

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCEDURE

Franklin Public Schools



TABLE OF CONTENTS

1. OVERVIEW	2
1.1 Scope	2
1.2 Confidentiality	2
1.3 Definitions	3
2. REPORTING SEXUAL HARASSMENT	4
2.1 Who May Report Sexual Harassment	4
2.2 How to Report Sexual Harassment	5
2.3 Internal Reporting	5
2.4 Anonymous Reporting	5
3. FILING A TITLE IX FORMAL COMPLAINT	5
3.1 Who may file a Title IX Formal Complaint:	5
3.2 Supportive Measures	5
4. TITLE IX FORMAL COMPLAINT GRIEVANCE PROCEDURE	6
Step 1: Title IX Formal Complaint is filed	6
Step 2: Consider Supportive Measures for both the complainant and the respondent	6
Step 4: Consider Whether Dismissal of Formal Complaint Warranted	6
Step 5: Initial Investigation	7
Step 6: Opportunity for Parties to Respond to Evidence	7
Step 7: Completion of the Investigative Report	8
Step 8: Parties' Opportunity to Respond to Investigative Report	8
Step 9: Directed Written Questions from the Parties	8
Step 10: Determination of Responsibility/Findings of Fact by the Decision-Maker	8
5. INFORMAL PROCESS	9
6. RESPONSES	9
6.1 Remedies	9
6.2 Discipline	9
6.3 Emergency Removal under Title IX	9
6.4 Retaliation	9
7. APPEALS	10
8. RECORDKEEPING:	10
9. ONGOING ASSESSMENT AND DEVELOPMENT	10

1. OVERVIEW

The Franklin Public Schools is committed to maintaining school environments free of sexual harassment.

Sexual harassment in any form or for any reason is prohibited. This includes sexual harassment by administrators, personnel, students, vendors, and other individuals in school or at school-related events.

The District does not discriminate on the basis of sex in its educational programs or activities and is required by Title IX of the Education Amendments of 1972 not to discriminate on the basis of sex. Such non-discrimination also extends to admissions and the employment application process. Retaliation against any individual who has brought sexual harassment to the attention of school officials or against an individual who has participated or refused to participate in the investigation thereof is unlawful and will not be tolerated by the Franklin Public Schools.

1.1 Scope

The Title IX Sexual Harassment Grievance Procedure has been developed in accordance with the revised Title IX regulations, 34 CFR Part 106, effective August 14, 2020, which established a new definition of sexual harassment under Title IX and which mandate specific procedures for responding to and investigating allegations of sexual harassment under Title IX.

The Title IX Sexual Harassment Grievance Procedure applies only to allegations of sexual harassment under Title IX, which includes harassment based on sex, sexual orientation, and/or gender identity, and is defined in the Definitions section below.

The Title IX Sexual Harassment Grievance Procedure applies to conduct that occurs within the United States in an education program or activity of the District, regardless of whether such District program or activity is conducted on or off school grounds. A District education program or activity includes locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurred.

Allegations of conduct that meet the definition of sexual harassment under Title IX will be addressed through the Title IX Sexual Harassment Grievance Procedure. Allegations of conduct that meet the definition of sexual harassment under Title IX, and simultaneously meet the definitions of sexual harassment under Title VII of the Civil Rights Act of 1964 (employees), M.G.L. c. 151B (employees), and/or M.G.L. c. 151C (students) will also be addressed through the Title IX Sexual Harassment Grievance Procedure.

Allegations of conduct that do not meet the definition of sexual harassment under Title IX but could, if proven, meet the definition(s) of sexual harassment under state law will be addressed through the District's Civil Rights Grievance Procedure. (See exception under Section II, Part 4, Step 4 below). The definitions of sexual harassment under Title VII, M.G.L. c. 151B, and M.G.L. c. 151C are set out in the Civil Rights Grievance Procedure.

1.2 Confidentiality

The District will keep the identity of complainants, respondents, and witnesses confidential, except as permitted by the Family Educational Rights and Privacy Act (FERPA), as otherwise required by law, and/or as necessary to carry out this Procedure.

