

**Franklin Public Schools  
Franklin, Massachusetts 02038**

**Action Required**

---

**Subject:** Policy Elimination

**Date:** September 13, 2022

**Dept:** SC

---

**Reason:** Required Vote

**Enclosure:** yes

**Recommendation:**

Elimination of Policies

I recommend eliminating the following Policies as discussed:

ACAB-RI - 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

**Action Requested of the School Committee:**

Majority vote of the School Committee is required.

<u><b>Vote Tabulator</b></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: _____

## **GRIEVANCE PROCEDURE FOR COMPLAINTS OF HARASSMENT AND DISCRIMINATION**

The following grievance procedures apply to all non-Title IX complaints made by students or staff of discrimination or harassment in accordance with School Committee Policies AC and ACAB.

All grievances shall be processed in a fair, expeditious and confidential manner. When a complaint of discrimination or harassment is made, the following investigative and appeal procedures will be followed:

### **I. Investigation and Response**

#### **A. Reporting**

Complaints may be made verbally or in writing to the school administrator, who has authority to investigate all grievances. Complaints should be made promptly, within a short time after the occurrence giving rise to the complaint, to assure a prompt investigation and fair resolution.

Additionally, a student who believes that they is the victim of discrimination or harassment may also report the matter to a teacher, counselor, or administrator who in turn will notify the Building Principal in the school, or to the Building Principal directly. 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.

#### **B. Investigation**

All complaints will be thoroughly investigated and interim supportive measures will be provided, as determined appropriate. Both the complainant and the subject of the complaint will be interviewed and given a full opportunity to state their case through the presentation of witnesses and other evidence. Witnesses and other persons relevant to the complaint, if any, will also be interviewed. A record will be kept of each investigation.

The complaints will be investigated within a reasonable time, usually not to exceed thirty (30) school days after the complaint has been received. When more than thirty (30) school days are required for the investigation, the Coordinator or their designee shall inform the employee or student who filed the complaint that the investigation is still ongoing. Both the complainant and the subject of the complaint will be informed of the result of the investigation, in writing in a manner consistent with federal and state law.

## **C. Response**

If the complaint is substantiated, the Coordinator will refer the matter to the proper supervisor or administrator for appropriate responsive measures, including but not limited to disciplinary action. For students, discipline will be imposed consistent with the student code of conduct and state laws and regulations. Discipline of school staff will be consistent with collective bargaining procedures, if applicable, and may include reprimand, suspension from employment, or employment termination. Responsive measures will include any steps necessary to prevent the recurrence of any discrimination and/or harassment and will include corrective action aimed at eliminating any discriminatory effects on the complainant and others, as appropriate.

In certain cases, harassment and, in particular, sexual harassment of a student may constitute child abuse under Massachusetts law. The Franklin Public Schools will comply with all legal requirements governing the reporting of suspected cases of child abuse. The Franklin Public Schools will also report instances of harassment that may involve a crime in a manner consistent with the MOU between the Franklin Public Schools and the Franklin Police Department.

## **II. Appeal**

In the event a complainant or subject of a complainant disputes the results of the investigation or resolution, they may further appeal to the Superintendent within ten (10) school days of the Coordinator's decision. Any request for appeal shall be made in writing.

The Superintendent shall meet with the parties to hear the appeal, and shall review the records of the investigation. The Superintendent shall issue a decision within ten (10) days of the hearing. The Superintendent's decision shall be final.

Nothing in this policy or procedure shall be deemed to affect a grievant's right to other remedies at law, including administrative appeals or lawsuits. Administrative agencies with jurisdiction in these matters include:

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 8<sup>th</sup> 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

Adopted by School Committee: 11-10-2020

**GRIEVANCE PROCEDURE FOR COMPLAINTS OF SEXUAL HARASSMENT  
UNDER TITLE IX OF THE EDUCATION AMENDMENTS OF 1972**

The following grievance procedures apply to all complaints made by students or staff of sexual harassment, sexual assault or sexual violence under Title IX of the Education Amendments of 1972 and in accordance with School Committee Policy ACAB.

