



MURPHY HESSE

TOOMEY & LEHANE LLP

Attorneys at Law

# Title IX

**North River**

**May 2, 2024**

Presented by: Felicia Vasudevan, Esq.

# Title IX

---

- The District deems that harassment and discrimination within the workplace/schools is unlawful and prohibits any harassment or discrimination on the basis of sex, sexual orientation or gender identity in the educational programs, services, and activities of the District as well as all employment opportunities.
- The District is committed to maintaining an educational and employment atmosphere in which every student and employee is free to pursue his/her need and fulfill his/her responsibilities free from behaviors that would prove to be destructive.
- Harassment and discrimination are considered to be destructive and will not be tolerated. It is considered to be unlawful to retaliate against an employee or student who files a complaint of harassment or discrimination or who cooperated in the investigation of such complaint.

# Definitions

---

- Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- “Retaliation” means intimidation, threats, coercion, or discrimination against any person by the District, a student, or an employee or other person authorized by the District to provide aid, benefit, or service under the District’s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations.

# Definitions

---

- Under state law, sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment under Massachusetts law when:
  - Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's advancement (quid pro quo harassment);
  - 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 work environment.

# Definitions

- Under Federal law, sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:
  - *Quid pro quo harassment.* An employee, agent, or other person authorized by the District to provide an aid, benefit, or service under the District's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
  - *Hostile environment harassment.* Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the District's education program or activity (*i.e.*, creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
    - The degree to which the conduct affected the complainant's ability to access the District's education program or activity;
    - The type, frequency, and duration of the conduct;
    - The parties' ages, roles within the District's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
    - The location of the conduct and the context in which the conduct occurred; and
    - Other sex-based harassment in the District's education program or activity.
- Sexual assault, dating violence, domestic violence and stalking

# Knowledge

---

- Must respond to complaints when have knowledge
- District can designate confidential employees
- Confidential employees will explain to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination under Title IX:
  - The employee's status as confidential for purposes of this part, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination;
  - How to contact the District's Title IX Coordinator and how to make a complaint of sex discrimination; and
  - That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.

# Upon receipt of actual knowledge

---

- Employees notify Title IX Coordinator or people file report directly with Title IX officer
- The Title IX Coordinator must then contact the complainant upon receiving the complaint and do the following:
  - 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 purpose of filing a formal complaint

# Offer Supportive Measures

---

- Complainant and respondents must be offered supportive measures even if they do not file a formal complaint.
- “Supportive measures” means 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. Such measures are designed to restore or preserve equal access to the recipient’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 environment, or deter sexual harassment. Supportive measures may include 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 housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The District must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures



# Document, document, document

---

- The Title IX Coordinator must document in writing the supportive measures offered/provided or why no supportive measures were offered/provided.
- If the complainant or respondent is a student with a disability, the Title IX Coordinator will consult with one or more members, as appropriate, of the student's IEP or 504 Team to determine how to comply with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.

# Informal Resolution

---

- No informal resolution for employee respondent and student complainant
- Facilitators of informal resolution will be designated by the Title IX Coordinator and must not be biased against any of the parties. Prior to beginning informal resolution, the Title IX Coordinator will send notice to the parties of the process and their rights.
- Informal resolution is entirely voluntary. Parties may elect to pursue formal procedures at any step in the process of making their complaint, including prior to filing one.
- If the complainant and the respondent feel that their grievances have been sufficiently addressed via informal resolution, then no further action needs to be taken. This voluntary conversation must occur within thirty (30) school days after receiving the allegations, unless both parties agree otherwise. The results of an informal resolution shall be maintained by the facilitator, in writing

# Complaint

■ “Complaint” means an oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX or its regulations. The Title IX Coordinator will file this complaint if the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the District from ensuring equal access on the basis of sex to its education program or activity. The following factors go into the decision by the Title IX Coordinator:

- - The complainant’s request not to proceed with initiation of a complaint;
  - The complainant’s reasonable safety concerns regarding initiation of a complaint;
  - The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
  - The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
  - The age and relationship of the parties, including whether the respondent is an employee of the District;
  - The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
  - The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
- Whether the District could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures

# Complaint

---

- A person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).
  
- With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:
  - Any student or employee of the District; or
  - Any person other than a student or employee who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination.

# Dismiss Formal Complaint

---

- May dismiss complaint if:
  - the District is unable to identify the respondent after taking reasonable steps to do so;
  - The respondent is not participating in the District's education program or activity and is not employed by the District;
  - The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the District determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
  - the District determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the District will make reasonable efforts to clarify the allegations with the complainant.

# Dismiss Complaint

---

- Dismissals may be appealed on the following bases:
  - Procedural irregularity that would change the outcome;
  - New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
  - The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.
-

# Timeframe

---

- Must be prompt – and needs to designate specific timeframes in policies, but can be extended for good cause
- Provide all parties with a reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay. If a party is seeking an extension, they should request an extension from the Title IX Coordinator in writing, explaining the reasons for the requested extension. The Title IX Coordinator will rule on the extension in writing to all parties.

# Written notice

---

- Before any investigation can begin, the District must send written notice to both parties including sufficient details. Sufficient details include:
  - the identities of the parties involved in the incident, if known
  - the conduct allegedly constituting sexual harassment,
  - the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must warn that retaliation is prohibited.
- If additional allegations are added during the course of the investigation, additional written notice must be provided.



