

# **CIVIL RIGHTS TRAINING MANUAL 2017-2018 School Year**

## **CHELSEA PUBLIC SCHOOLS**

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# Civil Rights in Education and Schools

State and federal laws protect the rights of Massachusetts residents to attend schools without being the victim of violence, threats, intimidation or harassment based on race, color, religion, national origin, ethnicity, gender, gender identity, homelessness, sexual orientation or disability.

<http://www.mass.gov/ago/consumer-resources/your-rights/civil-rights/education-and-schools/civil-rights-in-education.html>

# State and Federal Civil Rights Laws

- Title VII of the Civil Rights Act of 1964 42 U.S. C. §2000d et. seq. – prohibits discrimination based on race, color, religious creed, national origin, sex, gender identity, sexual orientation, if a school district is receiving federal assistance
- Age Discrimination in Employment Act of 1967 (ADEA)- prohibits discrimination based on age in employment practices
- Mass General Laws c. 151B – prohibits discrimination based on race, color, religious creed, national origin, sex, gender identity, or sexual orientation in employment practices
- Mass General Laws c. 76 §5 – prohibits discrimination in education and guarantees equal educational opportunities which prohibits discrimination in public schools.
- These are just some of the laws that protect the civil rights of all of us in the school setting.

# Discrimination



## What is Harassment/Discrimination?

- It is when students, teachers, administrators and other school district personnel are subject to adverse employment decisions, verbal and physical abuse and intimidation, or treated differently, decisions based on their ethnicity, race, age, disability, religion, national origin, gender identity, homelessness, sexual orientation and gender.
- The law requires that everyone should be treated equally regardless of their race, gender, age, disability, sexual orientation, religion, gender identity, color and national origin.
- Every District employee shall be treated equally regardless of their race, gender, religion, age, disability, sexual orientation, homelessness, gender identity, color and national origin.

# **Why are Harassment and Discrimination not tolerated by the Chelsea Public School District?**

- Bullying, abuse and harassment can adversely affect a student's ability to learn or benefit from the education we are providing.
- It is against the law and it requires everyone to be treated equally. It further places liability on Districts to immediately stop acts of discrimination and harassment.
- Employees should feel safe at their workplace.

# Examples of Racial/National Origin/Ethnicity Discrimination

- graffiti containing language derogatory to a specific race, national origin or ethnicity
- notes or cartoons or drawings
- name calling, jokes or rumors
- racial or ethnic slurs
- negative stereotypes

# TITLE IX OF THE EDUCATIONAL AMENDMENTS OF 1972 20 U.S.C. §1681 et. seq.

- Prohibits discrimination based on sex.
- Sexual harassment is a form of discrimination based on sex
- The Board of Education has imposed an affirmative obligation on all public schools to foster a school environment free of harassment and discrimination. It further requires public schools to respond promptly to any acts of harassment and discrimination. 603 CMR § 26.01-09
- Districts are liable if they do not investigate it upon notice of any complaints.
- Administrators and teachers may be personally liable if they do not follow the law and the district's policies.
- There are two forms of Sexual Harassment:
  1. Quid Pro Quo
  2. Hostile Work Environment

## Mass law specifically defines sexual harassment in educational institutions. M.G.L. c. 151C § 1(e).

Any sexual advances, request for sexual favors and other verbal or physical conduct of a sexual nature when (1) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of the provision of the benefits, privileges or placement services or as a basis for the evaluation of academic achievement; or (ii) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individuals education by creating an intimidating, hostile, humiliating or sexually offensive educational environment.

When does it occur?

- a) Adverse Employment Action
- b) Coercion, Intimidating, Threats or Interference
- c) Retaliation

# “Quid Pro Quo” Sexual Harassment

- Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when . . . submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions.
- To prove a claim for quid pro quo harassment, the employee must establish the following elements:
  - That the alleged harasser made sexual advances or sexual requests, or otherwise engaged in conduct of a sexual nature;
  - The sexual conduct was unwelcome;
  - He or she rejected such advances, requests or conduct; and
  - The terms or conditions of his or her employment were then adversely affected.