1.3 Definitions

Complainant	An individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. Parents and/or legal guardians of a complainant are not considered a complainant but may file a Formal Complaint on behalf of a minor child and act on behalf of the minor child in any Title IX matter. For the purpose of this Procedure, the terms “complainant” and “alleged victim” shall have the same meaning.
Retaliation	includes, but is not limited to, coercion, intimidation, interference, punishment, discrimination, or harassment against any member of the school community in response to that member’s oral or written, formal or informal, reporting or filing a complaint of discrimination, including harassment or retaliation, cooperating in an investigation, aiding or encouraging another member of the school community to report or file a complaint, or for opposing any act or practice believed to be prohibited by the Non-Discrimination Policy.
Formal Complaint	<p>A document or electronic submission filed by a complainant that contains the complainant’s physical or digital signature or otherwise indicates that the complainant is the person filing the Formal Complaint, or a document signed by the Title IX Coordinator, that:</p> <ol style="list-style-type: none">(1) alleges sexual harassment against a respondent; and(2) requests that the District investigate the allegation of sexual harassment. <p>At the time of filing a Formal Complaint, the complainant must be participating in or attempting to participate in the District’s education program or activity with which the Formal Complaint is being filed.</p>
Sexual Harassment	<p>Under Title IX, the term “sexual harassment” includes three (3) types of misconduct based on sex:</p> <ol style="list-style-type: none">(1) any instance of quid pro quo harassment by a school employee; or student(2) unwelcome conduct on the basis of sex, including unwelcome conduct based on sex stereotyping that is sufficiently severe and pervasive and objectively offensive conduct, effectively denying a person equal educational access to a school or educational activity; or(3) any instance of sexual assault, dating violence, domestic violence, or stalking as defined below.
Sexual Assault	<p>A criminal offense that meets the definition of rape, fondling, incest, or statutory rape and set out below:</p> <ul style="list-style-type: none">• Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person, without the consent of the victim.• Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity. In Massachusetts, pursuant to M.G.L. c. 265, § 13B, a child under the age of 14 is incapable of giving consent to indecent touching.

- Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent which is 16 years of age in Massachusetts.

For the purposes of the definition of sexual assault, the term “consent” shall be defined in a manner consistent with Massachusetts laws.

Dating Violence	Violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
Domestic Violence	Domestic violence includes but is not limited to a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner.
Stalking	Engaging in a “course of conduct” directed at a specific person would cause a “reasonable person” to fear for the person’s safety or the safety of others or suffer “substantial emotional distress.”
Parties	The complainant and/or respondent.
Principal	The Principal or Principal’s designee.
Respondent	An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
Supportive Measures	Individualized services reasonably available, non-punitive, non-disciplinary, and are not unreasonably burdensome to the Complainant or Respondent while designed to ensure equal educational access, protect the safety, and/or deter sexual harassment. Supportive measures are individualized services reasonably available that are non-punitive while designed to ensure equal educational access, protect safety, and/or deter sexual harassment. Supportive measures include, but are not limited to: counseling; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; no contact between the parties; changes in work locations; leaves of absence; increased security and monitoring of certain areas of the building; and other similar measures.

2. REPORTING SEXUAL HARASSMENT

The District will respond to all reports of sexual harassment promptly and equitably and in a manner consistent with this Procedure and any other relevant District procedures and policies.

2.1 Who May Report Sexual Harassment

Anyone may report an allegation of sexual harassment.

2.2 How to Report Sexual Harassment

Individuals are encouraged to report allegations of sexual harassment to the Title IX Coordinator or the Principal.

2.3 Internal Reporting

Any District employee who receives a complaint (verbally or in writing) of sexual harassment shall respond by promptly informing the Principal or Title IX Coordinator of the report. Any District employee who observes sexual harassment of a student should intervene to stop the conduct and shall promptly inform the Principal or Title IX Coordinator of the incident. If a report involves an allegation against the Principal or Title IX Coordinator, the District employee shall instead report the allegation to the Superintendent. Any Principal who receives a report of sexual harassment shall promptly inform the Title IX Coordinator.