# Investigation

---

- It is possible to use a single investigator/decision maker
- The District must not be biased against any of the parties at the outset of the investigation and must treat both sides equally.
- Will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures.

# Investigation

---

- The investigator must avoid all questions that are protected by legal privilege, unless the privilege has been waived or to a confidential employee, that is made or maintained by a physician or other treatment provider or relates to complainant's sexual interests or prior sexual conduct unless offered to prove consent or someone else is responsible
- Investigator can provide evidence or description of an evidence, but if parties want it, can have access to the evidence

# Conducting the Investigation

---

- Ask open-ended questions, such as who, what, where, when and why
  - Do not ask leading questions
- Create questions beforehand and try to use the same questions for all parties, as possible
- Take notes of the individuals' answers.
- Start with the complainant, then witnesses, and then the respondent

# Conducting the investigation

---

- Do not prejudge the facts at issue
- Consider whether the information is relevant
  - Information must have a tendency to prove or disprove a fact, and that fact must be of consequence in determining the action.
  - For example, if the question is whether someone was sexually harassed by a peer, their grades are irrelevant.

# Conducting the investigation

---

- Relevancy
  - Remoteness in time or place reduces relevancy. Events taking place at times or locations distant from the event at issue are of little or no relevancy.
  - The similarity of a prior event affects relevancy. Prior events involving different people or objects are of little or no relevancy.
  - Evidence that a person hid or destroyed evidence, tried to avoid capture, or otherwise behaved as if he or she had a guilty conscience, is usually admissible for the negative inference that the person had something incriminating to hide.
  - Evidence of motive is usually relevant.

# Investigation

- The District will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:
  - the District will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence;
  - the District will provide a reasonable opportunity to respond to the evidence; and
- the District will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized
- Cannot rely on sex stereotypes or individual's status in either the investigation or decision-making.

# Decision-making

---

- After this process is complete will create a written determination regarding whether sexual harassment has occurred using a preponderance of the evidence standard.
- A District must think about how a reasonable person would view the conduct when determining whether the conduct constitutes sexual harassment. In making this determination, Districts may consider the age and number of parties involved.

# Decision-making

- The written determination must be issued to both parties simultaneously and must include:
  - Identification of the allegations potentially constituting sexual harassment;
  - A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - Findings of fact supporting the determination;
  - Conclusions regarding the application of the recipient's code of conduct to the facts;
  - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
  - The District's procedures and permissible bases for the complainant and respondent to appeal (a copy of, or direct reference to, this policy will suffice).



# Decision-making

---

- The decision-maker shall further recommend what action, if any, is required.
- If there is a finding that sexual harassment occurred, the District will provide remedies to the complainant designed to restore or preserve equal access to the District's education program or activity. Such remedies may include supportive measures.
- Formal disciplinary actions may be imposed in the event that the preponderance of the evidence indicates a violation of this policy, 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.
- District cannot take discipline in the absence of following this formal process. It does 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 pendency of the investigation.

# Decision-making

---

■ After the grievance process, the District may as appropriate, modify or terminate supportive measures. If the District does so, it will provide the parties to timely seek from an appropriate and impartial employee, modification or reversal of the District's decision to provide, deny, modify, or terminate supportive measures applicable to them. The impartial employee will be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures. The District will also provide a party with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

# Appeal

---

- Appeal process must be similar to what you offer for other offenses

# Records/Notice

---

- A record will be maintained for a period of seven years of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment and District staff will document the basis for the District's conclusion that its response was not deliberately indifferent.
- The District must notify applicants for employment, parents, employees and all unions of the name or title of the Title IX Coordinator, his or her address, email address and telephone number. The Title IX Coordinator's information must be displayed prominently on the District's website.

# Training

---

- All employees will be trained annually and upon hire on:
  - the District’s obligation to address sex discrimination in its education program or activity;
  - The scope of conduct that constitutes sex discrimination, including the definition of sex-based harassment; and
  - All applicable notice and information requirements.
  
- All investigators, facilitators of informal resolution, decisionmakers and other persons responsible for supportive measures/Title IX process will have additional training on:
  - The District’s grievance procedures;
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
  - The meaning and application of the term “relevant” in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance; and
  - rules and practices associated with the district’s informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

# Retaliation prohibited

---

- Complainants and those who participate in the complaint resolution process or who otherwise oppose in a reasonable manner an act or policy believed to constitute discrimination are protected from retaliation by law and District policy.
- The coordinator or designee will inform all involved individuals that retaliation is prohibited, and that anyone who feels that they have experienced retaliation for filing a complaint or participating in the resolution process should inform the coordinator.
- The coordinator will investigate reports of retaliation and, where retaliation is found, take separate remedial and disciplinary action.

# Questions?

---





# MURPHY HESSE TOOMEY & LEHANE LLP

Attorneys at Law

## Quincy

Crown Colony Plaza  
300 Crown Colony Drive  
Quincy, MA 02169  
Springfield, MA 01144

Tel: (617) 479-5000  
Fax: (617) 479-6469

## Boston

75-101 Federal Street  
Suite 410  
Boston, MA 02210

Tel: (617) 479-5000  
Fax: (617) 338-1324

## Springfield

One Monarch Place  
1414 Main Street 1310R  
Suite 1310R

Tel: (888) 841-4850  
Fax: (617) 479-6469