

# TITLE IX-Sexual Harassment

## Employee Overview

August 2022

# Goals of Overview

- ▶ What is Title IX
- ▶ Who is covered
- ▶ Recognize key terms and concepts associated with Title IX
- ▶ Sexual Harassment
- ▶ Understand employee/student rights and responsibilities
- ▶ Complaint/grievance process

# What is Title IX

- ▶ Title IX is a federal law that protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance.
- ▶ Title IX states that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

# WHO IS COVERED UNDER TITLE IX

Students are protected against sex discrimination in educational, athletic, extra-curricula and other educational and activities of the school district.

Employees are protected against sex discrimination in regard to employment opportunities including promotion, training, benefits and other employment activities.

Other third parties such as individuals seeking admission to or employment at the school district.

# Are Individuals Who Identify as LGBTQ Protected From Sexual Harassment Under Title IX?

- ▶ Yes
- ▶ Anyone may experience sexual harassment regardless of their sexual orientation or gender identity.

# Key Definitions:

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to any employee of the district, except this standard is not met when the only official of the district with actual knowledge is the respondent (where the respondent is an employee). Complaints will be addressed whenever the district has actual knowledge of the allegation.

Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment

# Key Definitions

Formal complaint: a document filed by a complainant or signed by the Title IX Coordinator (for students) or Director of School Counseling (for employees) alleging sexual harassment and requesting that the district investigate the allegation of sexual harassment.

Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed

# Key Definitions -Sexual Harassment

- ▶ Sexual Harassment, including sexual assault, is a form of sex discrimination.
- ▶ In educational context, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
  - ▶ An employee of the recipient (school district) conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (quid pro quo);
  - ▶ Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity (hostile environment); or
  - ▶ Sexual assault, as defined in 20 USC 1092 (f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).



# Sexual Harassment - Employment Context

- ▶ Sexual Harassment, including sexual assault, is a form of sex discrimination.
- ▶ In Employment context, sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitutes sexual harassment under MA law when:
  - ▶ Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's advancement (quid pro quo);
  - ▶ Submission to or rejection of such conduct by an individual is used as the basis for employment decisions;
  - ▶ Such conduct interferes with an individual's job duties; or
  - ▶ The conduct creates an intimidating, hostile or offensive working environment.

# Examples of Sexual Harassment

- ▶ Unwelcome sexual advances-whether they involve physical touching or not.
- ▶ Sexual epithets, jokes, written or oral references to sexual conduct.
- ▶ Displaying sexually suggestive objects, pictures or cartoons.
- ▶ Unwelcome leering, whistling, brushing against the body, sexual gestures
- ▶ Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent, including sexual assault, sexual battery, sexual abuse, and sexual coercion.

# Jurisdiction of Title IX Sexual Harassment

- ▶ What locations are covered?

Any education program or activity of the district in the United States.

- What does an education program or activity include?

Locations, events, circumstances over which the district exercised substantial control over both the respondent and the context in which sexual harassment occurred.

# What about electronic communication or social media?

- ▶ The Title IX Coordinator will evaluate whether the district exercised substantial control over the location, event or circumstance over both the respondent and the context in which sexual harassment occurred.

Personal computer used at home

vs

Computer used at school.

# Student Reports:

- ▶ Any student who believes that he or she has been subjected to sex discrimination, including sexual harassment, is encouraged to immediately report the conduct to any teacher, school nurse, school counselor, coach or other trusted employee of the district who will refer the matter promptly to the Director of School Counselling/Title IX Coordinator. This may be done verbally or in writing.

# How to respond

Any employee who observes sexual harassment of a student or receives a complaint sexual harassment is required to report complaints to the Director of School Counselling/Title IX Coordinator.

When a student comes to you with a complaint, let them know early on that you are a mandated reporter.

Listen with compassion.

Determine if they are safe.

The purpose of reporting is to:

- ▶ Prevent sex discrimination,
- ▶ Promptly address reported issues, and
- ▶ Limit the effects of harassment on the educational environment

# Student reports continued

Upon receiving actual notice of alleged sexual harassment, without a formal complaint, the Director of School Counselling/Title IX Coordinator will contact the complainant within two days of receiving the complaint and:

- ▶ Discuss and offer supportive measures;
- ▶ Consider the complainant's wishes with respect to supportive measures;
- ▶ Explain that supportive measures may be received with or without filing a formal complaint;
- ▶ Determine whether the complainant wishes to file a formal complaint; and
- ▶ Explain to the complainant the purposes of filing a formal complaint.

# Employee Reports:

Any employee who believes that he or she has been subjected to sexual harassment, is encouraged to immediately report the conduct to the Director of Human Resources. This may be done verbally or in writing.

