

**Franklin Public Schools
Franklin, Massachusetts 02038**

Action Required

Subject: Policy – 1st Reading

Date: August 23, 2022

Dept: SC

Reason: Required Vote

Enclosure: yes

Recommendation:

Policy First Readings

I recommend moving forward the following policies to a second reading:

AC - Nondiscrimination

ACAB - Harassment Including Sexual Harassment

ADC - Tobacco Products on School Premises Prohibited

Action Requested of the School Committee:

Majority vote of the School Committee is required.

<u>Vote Tabulator</u>	
C. Bernstein:	Y / N D. McNeill: Y / N
D. Callaghan:	Y / N M. Whitmore: Y / N
Al Charles:	Y / N D Spencer: Y / N
E Stokes:	Y / N Action: _____

NONDISCRIMINATION

The Franklin School Committee and Franklin Public Schools are committed to maintaining an education and work environment for all school community members that is free from all forms of discrimination, including harassment and retaliation. ~~The members of the school community include the School Committee, employees, administration, faculty, staff, students, volunteers in the schools, and parties contracted to perform work for the Franklin Public Schools.~~ This commitment to the community is affirmed by the following statements that the School Committee commits to:

1. Promoting the rights and responsibilities of all individuals as set forth in the State and Federal Constitutions, pertinent legislation, and applicable judicial interpretations.
2. Encouraging positive experiences in human values for children, youths, and adults, all of whom have differing personal and family characteristics and who come from various socioeconomic, racial, and ethnic groups.
3. Working toward a more integrated society and enlisting the support of individuals as well as groups and agencies, both private and governmental, in such an effort.
4. Using all appropriate communication and action techniques to air and address the grievances of individuals and groups.
5. Carefully consider, in all decisions made within the school district, the potential benefits or adverse consequences that those decisions might have on human relations.
6. Initiating a process of reviewing policies and practices of the school district in order to achieve to the greatest extent possible the objectives of this statement.

The Franklin Public Schools require all members of the school community to conduct themselves in accordance with this policy. The School Committee's policy extends to students, staff, the general public, and individuals with whom it does business.

No person shall be excluded from or discriminated against in admission to a public school ~~of any town~~ or in obtaining the advantages, privileges, and courses of study of such public school on account of race, color, creed, religion, ancestry, national origin, sex, gender identity or expression, sexual orientation, marital status, genetic information, disability, pregnancy, or a related condition, veteran status, age, or homelessness.

If an individual has a complaint of **discrimination on the basis** ~~if feels that they have been discriminated against because~~ of their race, color, creed, religion, ancestry, national origin, sex, gender identity or expression, sexual orientation, marital status, genetic information, disability, pregnancy, or a related condition, veteran status, age, or homelessness, their complaint should be registered with the **the Principal or designee, as appropriate** ~~District compliance officer~~, published on the District's website.

Additionally, a student who believes that they are the victim of discrimination or harassment may also report the matter to a teacher, counselor, or administrator who will **be responsible for** notifying the Building Principal.

~~in the school or directly to the Building Principal. All employees of the Franklin Public Schools must respond to suspected discrimination or harassment and to complaints by students of discrimination or harassment by notifying the Building Principal or their designee.~~ Employees are expected to take every report of discrimination seriously and to understand the reporting procedures.

For information regarding the District's prohibition of harassment and those grievance procedures available to students or staff who believe they have been subject to discrimination or harassment in violation of this Policy or state and federal law, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, and Massachusetts General Laws, Chapter 151B, please refer to Policy ACAB- Harassment and supporting procedures ACAB-R1 and ACAB-R2.

SOURCE: MASC

LEGAL REFS.: Title VI, Civil Rights Act of 1964

- Title VII, Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972
- Executive Order 11246, as amended by E.O. 11375
- Equal Pay Act, as amended by the Education Amendments of 1972
- Title IX, Education Amendments of 1972 [as amended 2020](#).
- Rehabilitation Act of 1973
- Education for All Handicapped Children Act of 1975

M.G.L. [71B:1](#) et seq. (Chapter 766 of the Acts of 1972)

M.G.L. [76:5](#); Amended 2011

M.G.L. [76:16](#)

BESE regulations 603CMR [26:00](#) Amended 2012

BESE regulations 603CMR [28.00](#)

