

## **SECTION G: PERSONNEL**

**GBAA**

### **TITLE IX SEXUAL HARASSMENT**

**PURPOSE:** It is the policy of the Portsmouth School Department ("PSD") to maintain an educational environment that is free from sexual harassment. This policy, which is adopted pursuant to Title IX of the Education Amendments Act of 1972 ("Title IX") and 34 CFR § 106.45, prohibits sexual harassment of students and employees in connection with any PSD program or activity, whether on or off school grounds, including on school buses, at sports games, on field trips, and while attending or engaging in school- sponsored activities. This policy applies to virtual learning.

#### **POLICY**

##### **I. DEFINITIONS**

*Complainant* shall mean a current student or student who is attempting to enroll in the School Department or an employee who is alleged to be the victim of conduct that could constitute sexual harassment.

*Formal Complaint* shall mean a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the School Department investigate the allegation of sexual harassment.

*Respondent* shall mean an individual who is a current or former student or current employee and who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

*Sexual harassment* shall mean any conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the School Department conditioning the provision of an aid, benefit, or service of the School Department on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the School Department's education programs and/or activities; or
- (3) Any form of sexual assault, dating violence, domestic violence, or stalking.

*Supportive measures* shall mean any and all 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 School Department's education program or activities without unreasonably burdening the other party,

including measures designed to protect the safety of all parties or the School Department's educational environment, or deter sexual harassment.

*Education programs or activities* shall include all locations, events, or circumstances over which the School Department exercises substantial control over the Respondent and the context in which the harassment occurs.

## II. DESIGNATION OF COORDINATOR, DISSEMINATION OF POLICY AND ADOPTION OF GRIEVANCE PROCEDURES:

The School Department shall designate an employee as its "Title IX Coordinator." The School Department shall notify all students, enrolling students, parents or guardians, employees, applicants for employment, and unions of the name, title, office address, email address, and telephone number of the Title IX Coordinator.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report can be made at any time of day, including non- business hours.

The School Department shall notify all students, enrolling students, parents or guardians, employees, applicants for employment, and unions that the School Department does not discriminate on the basis of sex, and that it is required by Title IX and applicable regulations not to discriminate in any of its education programs or activities as well as employment and that inquiries about how these rules apply to the School Department may be referred to the Title IX Coordinator. The School Department shall notify all students, enrolling students, parents or guardians, employees, applicants for employment, and unions of its grievance procedures and process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the School Department will respond thereto, all as further delineated herein.

The School Department shall prominently display the Title IX Coordinator's aforesaid contact information and this policy on its website, and in all student and employee handbooks. This information should also be displayed on registration paperwork or website/s and in a location where it is visible to job applicants.

## III. SCHOOL DEPARTMENT GRIEVANCE PROCESS PRIOR TO FORMAL COMPLAINT

- A. All School Department employees have an affirmative obligation to report sexual harassment and/or allegations of sexual harassment that they have witnessed and/or have knowledge of. All reports of sexual harassment must be made to the Title IX Coordinator.

- B. After a report of sexual harassment is made to the Title IX coordinator, the School Department must respond promptly and in a manner that treats consider the Complainant's wishes with respect to supportive measures.
- C. The Title IX Coordinator, in conjunction with School Department personnel shall consider restrictions to be placed on the Respondent during an investigation. However, any restrictions placed on the Respondent during an investigation, must be placed on the Complainant as well.
  - 1. The exception to this is that if School Department personnel determine that the Respondent is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment, the Respondent may be removed from campus.
  - 2. The Respondent must be provided with Notice of Removal and an opportunity to challenge the decision immediately following the removal.
- D. The Title IX Coordinator shall be responsible for explaining the process of filing a formal complaint to the Complainant.

#### IV. INFORMAL RESOLUTION PROCESS

- A. Once a formal complaint has been filed, and at any time prior to reaching a determination regarding responsibility, the School Department may facilitate an informal resolution process that does not involve a full investigation and adjudication. This process shall be in the form of mediation.
- B. The Title IX Coordinator shall explain this process in a written notice that shall contain the allegations.
- C. In order for this informal resolution process to commence, both parties must provide their voluntary, written consent.
- D. At any time prior to reaching a resolution, any party has the right to withdraw from the informal resolution process and resume or begin the grievance process.
- E. The School Department shall maintain all records involving this process in accordance with this policy and applicable law.
- F. This informal resolution process shall not be available to resolve matters involving allegations that an employee sexually harassed a student.

V. SCHOOL GRIEVANCE PROCESS AFTER THE FILING OF A FORMAL COMPLAINT OF SEXUAL HARASSMENT

- A. The School Department shall investigate all allegations set forth in a formal complaint. The grievance process shall be concluded and a written determination of responsibility shall be issued in a reasonably prompt time frame and up to one hundred twenty (120) days from the date of the filing of a formal complaint. This time frame may be extended in the event that the parties elect to take part in an informal resolution process as set forth in this policy, or temporarily delayed for good cause as defined by applicable law.
- B. Throughout the grievance process all relevant evidence will be objectively evaluated and credibility determinations shall not be based on a person's status as Complainant, Respondent, or witness. At no time shall the School Department require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless said privilege has been knowingly waived.
- C. Upon receipt of a formal complaint of sexual harassment, the School Department shall:
  - 1. Provide a written notice to all known parties that shall include:
    - a. Notice of the grievance process;
    - b. Notice of the allegations of sexual harassment to include the identities of all parties. The written notice should identify students by their initials, however verbal notification of the full name of students must be given to all parties.
    - c. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will only be made at the conclusion of the grievance process.
    - d. Notice that the parties may engage an advisor of their choice, who may be, but is not required to be, an attorney;
    - e. Notice that the parties have the right to inspect and review evidence as part of the grievance process.
    - f. Notice of any provision in the School Department's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during a grievance process.