2.4 Anonymous Reporting

The District may be on notice of an allegation of sexual harassment through receipt of an anonymous report. In cases of anonymous reports, the District's obligation is to respond in a manner that is reasonable in light of the known circumstances. If the anonymous reporter is the complainant and they request confidentiality, the District can and should offer supportive measures to the extent consistent with maintaining the request for confidentiality. If an anonymous report is received without disclosure of the complainant's identity, the District will be unable to provide the complainant with supportive measures in response to that report. The District may, in conformance with applicable state laws and regulations, be required to report sexual harassment identified in an anonymous complaint to state and/or local authorities such as the Massachusetts Department of Children and Families.

3. FILING A TITLE IX FORMAL COMPLAINT

Only the filing of a Title IX Formal Complaint will trigger the Title IX Formal Complaint grievance process outlined below.

3.1 Who may file a Title IX Formal Complaint:

Although anyone may report a claim of sexual harassment, only a complainant or a Title IX Coordinator may file a Title IX Formal Complaint. If a complainant chooses not to file a Formal Complaint, the complainant's choice not to initiate an investigation will generally be respected unless the Title IX Coordinator determines that signing a Formal Complaint to initiate an investigation over the wishes of the complainant is in the best interest of the District.

The Title IX Coordinator will take into account concerns articulated by the parties, the best interests of the community, fairness to all concerned, and the District's legal obligations under applicable state and federal laws. Where the Title IX Coordinator signs the Formal Complaint, the Title IX Coordinator is not a complainant or a party during the grievance process and must comply with the requirement to be free from conflicts or bias.

3.2 Supportive Measures

Upon receipt of a report, the Principal or Title IX Coordinator shall:

1. Promptly contact the complainant to discuss the availability of supportive measures;
2. Consider the complainant's wishes with respect to supportive measures;
3. If the District does not provide or the complainant declines supportive measures, document the reasons why; and
4. Explain to the complainant the process for filing a Title IX Formal Complaint.

4. TITLE IX FORMAL COMPLAINT GRIEVANCE PROCEDURE

Title IX Formal Complaints will be investigated promptly and equitably by the Title IX Coordinator or designee, as follows:

Step 1: Title IX Formal Complaint is filed

1. A Formal Complaint shall state (if known to the reporter or alleged victim) the name(s) of the persons involved, witnesses to the conduct, if any, a description of the conduct, and to the extent possible, the dates and locations of the conduct.
2. At the time of the filing of the Formal Complaint, the alleged victim must be participating in or attempting to participate in the education program or activity.
3. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information for the Title IX Coordinator listed in this Procedure.
4. Consider the use of the Informal Resolution Process, when appropriate, with the consent of the parties. (See Section 5)
5. Throughout this process, there shall be a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made.

Step 2: Consider Supportive Measures for both the complainant and the respondent

Once a Formal Complaint is filed, the Title IX Coordinator will ensure that supportive measures are considered for both parties. (See Section 3.2)

Step 3: Written Notice of Allegations

Upon receipt of a Formal Complaint, the District shall send written notice of the allegations, including the identity of the parties, to both the complainant and the respondent. The written notice must include the following:

1. Sufficient details known at the time to allow the respondent the opportunity to respond to the allegations;
2. A statement that the respondent is presumed not responsible for the alleged conduct;
3. A determination regarding responsibility is made at the conclusion of the investigation;
4. The parties may have an advisor of their choice, who may be, but is not required to be, an attorney; and
5. The parties/advisors may inspect and review evidence in accordance with this Procedure.

If, in the course of the investigation, the District decides to investigate allegations of sexual harassment that are not included in the initial written notice of allegations, the District shall provide notice of the additional allegations to the parties.

Step 4: Consider Whether Dismissal of Formal Complaint Warranted

1. Mandatory Dismissal of Formal Complaint: The Title IX Coordinator shall dismiss a Formal Complaint under Title IX when the conduct alleged:
 - a. even if proved, would not meet the definition of sexual harassment under Title IX;
 - b. did not occur in a program or activity of the District, or
 - c. did not occur against a person within the United States.
2. Discretionary Dismissal of Formal Complaint:
 - a. The Title IX Coordinator may dismiss a Formal Complaint or allegations therein for purposes of Title IX at any time if
 - b. the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the Formal Complaint of allegations;
 - c. the respondent is no longer enrolled or employed by the District, or
 - d. specific circumstances prevent the District from gathering sufficient evidence to make a determination.