**I. Reporting of Sexual Harassment Complaints**

**A. How to Report a Complaint of Sexual Harassment**

Students and employees who believe they have experienced or witnessed sexual harassment should notify the building-designated Title IX Coordinator, who will notify the District's designated Title IX Coordinator, Mr. Lucas Giguere, Assistant Superintendent of Schools. If the complaint concerns allegations against the Title IX Coordinator, then the complaint should be filed with the Superintendent or designee.

Employees who witness sexual harassment or have a reasonable belief that it is occurring, are required to report it immediately to the Title IX Coordinator.

Reports of sexual harassment may also be made by employees to their direct supervisor and by students to a teacher, counselor, school nurse or building administrator, who shall immediately bring such report to the attention of the Title IX Coordinator.

The complaint may be filed by the alleged by the victim or any other party. Any person filing a complaint is encouraged to do so within a short time after the occurrence giving rise to the complaint, to assure a prompt investigation and fair resolution.

**B. Handling of Sexual Harassment Complaints**

All complaints shall be processed in a fair, expeditious and confidential manner. The Title IX Coordinator is responsible for overseeing the complaint response, including implementation of supportive measures and the grievance/appeal process. In doing so, the Title IX Coordinator may delegate certain duties to a designee. Complaints can be investigated by a building administrator, district-level staff member, or the Title IX Coordinator. The decision-maker must be a separate individual from the investigator. The Title IX Coordinator (or designee), investigator and decision maker shall not have a conflict of interest or bias. All Title IX personnel shall receive appropriate training in accordance with Section VIII below.

**II. Supportive Measures and Filing of a Formal Complaint**

**A. Supportive Measures**

The District must investigate sexual harassment allegations in any formal complaint. Once a report of sexual harassment has been received, the Title IX Coordinator or designee will promptly contact the alleged victim (the "Complainant") to

discuss the availability of supportive measures and consider the Complainant's wishes with respect to supportive measures. The District must inform the Complainant of the availability of supportive measures with or without filing a formal complaint, and explain to the Complainant the process for filing a formal complaint. Supportive measures shall also be offered to the Respondent as necessary to ensure continued and equal access to the education program and/or activity during any investigation.

"Supportive measures" are individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, and deter sexual harassment. Supportive measures must be offered to both the Complainant and the Respondent, and may include, but not be limited to" no contact orders, change of class schedules, modifications of assignments/work, leaves of absence, increased security and monitoring of certain areas of the campus, and other appropriate measures.

In addition to the above supportive measures, the District, in its discretion, may consider the emergency removal of a student in accordance with applicable student discipline regulations. The District may place an employee on paid administrative leave during the course of an investigation of sexual harassment allegations against said employee as determined appropriate and consistent with any applicable collective bargaining agreement.

#### **B. Filing a Formal Complaint**

A formal complaint may be filed in writing by the Complainant or presented verbally and put into writing and signed by the Title IX Coordinator or designee. The District will respect the wishes of the Complainant with respect to whether the District investigates a report of sexual harassment, unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances.

#### **C. Contents of a Formal Complaint**

A formal complaint is signed by a Complainant or the Title IX Coordinator or designee alleging sexual harassment against a Respondent and requesting that the District investigate sexual harassment allegations. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the District. A formal complaint may be filed with the Title IX Coordinator or designee in person, by mail, or by electronic mail, by using the contact information set forth herein.

The District must investigate sexual harassment allegations in any formal complaint. If the allegations in the formal complaint do not meet the definition of sexual harassment as set forth under Title IX, or did not occur in the District's education program or activity, the District must dismiss such allegations for the purposes of Title IX, but may still address the allegations in any manner that the District deems appropriate consistent with its policies, procedures and code of conduct, including but not limited to its anti-bullying policies and plan

### **III. Informal or Formal Resolution of Complaint**

The District must offer the Complainant a formal resolution process and may offer an informal resolution process.

#### **A. Informal Resolution Process**

The informal resolution process shall be offered and implemented at the election of the Complainant and only after receipt of voluntary, informed, written consent of both the Complainant and the Respondent. The Complainant may elect informal resolution of a complaint at any time prior to a final determination by the decision maker. This may include conciliation and/or mediation by an individual trained to conduct such processes. At any time prior to agreeing to a resolution, either party has the right to withdraw from the informal resolution process and resume the formal complaint grievance process.

The District shall not offer an informal resolution process when a student alleges sexual harassment by staff.

