

Title IX Faculty and Staff Training

Barnstable Public Schools- November 2020



Background- Revisions to Title IX Regulations

Background

- Title IX was first enacted in 1972 as part of the Amendments to the Higher Education Act.
- Title IX prohibits discrimination on the basis of sex. Although the case law is evolving, the 11th Circuit Court of Appeals concluded that Title IX prohibits discrimination on the basis of gender identity.
- Title IX applies to all school districts that receive any Federal funding—including Barnstable Public Schools.

Background

- The US Department of Education's (USDOE) Office for Civil Rights (OCR) is responsible for enforcing Title IX.
- Under the Trump Administration, the USDOE revised the Title IX implementing regulations. The revised regulations took effect on August 14, 2020.
- In October 2020, the Barnstable School Committee updated its policies to reflect these changes.

Applicable School Committee Policies

Overview of Policies

- [Policy AC](#) (Nondiscrimination)
- [Policy ACA](#) (Nondiscrimination of the Basis of Sex)
- [Policy ACAB](#) (Harassment)

The entire School Committee Policy Manual is available online at:

<https://z2policy.ctspublish.com/masc/browse/barnstable/barnstable/root>

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Policy AC (Nondiscrimination)

- Outlines the District's commitment to creating a positive environment for students regardless of background and to considering the impacts of all decisions with respect to potential benefits or adverse consequences
- Prohibits discrimination on the of account of someone's race, color, national origin, language, sex, religion, gender identity, sexual orientation, pregnancy, pregnancy-related condition, disability/handicap or other bases prohibited under state or federal anti-discrimination statutes
- Identifies Dr. Gina Hurley as the District's Title IX/Section 504/Title II Coordinator
- Indicates that the District's Harassment grievance procedures apply to all complaints.

Policy ACA (Nondiscrimination on the Basis of Sex)

- References Title IX
- Prohibits discrimination on the basis of sex
- Requires equitable access, regardless of sex, to all educational and employment opportunities
- Requires equitable access, regardless of sex, to all educational programs and activities in Barnstable Public Schools
- Identifies Dr. Gina Hurley as the District's Title IX Coordinator

Policy ACAB (Harassment)

- Prohibits harassment of students, employees, vendors and other third parties
- Defines jurisdiction for addressing harassment
- Defines employee-to-student harassment, student-to-student harassment *and* sexual harassment
- Establishes expectations with respect to the handling of allegations of sexual harassment, which may include conduct by an employee towards a student or **conduct between students**
- Explains what constitutes actual notice of sexual harassment by the District
- Sets forth Due Process protections for the Complainant and the Accused
- Dr. Gina Hurley is identified as the District's Title IX Coordinator; school-based complaints can be filed with the building principal

Sexual Harassment

Sexual Harassment- Definition

Policy ACAB defines sexual harassment as unwelcome conduct of a sexual nature. The definition includes unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity it also, includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment includes conduct by an employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct, often called quid pro quo harassment and, sexual assault, dating violence, domestic violence and stalking as the Federal Clery Act and Violence Against Women Act define such crimes. Sexual violence is a form of sexual harassment. Sexual violence, as the Office of Civil Rights (OCR) uses the term, refers to 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). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse and sexual coercion.

Sexual Harassment- Categories

Essentially, the definition creates three categories of sexual harassment:

1. Any unwelcome conduct that a reasonable person would find so **severe, pervasive and objectively offensive** that its existence effectively denies the recipient of equal educational access;
2. **Quid pro quo** harassment by school district employees, which occurs when participation in or receipt of a service or benefit is conditioned upon a person's participation in unwelcome sexual conduct; and,
3. Any instance of sexual violence (including rape, sexual abuse, sexual battery and sexual coercion) dating violence, domestic violence and/or stalking.

Examples of school-based sexual harassment include, but are not limited to: unwanted, unwelcome physical contact, such as touching, bumping, grabbing, grinding on or patting someone; bragging about sexual prowess for others to hear; intimidating hallway behavior, which can include demeaning nicknames, homophobic name calling, cat calls, rating systems, or embarrassing whistles, and/or being followed around by another student.

Sexual Harassment- Potential for Claims

A student may have a harassment claim against the District and school-officials based on the conduct of a peer or staff members if:

- The District had actual knowledge of the harassment;
- The District acts in a deliberately indifferent manner toward the alleged conduct; AND
- The harassment is so severe, pervasive and objectively offensive as to deny the victim equal access to educational opportunities, programs or benefits (NOTE: generally, the existence *quid pro quo* harassment and/or sexual violence will be assumed to be sufficiently severe, pervasive and offensive).

Sexual Harassment- Beware of Bias

Beware of personal bias and biased gender norms or stereotypes:

- Gender does not define whether someone may be a victim or perpetrator of sexual harassment
- Claims of sexual harassment may arise within the same gender
- Homophobia or other anti-LGBTQ issues may also constitute sexual harassment or other forms of harassment and/or discrimination
- There may be overlap between hazing and/or bullying incident and sexual harassment

Sexual Harassment- Actual Knowledge

The District must respond to incidents of sexual harassment for which it has “actual knowledge.” The District has actual knowledge when an allegation of harassment is made known to **any school employee**. This means that all school employees must know:

- 1) the definition of sexual harassment,
- 2) the process for reporting such information and,
- 3) the contact information for the Title IX Coordinator.