3. The Title IX Coordinator must provide the parties with written notice of any dismissal of a Formal Complaint and the reasons for the dismissal.
4. Dismissal of a Formal Complaint for purposes of Title IX shall not preclude the District from addressing the allegations under any other relevant District policies or procedure(s), including but not limited to the Civil Rights Grievance Procedure, the Bullying Prevention and Intervention Plan, the Student Code of Conduct, and/or a collective bargaining agreement, nor will it preclude the District from addressing the allegations pursuant to the grievance process set out in Section II of this Procedure. The Title IX Coordinator shall have the discretion to make any such referrals and proceed as appropriate in regard to the allegations.

Step 5: Initial Investigation

All Formal Complaints will be investigated by the Title IX Coordinator or other individual designated to serve as the investigator by the Title IX Coordinator. The investigator shall be responsible for seeking and gathering evidence relative to the investigation.

During the Formal Complaint resolution process:

1. Standard of Proof: The investigator shall make factual findings based on a preponderance of the evidence standard.
2. The District shall provide equal opportunity for the parties to present facts, witnesses, and evidence.
3. The District shall not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag” orders).
4. Each party may have one (1) advisor of their own selection and at their own expense participate in this grievance process. In the case of a student under the age of 18, this advisor may be in addition to the student’s parents/guardians. The advisor may, but is not required to, be an attorney. Advisors are prohibited from disseminating or disclosing such evidence outside the grievance process.
5. The District shall send prior written notice to the parties of any investigative interviews to which they are invited.
6. Privacy of Medical Treatment and Mental Health Treatment Records: The District may not access or use either the complainant’s or the respondent’s medical, psychological, or similar treatment records unless the District obtains the party’s written consent to do so.
7. The investigator may impose reasonable timeframes on all parties as required to facilitate the timely completion of the investigation. If the investigator extends the investigation, the investigator will notify the parties of the extension and the reasons therefore in writing.

Step 6: Opportunity for Parties to Respond to Evidence

The District must send the parties, and their advisor(s) evidence directly related to the allegation, in electronic format or hard copy. Parties shall be afforded ten (10) calendar days to inspect, review and respond to the evidence. The District shall not require, allow, rely upon, or otherwise use evidence that constitutes information protected from disclosure by a legally recognized privilege unless it has been waived by the holder of the privilege in writing.

1. Prior to providing evidence to the parties, the investigator may redact or withhold confidential information that is not directly related to the allegations or that is otherwise barred from use under Title IX or by privilege (e.g., treatment records), the Family Educational Rights and Privacy Act, 603 CMR 23.00 and/or any other applicable law or regulation.
2. The parties and their advisors shall be prohibited from the dissemination of any of the evidence for any purpose not directly related to this grievance procedure.

Step 7: Completion of the Investigative Report

The District will send the parties, and their advisor, an Investigative Report that fairly summarizes relevant evidence but does not reach any conclusions regarding responsibility, in electronic format or hard copy, within thirty (30) calendar days of receipt of the Formal Complaint, unless otherwise extended for good cause. A copy of the Investigative Report will also be sent to the decision-maker.

Step 8: Parties' Opportunity to Respond to Investigative Report

The District shall provide the parties ten (10) calendar days to respond to the investigative report. The Investigative Report will notify the parties of the opportunity to submit to the decision-maker directed questions of the other party and/or any witness, provide the part with the other party's and/or witness's written responses to said written questions, and allow for additional, limited follow-up question from each party in writing.

Step 9: Directed Written Questions from the Parties

Questions that seek disclosure of information protected under a legally recognized privilege, Family Educational Rights and Privacy Act, and/or 603 CMR 23.00 shall not be permitted unless the person holding the privilege has waived the privilege.

1. The complainant shall be protected from answering questions about the complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove the complainant's consent to the conduct under investigation.
2. Upon receipt of the Investigative Report, each party shall have ten (10) calendar days to submit directed relevant questions to the decision-maker in writing.
 - a. All questions must be posed respectfully (e.g., without profanity and without attacking a person's character or motivations).
 - b. Questions that are not relevant will be excluded, and the decision-maker shall explain to the party posing the question the reason(s) for excluding any question.
3. Upon receipt of the directed questions from the District, each party and witness shall have five (5) calendar days to respond to those questions in writing.
4. After receipt of the answers by the parties, any follow-up questions by the parties shall be submitted to the decision-maker in writing within three (3) calendar days, and those follow-up questions shall be responded to in writing within three (3) calendar days of receipt.
5. Each party will be provided a copy of the other party's or witness's written answers.