OR

- That the alleged harasser made sexual advances or sexual requests, or otherwise engaged in conduct of a sexual nature;
- The sexual conduct was unwelcome;
- He or she submitted to such advances, requests or conduct; and
- When he or she submitted to the unwelcome sexual conduct, he or she did so in reasonable fear of adverse employment action.

# “Welcomeness”

- Only unsolicited and unwelcome conduct may create a hostile work environment.
- When the employee initiates conduct of a sexual nature or is a willing participant in a sexually charged environment, he or she may not be the victim of sexual harassment.
- When an employee only submits to harassing behavior to avoid being targeted further, to cope in a hostile environment, or because participation is made an implicit condition of employment, he or she is not considered to have welcomed the conduct.
- An employee need not communicate his or her objection to harassing conduct to demonstrate its un-welcomeness.

## **SIGNS OF HARASSMENT**

- Sexual harassment occurs in a variety of circumstances
- Victim/harasser can be a man or woman or child/student
- Supervisor, agent, co-worker, non-employee can be harasser
- Victim doesn't have to be the person harassed but could be someone affected by offensive comment
- It also includes harassment that targets a student based on gender identity, transgender status, or gender transition which creates a hostile environment

## **Examples of Sexual Harassment**

- Sexual advances/ touching, patting, grabbing or pinching another persons intimate parts regardless if individual is of the same sex or opposite sex
- coercing or forcing or attempting to coerce or force the touching of intimate parts, a sexual act, or sexual intercourse
- graffiti of a sexual nature
- sexual gestures and sexual or dirty jokes
- spreading rumors about or rating other students sexual activity/performance
- unwelcome sexual behavior

# Sexual Harassment Outside of the Workplace

- Massachusetts laws may apply to harassment that occurs between co-workers that takes place outside the workplace. The following factors may be considered in assessing whether the conduct constitutes sexual harassment:
  - Whether the event at which the conduct occurred is linked to the workplace in any way, such as at an employer-sponsored function.
  - Whether the conduct occurred during work hours.
  - The severity of the alleged outside-of-work conduct.
  - The work relationship of the complainant and alleged harasser, which includes whether the alleged harasser is a supervisor and whether the alleged harasser and complainant come into contact with one another on the job.
  - Whether the conduct adversely affected the terms and conditions of the complainant's employment or impacted the complainant's work environment.

# Valid Hostile Work Environment Claims for both Sexual Harassment and/or Discrimination

- Cannot just be an isolated incident.
- Mere joking or inappropriate comments do not rise to the level of a hostile work environment.
- In order to rise to the level of creating a hostile work environment, the conduct must be objectively hostile, intimidating, humiliating or offensive both from an objective and a subjective perspective.
- Aggregation of isolated incidents may create a hostile work environment where the isolated incident alone would not be enough.
- Proof of a hostile work environment claim requires a showing that any form of discrimination created an impediment to an employee's full participation in the workplace, altered the terms and conditions of her employment, or unreasonably interfered with her work performance.
- In some circumstances, a hostile environment may be established based on a single incident, due to its severity, despite the fact that the conduct is not frequent or repetitive.

# Hostile Work Environment Alleging Sexual Harassment

**Chapter 151B defines "hostile work environment" for sexual harassment as:**

- Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when . . . such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

In a hostile work environment case, the complainant must prove:

- He or she was subjected to conduct of a sexual nature;
- The conduct of a sexual nature was unwelcome;
- The conduct of a sexual nature had the purpose or effect of creating
- An intimidating, hostile, humiliating or sexually offensive work environment; and
- The conduct unreasonably interfered with complainant's work performance or altered the terms and conditions of the complainant's employment.

# Reminder: ESL Students Have Equal Access to High-Quality Education



**The Equal Educational Opportunities Act requires public schools to take appropriate action to help English learner students overcome language barriers and ensure their ability to participate equally in school.**

# Gender Identity/Transgender

- It is against the law to discriminate or treat someone different because they are transgender. The law uses the term “gender identity” rather than transgender but its primary purpose is to protect transgender individuals.
- Transgender is an umbrella term that includes people who transition from one gender to another or people who defy social expectations of how they should look, act, or identity, based on their sex at birth.