CROSS REFS.: ACAB, Harassment

ACAB-R1, Grievance Procedure for Complaints of Harassment and Discrimination

ACAB-R2, Grievance Procedure for Complaints of Sexual Harassment under Title IX of the Education Amendments of 1972

GBA, Equal Employment Opportunity

JB, Equal Educational Opportunities

UPDATED: June 2012

Reviewed; Revised; Adopted by School Committee: 11/10/2020

To School Committee for 1st Reading: 8/23/22

HARASSMENT INCLUDING SEXUAL HARASSMENT

Harassment of students by other students, employees, vendors, and ~~other~~ third parties will not be tolerated in the Franklin Public Schools. The **District is responsible for investigation** of alleged harassment ~~must involve conduct~~ that occurred within the school's own program or activity, ~~such as whether the harassment occurred at a location or under circumstances where the school-owned or substantially controlled the premises, exercised oversight and supervision, or discipline over the location of participants, or funded, sponsored, promoted or endorsed the event where the alleged harassment occurred, against a person in the United States.~~ This policy is in effect while students are on school grounds, School District property, or property within the school District's jurisdiction such as school buses, or attending or engaging in school-sponsored activities.

Harassment prohibited by the District includes, but is not limited to, harassment based upon race, color, creed, religion, ancestry, national origin, sex, gender identity or expression, sexual orientation, marital status, genetic information, disability, pregnancy, or a related condition, veteran status, age, or homelessness. Students whose behavior is found to violate this policy will be subject to disciplinary action, including suspension or expulsion pursuant to **the Student Handbook and applicable law.** ~~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 **any applicable** 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 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 of cyberbullying) 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;~~

Student-to-Employees Harassment means conduct of a written, verbal, or physical nature by a student that is designed to embarrass, distress, agitate, disturb, or trouble an employee which creates a hostile work environment.

~~By law, what constitutes harassment is determined from a reasonable person's perspective regarding the harassment's characteristics. Individuals should consider how others might reasonably view their words and actions.~~

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

- Written, verbal, or physical (including texting, blogging, or other technological methods of cyberbullying) 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;

The District will promptly and reasonably investigate allegations of harassment in accordance with [the timelines outlined in the Civil Rights Grievance Procedure document](#). ~~its grievance procedures~~ [Explicit timeframes for investigating and reporting will be listed out within ACAB R1 & ACAB R2.](#)

Sexual harassment is unwelcome conduct of a sexual nature. The definition **under federal law** 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 as **defined by** the Federal Clery Act ~~defines that crime.~~

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.

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 above. ~~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).~~

Massachusetts General Laws Ch. 119, Section 51 A, requires that public schools report suspected child abuse cases, immediately orally and file a written 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.

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 or employees may also constitute sexual harassment.

~~The District. Because the District takes allegations of harassment, including sexual harassment, seriously, we will respond promptly to complaints of 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.~~
~~The complainant does not have to be the person at whom the unwelcome sexual conduct is directed. The complainant, regardless of gender, may be a witness to and personally offended by such conduct.~~¶

Retaliation against a complainant, 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 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.~~

~~Please note that while this policy sets forth our goals of promoting an environment that is free of harassment including sexual harassment, T~~hese policy is not designed or intended to limit our authority to discipline or take remedial action for conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of harassment or sexual harassment.

NOTICE OF SEXUAL HARASSMENT UNDER TITLE IX

The regulations require a school district to respond when the district has actual notice of sexual harassment. 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 harassment ~~regardless and the conditions of actual notice and jurisdiction as noted~~ whether or not the complainant 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).~~

Schools are required to investigate every formal complaint and respond meaningfully to every known report of sexual harassment.

The regulation highlights 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

Due process protections include the following:

1. A presumption of innocence throughout the grievance process, ~~with the burden of proof on the school;~~
2. ~~AA prohibition of the single investigator model, instead requiring~~ a decision-maker separate from the Title IX Coordinator or investigator;
3. Application of a preponderance of evidence standard;
4. The opportunity to test the credibility of parties and witnesses ~~through cross-examination~~ subject to "rape shield" protections and may generally not be asked about their prior sexual behavior or history;
5. Written notice of allegations and an equal opportunity to review the evidence;
6. Title IX Coordinators, investigators, and decision-makers ~~shall must~~ be free from bias or conflict of interest;
7. ~~Equal opportunity for parties to appeal;~~
8. Upon filing a formal complaint the school 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. ~~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.~~
9. Appeal rights of both parties

The District may establish an informal investigation process that may be followed by a formal process upon the request of the complainant. As long as the process is voluntary for all parties, ~~after being fully informed and~~ both parties provide written consent, a school may facilitate informal resolution of a sexual complaint.