Actual knowledge by any school employee starts the timeline for responding to a complaint promptly.

Any employee who becomes aware of an occurrence of or a possible occurrence of sexual harassment must inform the building-principal and/or Title IX Coordinator as soon as possible.

Sexual Harassment- Actual Knowledge

Actual knowledge may arise from more than a direct student complaint. An employee may have actual knowledge that requires reporting to the Title IX Coordinator or building principal based on rumors, direct observation, social media or receipt of information regarding off-campus conduct that may have on-campus implications.

When in doubt or unsure...report!

Sexual Harassment - Jurisdiction

Generally, the Title IX Coordinator is responsible for jurisdictional decisions. Therefore, as previously noted, if unsure of whether or not the District has jurisdiction...report!

School officials are responsible for acts or conduct that occurred within the District's own programs or activities, such as when the harassment occurs at a location or under circumstances where the District owned or substantially controlled the premises, exercised oversight, supervision or discipline over the location or participants, or funded, sponsored, promoted or endorsed the the event where the alleged harassment occurred.

Policy ACAB applies to and is in effect while students are on school grounds, School District property or property within the jurisdiction of the School District, school buses, or attending or engaging in school-sponsored activities.

Sexual Harassment - Supportive Measures

The District is required to respond when it has actual knowledge of sexual harassment.

The District must investigate every formal complaint of sexual harassment and must meaningfully respond to every known report of sexual harassment.

Supportive measures may be put in place during the investigation of a formal complaint or in response to a report. Supportive measures may also be put into place when an incident of sexual harassment falls outside the District's jurisdiction.

Sexual Harassment - Supportive Measures

Supportive measures are defined as reasonably available, individualized services that are nonpunitive, non-disciplinary and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

Supportive measures may include placing the individuals involved in separate classes or transferring a student to a class taught by a different teacher. Other examples may include access to counselors, social workers, or support staff, regular check-ins and other schedule modifications.

Sexual Harassment - Due Process

The Title IX Coordinator shall develop processes for formal and informal investigations. The formal investigatory process must, minimally, include the following due process protections:

- 1) A reasonably prompt response and resolution, generally within 60 school days; although extenuating circumstances may result in extensions to this timeline, the District will avoid all undue delays within its control;
- 2) A presumption of innocence throughout the grievance process, with the burden of proof on the school;
- 3) A prohibition of the single investigator model, instead requiring a decision -maker separate from the Title IX Coordinator or investigator;

Sexual Harassment - Due Process

- 4) The standard for determining whether the alleged harassment or discrimination occurred shall be by the preponderance of the evidence; meaning that it is more likely than not that the alleged conduct occurred;
- 5) Access to an advisor of the party's choice throughout the process;
- 6) The opportunity to test the credibility of parties and witnesses through cross examination, subject to "rape shield" protections;
- 7) Written notice of allegations and an equal opportunity to review the evidence;
- 8) Title IX Coordinators, investigators, and decision-makers must be free from bias or conflict of interest;

Sexual Harassment - Due Process

9) Equal opportunity for parties to appeal;

10) Upon filing a formal complaint the school will 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. The District will not conduct in-person hearings as part of the investigative process but the parties will 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 will 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. 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 complaint.

Sexual Harassment - How Should I Respond?

If you are an employee of the District and you have actual knowledge of an alleged instance of sexual harassment:

- Promptly report it to the Title IX Coordinator or your building principal;
- Maintain confidentiality; and,
- Participate in any ensuing investigation.

Sexual Harassment - A Note on Retaliation

Retaliation against a complainant or any participant within the complaint resolution process, because they have filed a harassment or sexual harassment complaint or assisted or participated in a harassment or sexual harassment investigation or proceeding, is also strictly 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.

Also note, the complainant does not have to be the person toward whom the unwelcome sexual conduct is directed. The complainant, regardless of gender, may be a witness to and personally offended by such conduct.

Sexual Harassment - A Note on Confidentiality

Every effort shall be made to preserve the privacy of reports. Information related to the complaint will be shared with the parties, their advisors, and a limited number of District employees who "need to know" in order to assist in the assessment, investigator and/or resolution of the report. Otherwise, the privacy of student records will be protected in accordance with state and federal laws and District policies pertaining to student records. The privacy of employee records will be protected in accordance with state laws and District policies.

Sexual Harassment - In Short

When the District becomes aware of an allegation of sexual harassment or other sexual misconduct, it must:

- Investigate (formally or informally)
- Stop the harassment
- Prevent future harassment
- Remedy the effect of the harassment

Equal Access

Equal Access

Title IX requires the District to provide students with equal access to opportunities regardless of sex/gender.

Equity of access is required for academic pursuits, as well as access to clubs, activities and athletic endeavours. Equity of access is more than just a numbers game. It applies to the resources available including quality of staff, locker rooms and equipment.

Students must have access to equal treatment and benefits.

Quiz:

In order to demonstrate your learning on this topic, you must complete this summative assessment:

Summative Assessment [[Click Here](#)]