# What is Gender Identity? What Does it Mean to be a Transgender Individual?

- **Gender identity** as defined by M.G.L. c. 4, §7, “a person’s gender related identity, appearance or behavior, whether or not that gender identity, appearance or behavior is different from that traditionally associated with the persons physiology or assigned sex at birth”.
- **Gender Expression** is the manner an individual expresses his or her gender identity.
- It is important to note that an individual may experience increasing psychological and emotional discomfort and pain if gender identity is different from the individual’s physical sex.
- A **transgender individual** has a gender identity that is different from the sex assigned to them at birth.
  - Someone who was assigned the male sex at birth, but identifies as female is a transgender woman.
  - Someone who was assigned the female sex at birth, but identifies as a male is a transgender male.

# Procedure to Support Transgender Students

- A student is considered transgender at school if he/she consistently asserts a gender identity or expression different from the gender assigned at birth
- A transgender student and/or his/her parent(s) should contact the school principal or school Administration
- A meeting should be scheduled to discuss the student's particular circumstances and needs
- A plan should be developed by the school that optimizes each student's integration and particular needs for transitioning, and it should be maintained in the student's health file

# General Things to Consider for Transgender Students and Employees

- Some transgender individuals will find it necessary to transition from living and working/going to school as one gender to another gender consistent with his or her gender identity.
- The individual's transition should be treated with as much sensitivity and confidentiality as any other employee or student's significant life experiences.
- While any information relating to this transition should be limited to as few people as possible, employees may be given *general* information about the transition on a strictly need-to-know basis in accordance with the Massachusetts Student Record Law.

# General Things to Consider for Transgender Students and Employees

- Once the employee/student has informed management/school district about transitioning, the employee/student will begin wearing target gender clothing under the same guidelines that are applied to other employees/students of that gender.
- The new name and gender of the employee/student should be used in employee/student records and communications regarding the employee/student.
  - Consistent with the Privacy Act, the records in the employee's Official Personnel Folder (OPF) and other employee records should be changed to show the employee's new name and gender, once the employee has begun working full-time in the gender role consistent with the employee's gender identity.
- Public schools are not allowed to prohibit transgender students from dressing in their target gender or expressing their gender identity in unconventional ways.
- School staff and students should use the name and pronouns appropriate to the student's new gender. The name and gender should be used in school records and communications regarding the student.

# Compliance with Title IX

- Title IX requires that when a school is notified of a student that will assert a gender identity that differs from previous representations, the school will begin treating the student consistent with the student's gender identity.
- A school is obligated to ensure nondiscrimination on the basis of sex and is required to provide transgender students equal access to educational programs even in circumstances in which other students, parents, or community members raise objections/concerns.
- Harassment that targets a student based on gender identity is harassment based on sex. If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and remedy its effects.

# Privacy and Confidentiality

- A school shall accept the gender identity that each student asserts
- The person best situated to determine a student's gender identity is the student himself/herself
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- A student who has been identified as transgender under these guidelines should be addressed by school staff and other students by the name and pronoun corresponding to their gender identity that is consistently asserted at school without obtaining a court order formalizing a name change.
- **EVERYONE SHOULD REVIEW THE SCHOOL DISTRICT'S GUIDELINES AS TO TRANSGENDER STUDENTS**

# Privacy and Student Records

- When a student new to a school is using a chosen name, the birth name is considered private information and may be disclosed only with authorization as provided under Massachusetts Student Records Regulations.
- Records with the student's assigned birth name should be kept in a separate, confidential file.
- Schools should consult with the student, or in the case of a young student, the student's parent/guardian first before disclosing information regarding a student's gender identity. Schools may choose to follow different developmentally appropriate protocols depending on grade level.
- Nonconsensual disclosure of personally identifiable information could invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).
- For transgender students, a documented gender marker should reflect the student's gender identity, not the student's assigned birth sex

# Directory and Education Records

- School officials may not designate students' sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.
- Under Title IX, a school must respond to a request to amend information regarding a student's transgender status consistent with its general practices for amending other students' records.
- Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.
- Under FERPA, if a school does not amend the record, it must inform the requestor of its decision and of the right to a hearing.