Step 10: Determination of Responsibility/Findings of Fact by the Decision-Maker

1. The decision-maker shall issue a written determination regarding responsibility with a description of the procedural steps taken, findings of fact, conclusions about whether the alleged conduct occurred, the rationale for the result as to each allegation, and procedures and basis for appeal. The decision-maker's written determination shall not be completed by the Title IX Coordinator or the investigator.
2. Standard of Proof: The decision-maker shall make factual findings based on a preponderance of the evidence standard.
3. The decision-maker's findings shall be based on an objective review of all relevant evidence.
4. This determination shall be sent within ten (10) calendar days of the issuance of the investigative report to both parties unless an extension is agreed upon by the parties or if the process is otherwise reasonably delayed.

5. INFORMAL PROCESS

Only after a Formal Complaint is filed may the District opt to offer and facilitate informal resolution options, such as mediation or restorative justice. Both parties must give voluntary, informed, written consent to attempt any offered informal resolution. Any informal resolution under this Procedure will be facilitated by trained personnel.

1. The informal resolution process is not available to resolve allegations that an employee sexually harassed a student.
2. The informal process is voluntary, and the alleged victim and/or respondent may terminate or decline any informal process at any time and resume the Formal Complaint grievance process.
3. The informal process shall not exceed thirty (30) calendar days. Participation in the informal process will stay within the timelines of the Formal Complaint Process.

6. RESPONSES

6.1 Remedies

If the decision-maker determines that sexual harassment has occurred, the District administration shall take steps to eliminate the harassing environment, which may include, but not be limited to, providing remedies to a complainant that are designed to restore or preserve the complainant's equal access to the District's educational programs and/or activities.

6.2 Discipline

Although the student may, under Title IX, be subject to emergency removal at any time, the respondent may not be subject to disciplinary sanctions for the misconduct defined under this Procedure until after this grievance process has been completed.

6.3 Emergency Removal under Title IX

The District may remove a respondent on an emergency basis at any time provided that the District:

1. undertakes an individualized safety and risk analysis;
2. determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal and that there is no alternative to the respondent's emergency removal to mitigate the threat presented, and
3. provides the respondent with notice and the opportunity to challenge the decision immediately following the removal.

6.4 Retaliation

Retaliation in any form against any person because of or related to a sexual harassment or retaliation complaint or because of or related to cooperation with an investigation of a sexual harassment or retaliation complaint, is unlawful and prohibited. Retaliation is also prohibited against any individual that participates or chooses not to participate in the grievance process.

If retaliation occurs, it could be considered grounds for disciplinary action.

7. APPEALS

The complainant or respondent may appeal from a determination regarding responsibility and/or from the District's dismissal of a Formal Complaint or any allegations therein, only on the following bases:

1. procedural irregularity that affected the outcome of the matter;
2. newly discovered evidence that could affect the outcome of the matter; and/or
3. Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.

An appeal may be made to the Superintendent or designee within ten (10) calendar days after receiving the determination of responsibility or dismissal. The Superintendent will render a decision within thirty (30) calendar days from the date of receipt of the written appeal. In cases in which it has been determined that a respondent student is subject to long-term suspension as a result of a finding of sexual harassment state laws. Appeals must be made in writing (email is sufficient) to the Superintendent, Franklin Public Schools.

The decision of the appeal process is final and is not subject to further review by the School Committee.

8. RECORDKEEPING:

Records related to this Procedure will be maintained for a period of seven (7) years.

9. ONGOING ASSESSMENT AND DEVELOPMENT

The Title IX Sexual Harassment Grievance Procedure will be reviewed annually by members of the Franklin Public Schools administrative team. Areas of responsibility have been identified for school and district leaders to ensure the successful implementation and ongoing improvements to the plan. The Superintendent is responsible for providing oversight on the Plan. The Superintendent, or their designee, will provide annual training to all administrators on the Title IX Sexual Harassment Grievance Procedures.