Upon receiving actual notice of alleged sexual harassment, the Director of Human Resources will contact the complainant within two days of receiving the complaint and:

- ▶ Discuss and offer supportive measures;
- ▶ Consider the complainant's wishes with respect to supportive measures;
- ▶ Explain that supportive measures may be received with or without filing a formal complaint;
- ▶ Determine whether the complainant wishes to file a formal complaint; and
- ▶ Explain to the complainant the purposes of filing a formal complaint



# Who else can report?

Any other person may report an allegation of sex discrimination, including sexual harassment, whether or not the person reporting is the person alleged to have been the victim of the conduct. A minor student's parent or guardian (including the parent or guardian of a minor complainant, minor respondent, or minor third party) may act on the student's behalf at any point in the District's reporting, investigating or grievance process. The report may be made in person, by mail, by telephone or by electronic mail

# What information should be reported in a complaint?

- ▶ Name of the complainant
- ▶ Name of the alleged victim (if different than complainant)
- ▶ Name of the respondent
- ▶ Description of the conduct including date, time and location where the alleged discriminatory action occurred
- ▶ Names of any witnesses
- ▶ The corrective action the complainant is seeking.

# Supportive Measures & Examples

Supportive measures are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational or working environment, or deter sexual harassment.

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or classroom/shop locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus and other similar measures.

Important note: The District will treat both the complainant and respondent equitably by offering supportive measures to both when appropriate.

# Formal Complaint

- ▶ If the complainant declines to file a formal complaint, the Director of School Counselling/Title IX Coordinator (for students) or Director of Human Resources (employees) will consider whether to sign a formal complaint and start an investigation despite the complainant's preferences.
- ▶ If the Director of School Counselling/Title IX Coordinator or Director of Human Resources decides to override the complainant's decision not to file a formal complaint, an explanation will be documented why this decision was necessary in order to avoid deliberate indifference.

# Formal Complaint

- ▶ A complainant can file a formal complaint (written document including electronic submission such as email) alleging sexual harassment by a respondent and requesting the district investigate the allegation.
- ▶ A parent/guardian who retains legal rights over a student may file a written complaint.
- ▶ The Director of School Counselling/Title IX can file a formal complaint (for students).
- ▶ The Director of Human Resources can file a formal complaint (for employees).

## Important Note:

A formal complaint cannot be filed anonymously. However, the district, under state law, may be required to report sexual harassment identified in an anonymous report to state and/or local authorities such as DCF or the local police.

# Formal Complaint Continued

- ▶ The District may consolidate formal complaints where the allegation arise out of the same facts or circumstances.
- ▶ For example, student A files a complaint of sexual harassment against student B. Student B files a complaint against Student A-the district may consolidate.

# Time to file

There is no time limit or statute of limitation on timing to file a formal complaint.

However:

1. At the time of filing a formal complaint, an alleged victim must be participating or attempting to participate in a program or activity of the school district.
2. The district has discretion to dismiss a formal complaint where the passage of time would result in the district's inability to gather evidence sufficient to reach a determination or when the district loses responsibility for the respondent (the respondent no longer attends or is employed).

# Dismissing a complaint-School District

The district will dismiss a formal complaint if:

1. The conduct alleged would not constitute sexual harassment as defined in our Title IX-Sexual Harassment Policy even if proved; or
  2. Did not occur in the school district's education program or activity; or
  3. Did not occur against a person in the United States.
- ▶ Important note: The district maintains the authority to investigate the allegation under other school district policies and procedures.



# Dismissing a Complaint-Complainant Request

The District may dismiss a formal complaint or any allegation in the complaint, if at any time during the investigation or appeal a complainant notifies the Director of School Counselling/Title IX Coordinator (for students), or Director of Human Resources (for employees) in writing that they would like to withdraw the formal complaint or allegation.

# Receipt of a Formal Signed Complaint- Written Notice of Allegations

Before an investigation begins, both complainant and respondent will receive written notice with sufficient details.

Written notice will include:

1. Identities of the parties involved (if known),
2. The alleged conduct constituting sexual harassment,
3. The date, time and location if known.
4. A statement that respondent is presumed not responsible for the alleged conduct and that determination regarding responsibility is made at the conclusion of the grievance process.
5. The respondent and complainant may have one (1) advisor of their choice and at their own expense, who may be an attorney, and may inspect and review evidence. In the case of a minor child, the advisor may be in addition to the parents.

# Option for Informal Resolution & Facilitator's Role

After written notice has been given, the district may consider offering parties an option for information resolution (mediation) that does not involve a full investigation and adjudication.

- ▶ Only offered:
  1. After formal complaint is filed; and
  2. The parties must give written consent to engage in this process.

## Important notes:

- ▶ The complainant may elect to pursue formal procedures at any step in process even if informal resolution has begun.
- ▶ The respondent may elect to follow formal procedures and decline informal resolution.
- ▶ May not be used if the allegation is against an employee respondent.
- ▶ The Facilitator cannot be the Investigator or Decision Maker.

# Investigation

- ▶ Director of School Counselling/Title IX Coordinator (for students), or Director of Human Resources (for employees), will designate an investigator(s) and a decision maker who cannot be the same person.
- ▶ The Director of School Counselling/Title IX Coordinator or Director of Human Resources is free to serve in either role when appropriate.

# Role of Investigator

Investigator will be free of bias against any of the parties at the outset of the investigation.