# Restrooms, Locker Rooms, and Changing Facilities for Transgender Individuals

- All employees and students must be given access to sanitary, safe, and adequate restrooms, locker rooms and changing facilities that corresponds with his/her gender identity if they choose.
- Once a student/employee informs the school district of their gender identity the school district should meet with the student/employee to discuss the employee/students need to make them comfortable including but not limited to what restroom facility they would like to use. If they are not comfortable using the boys/girls room a safe and adequate alternative should be provided such as a single unisex restroom or the nurse's restroom.
- Similarly, if a student is not comfortable undressing in the changing facilities that correspond to the student's gender identity, a school may provide a private changing area, a gender-neutral changing facility, or a separate changing schedule.

# Bullying

The U.S. Department Education's Office for Civil Rights has explained that it will find a violation of civil rights laws where:

1. The bullying or harassment is severe, pervasive, or persistent;
2. The harassment interfered with or limited the student's education benefits or opportunities; and
3. A school official knew or should have known about the harassment.

# What does bullying look like?

- **Bullying is a form of unwanted, aggressive behavior among school-age children that involves a real or perceived power imbalance and that is repeated, or has the potential to be repeated, over time.**
- **Physical bullying** is a form of intentional aggression that involves injuring someone or damaging their property. Examples of physical bullying include hitting, kicking or punching, spitting, tripping, pushing, taking or breaking someone's belongings, or making mean or rude gestures.
- **Verbal bullying** is a form of intentional aggression that involves saying or writing things that are mean or hurtful to others. Examples of verbal bullying include teasing, name-calling, taunting, inappropriate sexual comments, or threatening to cause harm to another person.
- **Social bullying** is a form of intentional aggression that is used to damage someone's reputation or relationships. Examples of social bullying include leaving someone out on purpose, telling other children not to be friends with someone, spreading rumors about someone, or embarrassing someone in public.

<http://safesupportivelearning.ed.gov/topicresearch/safety/bullyingcyberbullying>

# Best Practices



- Having in place clear policies that prohibit bullying and harassment and provide procedures for investigating and effectively addressing bullying and harassment.
- Having a system to track reports of bullying to identify trends and possible repeat perpetrators and victims—before the bullying gets out of hand.
- Investigating every complaint of bullying or harassment.
- If bullying or harassment is found, taking prompt and effective steps reasonably calculated to end the bullying or harassment, eliminate any hostile environment, and prevent its recurrence.
- Make sure that bullying-related information is communicated between buildings and grades.

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## **Adverse Employment Action**

- An employer takes adverse action under §4(4) when it materially disadvantages the complainant with regard to any of the terms or conditions of her employment. The term "adverse action" can encompass actions such as:
  - Termination
  - Denial of promotion
  - Demotion in title or duties
  - Transfer to a less favorable position or location
  - Involuntary placement on leave
  - Hostile or abusive workplace treatment
  - Decreasing compensation or benefits.

## **Coercion, Intimidation, Threats or Interference**

- A complainant may also bring a retaliation claim under §4(4A) of chapter 151B if he or she is subjected to threats, intimidation, or coercion, or his or her employment is otherwise interfered with because of the harassment complaint or assisting/encouraging another to complain of harassment.

# Retaliation

- Neither an employer, coworker nor any person may retaliate against an individual who alleges sexual harassment or discrimination or hostile work environment.
- Chapter 151B, §4(4) prohibits any person or employer from taking adverse action against a person because he or she has opposed any practices forbidden under chapter 151B or because he or she has filed a complaint, testified or assisted in any proceeding under chapter 151B.
- In order to prove retaliation, a complainant must show that: (A) He or she engaged in protected activity; (B) His or her employer knew of this protected activity and acted adversely against him or her; and (C) a causal connection exists between the adverse action and the protected activity.
- In order to prove protected activity, a complainant must demonstrate that he or she reasonably and in good faith believed that the employer was engaged in wrongful discrimination and that he or she acted reasonably in response to that belief.

# Protection Activity for Retaliation Claims

- Protected Activity may include, but is not limited to, such actions as:
  - Speaking to someone at the MCAD, EEOC or other civil rights or law enforcement agency, or to an attorney about the possibility of filing a claim of discrimination against the employer.
  - Filing a complaint at the MCAD or EEOC against the employer.
  - Filing a complaint in court.
  - Talking to an MCAD or EEOC investigator about another employee's charge of discrimination against the employer.
  - Testifying as a witness concerning a claim of harassment against the employer.
  - Complaining to management or filing an internal complaint of harassment.
  - Asking a supervisor or co-worker to stop engaging in harassing conduct.
  - Cooperating with an internal investigation of a sexual harassment complaint.
  - Meeting with co-workers to discuss how to stop sexual harassment in the workplace.