#### **B. Formal Resolution Process**

The formal complaint process will comply with the grievance procedures outlined below.

### **IV. Grievance Procedure**

In accordance with Title IX and its supporting regulations, the District shall implement the following process when investigating formal complaints of sexual harassment:

- A. The Complainant and Respondent will be treated equally throughout the investigation process and be provided with written notice of the allegation (including sufficient details known at the time and with sufficient time to prepare a response before any initial interview), the grievance process, the range of possible remedies the District may provide a Complainant and disciplinary sanctions the District might impose on a respondent, following determinations of responsibility. Both parties have the right to have a representative/advisor participate in the process on their behalf.
- B. Any interim supportive measures, as appropriate, will be offered to both parties.
- C. The investigator will conduct an objective evaluation of all available evidence. This shall include an interview of both the Complainant and the Respondent, during which each party shall have a full opportunity to state their case through the presentation of witnesses and other evidence. Witnesses and other persons relevant to the complaint, if any, may also be interviewed. Please note that, during the investigation, rape shield protections apply to the Complainant and Complainants may generally not be asked about their prior sexual behavior or history.
- D. During the investigation process, the parties shall not be prohibited from discussing the complaint or collecting evidence.

- E.** The investigation shall be completed in a reasonable time frame within thirty (30) school days except for good cause. Good cause may include, but not limited to, unavailability of a party, concurrent pending law enforcement investigation, need for interpreter and/or accommodation of any party or witnesses' disability.
- F.** During the investigation, there is a presumption that the Respondent is not responsible for the alleged conduct until a determination is made at the conclusion of the grievance process.
- G.** The investigator will make findings based on a preponderance of the evidence standard.
- H.** The investigator will not request or solicit information from any party or witness that constitutes disclosure of information that is protected under a legally recognized privilege, unless the holder of the privilege voluntarily waives it.
- I.** Prior to the conclusion of the investigation, the Complainant and Respondent will both be provided a copy of the investigation report and an opportunity to submit any additional information in a timely manner they would like considered by the investigator before their report is finalized. Both parties shall be provided the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- J.** Once the investigation has been completed, the investigator will submit their investigation report, with recommendations to the decision maker. The Complainant and Respondent shall also be advised, in writing, of the investigator's report.
- K.** The decision maker will review the investigation report and hold a disciplinary hearing with the Respondent, in accordance with applicable procedures (for student or employee).
- L.** The decision maker will advise both parties of the final determination and any related remedial/responsive measures in a manner that complies with applicable laws regarding student confidentiality and appeal rights. The Respondent will be notified of any disciplinary action and other remedial measures, if the complaint is substantiated. Notice of such final determination will be made in writing and sent simultaneously to the parties along with information about how to file an appeal.

**V. Disciplinary Action**

If a complaint is substantiated, the District will act promptly to eliminate the behavior and will refer the matter to the proper supervisor or administrator for appropriate responsive measures, including but not limited to disciplinary action and restoring a sense of safety for the Complainant. For students, discipline will be imposed consistent with the Code of Conduct and Massachusetts Student Discipline Law.



Discipline of employees will be consistent with collective bargaining procedures, if applicable, and may include disciplinary action up to and including dismissal.

Responsive measures will also include any steps necessary to prevent the recurrence of any discrimination and/or harassment and will include corrective action aimed at eliminating any discriminatory effects on the complainant and others, as appropriate.

## **VI. Retaliation Prohibited**

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 discipline, up to and including suspension and/or discharge for employee(s), and appropriate disciplinary action for students.

## **VII. Appeal Procedure**

Both parties have the right to appeal the decision maker's determination to the Superintendent or designee. Any appeal should be submitted in writing to the Superintendent within ten (10) calendar days of receipt of the final determination.

The Superintendent or designee in reviewing the appeal may consider the following factors:

- A. Was there any procedural irregularity with the investigation process?
- B. Is there any new evidence not reasonably available at the time of the investigation?
- C. Did the Title IX Coordinator, investigator or decision maker have a conflict of interest or bias that affected the outcome of the investigation?

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

## **VIII. Training Requirements**

All Title IX personnel including Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process shall receive training as required by Title IX and its supporting regulations. All training materials shall be made available to the public for inspection upon request.

Adopted by School Committee: 11/10/2020