The investigator will:

1. Send prior written notice to the parties of any investigative meetings, interviews, or hearings in which their participation is invited or expected.
2. Interview parties and witnesses
3. Avoid questions that are protected by legal privilege, unless the privilege has been waived.
4. Find facts
5. Make determinations regarding credibility
6. Prepare written report. The written report will be sent to: the parties, their advisors and the Decision Maker.

Important note: Before completion of investigative report, the school will send each party and the party's advisor, if any, the evidence subject to inspection and review. The parties have ten days to submit written response to the evidence which investigator will consider prior to completion of report.

# Legally recognized privilege

The District cannot access information that is “attorney-client” privilege without consent.

The District cannot consider, access, disclose or use a party’s medical or counseling records that are maintained in connection with provision of treatment to the party, unless the District obtains voluntary, written consent to do so for the grievance process.

- ▶ A parent/guardian must give written consent if the child is under 18 to waive the privilege.
- ▶ If consent is received, the district is only obligated to share information in these records that is directly related to the allegations raised in the formal complaint.

# Decision Maker's role

1. Offer both parties the ability to submit relevant questions to ask any party or witness, respond to questions posed by other party, or to offer additional limited follow-up.
2. Submit written determination to both parties including: procedural steps taken, finding of facts, conclusion about whether the alleged behavior occurred using a preponderance of the evidence standard, rationale for the result as to each allegation, disciplinary actions to which the respondent may be subject, \*whether remedies will be provided to the complainant, and procedures and basis for appeal.

Important note: The decision maker will not be biased against any of the parties. The decision maker cannot have served as the investigator. \*Whether remedies will be provided will be in the written determination but the details of what those remedies are will not be.

# What happens if there is the determination of a Policy violation:

- ▶ The District will take steps to prevent the reoccurrence of the harassment and correct its discriminatory effect on the complainant and others if appropriate.
- ▶ Formal disciplinary action may be imposed up to and including expulsion or termination. Any disciplinary action will be in accordance with due process rights under State law and any applicable collective bargaining agreement.

Important note: These procedures do not limit the district from removing a student or employee from a program or activity on an emergency basis based on immediate threats to people's physical health or safety or placing an employee on administrative leave during the investigation.



# Appeals and Appeal Officer's Role

Either party may appeal the decision to dismiss a formal complaint or from the decision maker's determination of responsibility in writing to the Superintendent-Director (Appeal Officer) within fifteen (10) calendar days of receipt of the notice of dismissal or determination of responsibility.

Appeals will only be allowed for the following reasons:

- A. Procedural irregularity that affected the outcome of the matter;
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- C. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The Appeal Officer will complete a written determination describing the outcome of the appeal and rationale.

# External Grievance Procedure

Any student, parent or employee who chooses not to use the District's internal grievance procedures or who is not satisfied with the District's internal grievance procedures may file a complaint of discrimination or harassment with an appropriate state or federal agency.

- ▶ The Office for Civil Rights, US Department of Education, 5 Post Office Square, 8<sup>th</sup> Floor, Boston, MA 02109-3921, Telephone: 617-289-0111, FAX: 617-289-0150, TDD: 877-521-2172
- ▶ The Massachusetts Commission Against Discrimination, One Ashburton Place, Sixth Floor, Room 601, Boston, MA 02108, Phone 617-994-6000, TIY: 617-994-6196
- ▶ The Equal Employment Opportunities Commission, John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203, Phone: 1-800-669-4000

# Referral to Law Enforcement or Other Agencies

Some alleged conduct may constitute both a violation of District policies and criminal activity. The Assistant Superintendent-Principal, Superintendent-Director, or designee will refer matters to law enforcement and other agencies as appropriate under the law or District policy, and inform the complainant/ alleged victim of the right to file a criminal complaint.

# Retaliation

It is unlawful to retaliate against an individual who has:

- ▶ Made a complaint of sex discrimination including sexual harassment
- ▶ Participated in the investigation of such a complaint (i.e. testifying as a witness, providing proof, etc.); or
- ▶ Opposed conduct that is reasonably believed to violate our school policy.

# FERPA, Title IX & Confidentiality

- ▶ The District must provide both parties an equal opportunity to review and inspect any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.
- ▶ FERPA defines “education records” in part, as meaning with certain exceptions, records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the educational agency or institution.
- ▶ Important note: If an educational record contains the names of other students, the parent/guardian should only view the information related to their student, unless the information cannot be redacted or segregated. Evidence obtained through the investigation process that is directly related to the allegations in the complaint, that cannot be redacted or segregated, become part of the student record for both the complainant and respondent.

# Our commitment-Your commitment

- ▶ Greater Lowell Technical High School is committed to maintaining an educational and working environment that is safe, supportive and free from discrimination based on sex, including sexual harassment, sexual violence, and does not discriminate against students, applicants, or employees in any of its programs or activities, including but not limited to educational programs, employment, and admission.
- ▶ It is expected that employees and students will cooperate fully in the investigation of a complaint of sex-based discrimination including sexual harassment, harassment and discrimination. Employees are expected to do all that they can to prevent and discourage sexual harassment, harassment and discrimination from occurring.

