by the Boston Public Schools.

As provided in the Boston Public Schools Code of Conduct, the Boston Public Schools strictly prohibits all forms of sexual harassment on school grounds, at school-sponsored activities, programs and events; and while traveling to and from school or school-sponsored activities, programs and events.

It shall be a violation of this policy for any student, employee or third party (i.e., school visitors, vendors, etc.) to sexually harass or otherwise discriminate against any student, employee or other individual associated with the school (i.e., parents, contractors, maintenance workers, consultants, etc.) on the basis of sex.

COMPLAINTS OF SEXUAL HARASSMENT

If any student or employee believes that he or she has been subjected to sexual harassment, the student or employee has the right to file a complaint with the Boston Public Schools. This may be done in writing or orally.

If you would like to file a complaint you may do so by contacting either your school principal/headmaster/responsibility center manager or Kimberly Williams, Acting Senior Officer, Office of Equity, at 617-635-9650. Any teachers and/or other school staff who receive a complaint of sexual harassment shall report such complaint to their principal/headmaster. School principals/headmasters and responsibility center managers will report all complaints of sexual harassment to Ms. Williams in the Office of Equity.

SEXUAL HARASSMENT INVESTIGATION

When the Boston Public Schools receives the complaint, it will promptly investigate the allegation in a fair, thorough and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances.

A copy of this circular will be provided to both the person filing the complaint and the person who is alleged to have committed the sexual harassment upon receipt of the complaint. The investigation will include a private interview with the person filing the complaint and with witnesses. The person alleged to have committed the sexual harassment also will be interviewed. Upon completion of the investigation, to the extent appropriate, the person filing the complaint and the person alleged to have committed the conduct will be informed of the results of that investigation in writing with notice of the right to appeal.

DISCIPLINARY ACTION

Complaints received will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements that define and/or should be treated as sexual harassment. Unacceptable conduct may or may not constitute sexual harassment. Normally, unacceptable behavior must be severe, persistent or pervasive to be considered sexual harassment. Even if unacceptable behavior is not sufficiently severe, persistent or pervasive to constitute sexual harassment, it may be subject to disciplinary action.

BPS will respond to all allegations of sexual harassment and other forms of discrimination on the basis of sex. Based upon the nature of the allegation and results of the investigation, BPS will determine the appropriate level of response.

If it is determined that inappropriate conduct has been committed, the Boston Public Schools will take such action as is appropriate under the circumstances. For students such action may range from counseling to suspension or expulsion from school. For employees, such disciplinary action may include warnings, reprimands, suspension or termination of employment. In either case, action may include such other forms of disciplinary action deemed appropriate under the circumstances.

PROHIBITION OF RETALIATION

Retaliation against an individual who has complained of sexual harassment and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by the Boston Public Schools.

Complaints of retaliation should be filed as specified in the Uniform Procedures for Student Grievances of Discrimination or Harassment or in the Uniform Procedures for Employee Discrimination or Harassment, as applicable.

RELATED POLICIES

You may also want to look at the following documents outlining related Boston Public School policies:

- Superintendent's Circular #LGL-13, Sexual Assault
- Superintendent's Circular #EQT-4, Non-Discrimination and Zero Tolerance Policy
- Superintendent's Circular #LGL-1, Hazing Law
- Superintendent's Circular #EQT-3, Student Grievances of Discrimination

STATE AND FEDERAL REMEDIES

In addition to the above, if you believe you have been subjected to sexual harassment, you may file a formal complaint with either or both of the government agencies set forth below. Using BPS' complaint process does not prohibit you from also filing a complaint with these agencies. Most of these agencies have a short time period for filing a claim (EEOC/OCR – 180 days; MDOE – within same school year; MCAD – 300 days).

United States Department of Education Office for Civil Rights ("OCR")

John W. McCormack Post Office and Courthouse
Post Office Square, Suite 800
Boston, MA 02109
(617) 223-9662

Massachusetts Department of Education ("MDOE")

350 Main Street
Malden, MA 02108
(781) 388-3300

Massachusetts Office of Attorney General ("MAG")

Civil Rights Division
One Ashburton Place
Boston, MA 02108
(617) 727-2200 ext. 2691

United States Equal Employment Opportunity Commission ("EEOC")

1 Congress Street, 10th Floor
Boston, MA 02114
617-565-3200

Massachusetts Commission Against Discrimination ("MCAD")

Boston Office:	Springfield Office:
One Ashburton Place, Room 601	436 Dwight Street, Suite 220
Boston, MA 02108	Springfield, MA 01103
(617) 994-6000	(413) 739-2145

For more information about this circular, contact:

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