In consultation with the Title IX Coordinator, the Superintendent shall designate each school principal in the district or their designee ~~for some other appropriate employee(s))~~ as the initial entity to receive the sexual harassment complaint. Also, in a matter of sexual harassment, the district shall require that the 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 investigator 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.

RECORD KEEPING REQUIREMENTS

Schools must create and maintain records documenting every Title IX sexual harassment complaint. This could include mediation, restorative justice, or other models of alternative dispute resolution. Schools 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 distributed by the Franklin Public School District to its students and employees and each parent or guardian shall sign that they have received and understand the policy.

Please note that the following entities have specified time limits for filing a claim.

The Complainant may also file a complaint with:

The Massachusetts Commission Against Discrimination ("MCAD")

One Ashburton Place, Room 601

Boston, MA 02108

(617) 727-3990

The U.S. Department of Education, Office for Civil Rights

5 Post Office Square 8th Floor

Boston, MA 02109-3921

(617) 289-0111

Massachusetts Department of Elementary & Secondary Education

75 Pleasant Street

Malden, MA 02148-4906

(781) 388-3000

The U.S. Equal Employment Opportunity Commission ("EEOC")

John F. Kennedy Federal Building

475 Government Center

Boston, MA 02203

(800) 669-4000

For information regarding the Grievance Process for non-Title IX complaints of harassment and/or discrimination, please refer to regulation ACAB-R1.

For information regarding the Grievance Process for complaints of discrimination on basis of sex or sexual harassment under Title IX of the Education Amendments of 1972, please refer to regulation ACAB-R2.

LEGAL REF.: M.G.L. 151B:3A

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

Adopted by School Committee: 11/10/2020

TOBACCO PRODUCTS ON SCHOOL PREMISES PROHIBITED
~~NO SMOKING POLICY~~

The Franklin School Committee specifically prohibits the use ~~of any tobacco products by any individual while they are on School property.~~

~~Use of any tobacco products, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes or other similar products that rely on vaporization or aerosolization, within the school buildings, school facilities, on school grounds or school buses, or at school sponsored events by any individual, including school personnel and students, is prohibited at all times.~~

Authority

This policy is intended to be consistent with Massachusetts General Laws, Chapter 71, Section 2A and Section 37H; Massachusetts Board of Fire Prevention Regulations 527; CMR 10:07; Franklin Town Bylaw 97-331; and MA General Laws, Chapter 148, Section 10B.

Enforcement

The Principal ~~or designee s and Assistant Principals~~ within each school will serve, at the pleasure of the local enforcing authority, as deputized enforcement officers of the Franklin School Department and will therefore be authorized to enforce this policy along with other authorized legal enforcement personnel.

■

Penalties & Fines

In compliance with the penalties prescribed within Massachusetts General Laws, Chapter 71, Section 37H, violators of this policy will be subjected to the actions and fines described herein:

~~A staff member determined to be in violation of this policy shall be subject to disciplinary action.~~

~~A student determined to be in violation of this policy shall be subject to disciplinary action pursuant to the student discipline code.~~

~~This policy shall be promulgated to all staff and students in appropriate handbook(s) and publications.~~

~~Signs shall be posted in all school buildings informing the general public of the District policy and requirements of state law.~~

Violator	Offense	Action	Fine
Students	Each	Consequences as described in Parent/Student Handbook	\$100
School Personnel	First Second Third	Verbal Warning	\$100
		Written Reprimand and staff member will be required to enter a smoking cessation program as provided by the employer to the employee. Staff member may select another program at his/her own expenses	\$100
		Suspension	
		Viewed as insubordination which may result in termination *Should a staff member not repeat a violation of this policy within a three year period, the slate will be considered clean. The process will then be considered free of previous violations.	
			\$100
General Public	Each	Removed from School Property	\$100

SOURCE: MASC - Updated 2022

LEGAL REF: M.G.L. Ch 71:37H; 270:6

CROSS REFS.:

JICH, Alcohol, Tobacco and Drug Use by Students Prohibited

Reviewed; no revisions 4/8/2008; 3/3/12

Reviewed, revised: 10/4/16

Reviewed, revised: 8/15/17