# Frivolous Claims

- The District as employer has the right to take appropriate disciplinary action against an employee who makes a false or bad faith claim of sexual harassment or discrimination.
- In addition, to the extent that any willfully false claim constitutes resistance to or interference with the work of the Massachusetts Commission Against Discrimination, the person filing such a complaint may be subject to civil and/or criminal penalties.

# The District's Policy

- The Chelsea Public School District has zero tolerance for acts of discrimination and harassment.
- If someone, a parent, co-worker, or superior, is making you feel uncomfortable ask that person to stop their behavior.
- If the behavior continues, or you feel unable to confront that person speak to your direct supervisor.
- If the situation is not resolved speak to the School's Administration or the District Administration.

# GRIEVANCE PROCEDURE

- It is the policy of Chelsea School Committee and School Administration to not discriminate in admissions, provision of services, hiring and employment practices on the basis of race, color, national origin, sex, religion, gender identity, sexual orientation, gender, age or disability.
- The Chelsea School District has an internal grievance procedure providing for prompt and equitable resolution of all complaints and those specifically alleging any action prohibited by Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Americans With Disabilities Act (ADA) of 1990. These regulations state, in part, that no person will, solely by reasons of his or her race, gender identity, sexual orientation, color, national origin, sex, religion, age or disability be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving state or federal financial assistance.

***This grievance procedure is not the procedure outlined in your union agreement. This procedure is for civil rights complaints.***

# Reporting of Harassment and Discrimination

- Any report of violations of the District's policies should be immediately reported and all such allegations are investigated.
- If the Administration is not responding you should then report to the City Solicitor's Office/Law Department.
- The Law Department may be reached at (617) 466-4150 or in person at 500 Broadway, Room 307 or at [cfisher@chelseama.gov](mailto:cfisher@chelseama.gov).

# Grievance Procedure

1. Any person who believes he or she has been subjected to discrimination on the basis of race, color, national origin, gender identity, sexual orientation, sex, religion, age or disability may file a grievance under this procedure. It is unlawful for the Chelsea School District to retaliate against anyone who files a grievance or cooperates in the investigation or a grievance.
2. Grievances must be submitted to the Civil Rights Coordinator Cheryl Watson Fisher within 30 days of the date the person filing the grievance becomes aware of the alleged discriminatory action.
3. A complaint should be in writing, containing the name and address of the person filing it (“the grievant”). The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought.
4. The Civil Rights Coordinator (or his or her designee) will conduct an investigation of the complaint to determine its validity. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. The Civil Rights Coordinator will maintain the files and records of Chelsea School Committee relating to such grievances.

# Grievance Procedure

- 5. The Civil Rights Coordinator will issue a written decision on the grievance no later than 45 days after its filing.
- 6. The grievant may appeal the decision of the Civil Rights Coordinator by filing an appeal in writing to the Superintendent of Schools within 15 days of receiving the Civil Rights Coordinator's decision.
- 7. The Superintendent of Schools will issue a written decision in response to the appeal no later than 30 days after its filing.
- 8. The availability and use of this grievance procedure do not preclude a person from filing a complaint of discrimination on the basis of race, color, national origin, sex, religion, age or disability (including AIDS and related conditions), sexual orientation, gender identity with the Massachusetts Commission Against Discrimination One Ashburton, Place Boston, Massachusetts or with the Office for Civil Rights Boston Office located 5 Post Office Square, Boston, Mass – Telephone # 617-289-0111 or email at [OCR.boston@ed.gov](mailto:OCR.boston@ed.gov).

# Grievance Procedure

9. If the grievance is based on a disability, the Chelsea School District will make appropriate arrangements to assure that persons with disabilities can participate in or make use of this grievance process on the same basis as persons who do not have disabilities. Such arrangements may include, but not be limited to, the provisions of interpreters for the deaf, providing taped cassettes for the blind, or assuring a barrier-free location for the proceedings. The civil rights coordinator will be responsible for providing such arrangements.