2. If, in the course of an investigation, the School Department decides to investigate additional allegations concerning the parties that are not included in the aforesaid initial written notice, the School Department shall provide notice of said additional allegations to the known parties.
3. Conduct an Investigation adhering to the following guidelines:
  - a. The investigation of all formal complaints shall be completed in a reasonably prompt manner.
  - b. Upon receipt of a formal complaint, the Title IX Coordinator shall appoint an appropriately trained and unbiased investigator to create an investigative report that fairly summarizes the relevant evidence obtained during their investigation.
  - c. Throughout the investigation process the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility shall remain on the School Department and not on the parties.
  - d. The investigation shall include equal opportunities for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence to the investigator.
  - e. Both parties shall be provided with the same opportunities to be accompanied to any related meeting by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting.
  - f. The School Department shall provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
  - g. The School Department shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
  - h. The School Department cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision

of treatment to the party, unless the School Department obtains that party's voluntary, written consent, or, if the party is a student under the age of 18, the written consent of their parent or legal guardian.

- i. The investigation process shall provide both parties an equal opportunity to inspect and review any and all evidence obtained by the School Department that is directly related to the allegations raised in the formal complaint, including the evidence upon which the School Department does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.
- j. The School Department shall send to each party and the party's advisor, if any, all evidence subject to inspection and review in an electronic format or a hard copy. The parties must then be given at least 10 days to submit a written response to the evidence, which the investigator will consider prior to their completion of the investigative report.
- k. The investigator shall complete a final investigative report, which will be sent to each party and the party's advisor, if any, for their review and written response.
- l. Upon review of the final investigative report, each party shall afford be afforded 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.
  - i. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
  - ii. The investigator shall explain to the party proposing the questions any decision to exclude a question as not relevant.

4. Dismissal of a formal complaint.
  - a. The School Department MUST dismiss a formal complaint if:
    - i. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy even if proved;
    - ii. Did not occur in the School Department's education program or activity; or
    - iii. Did not occur against a person in the United States.
  - b. Such a dismissal does not preclude the School Department from taking action under any other relevant provision(s) of its code(s) of conduct.
  - c. The School Department MAY dismiss the formal complaint if at any time during the investigation or hearing:
    - i. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any allegations therein;
    - ii. The Respondent is no longer enrolled in, or employed by, the School Department; or
    - iii. Specific circumstances prevent the School Department from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
  - d. Upon the dismissal of a formal complaint, the School Department shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
5. Consolidation of formal complaints. The School Department may consolidate formal complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

## VI. DETERMINATION OF RESPONSIBILITY

- A. The Superintendent shall be responsible for rendering a decision regarding the formal complaint.
- B. The standard of review shall be by the preponderance of the evidence.

- C. In no case shall a final determination be made inside of ten days from the sending of the final investigative report.
- D. Once a final determination is made, the Superintendent shall issue a written decision and determination regarding responsibility.
  - 1. The written determination shall include:
    - a. Identification of the allegations potentially constituting sexual harassment;
    - b. 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, and methods used to gather other evidence;
    - c. Findings of fact supporting the determination;
    - d. Conclusions regarding the application of the School Department's code of conduct to the facts;
    - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the School Department imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the School Department's education program or activity will be provided to the Complainant; and
    - f. The School Department's procedures and permissible bases for the Complainant and Respondent to appeal.
  - 2. The School Department shall provide the written determination to the parties simultaneously.
  - 3. The determination shall become final either on the date that the School Department provides the parties with the written determination of the result of any appeal, or on the date upon which an appeal would no longer be considered timely.

## VII. REMEDIES

- A. Following a determination of responsibility, the range of possible disciplinary sanctions are as set forth in the Student Code of Conduct/Handbook and shall be determined by the superintendent.



- B. The Title IX Coordinator is responsible for effective implementation of any remedies to be provided to the Complainant.

## VIII. APPEALS

- A. Both parties shall have the right to an appeal from a determination regarding responsibility, and from a School Department's dismissal of a formal complaint or any allegations therein, on the following bases:
  - 1. Procedural irregularity that affected the outcome of the matter;
  - 2. New evidence that could affect the outcome of the matter that was not reasonably available at the time the determination regarding responsibility or dismissal was made, or
  - 3. The Title IX Coordinator, investigator(s) or Superintendent had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- B. The School Committee shall serve as the decision-maker for any appeal that is taken, according to the following procedure and Policy BGBA, Appeals to the School Committee:
  - 1. If either party wishes to appeal from a written determination of responsibility, they must file a notice of appeal with the Title IX Coordinator within thirty (30) days from the date that the School Department provided said written determination.
  - 2. The School Department shall notify the other party in writing when an appeal is filed. Each party will then have ten days to submit a written statement in support of, or challenging, the outcome.
  - 3. Following this ten-day period, the School Committee will take up the matter in executive session at its next business meeting.
  - 4. The School Committee shall issue a written decision describing the result of the appeal and the rationale for the result and provide it to both parties simultaneously.

## IX. TRAINING

- 1. All individuals designated as a Title IX Coordinator, investigator, decision-maker, and any person who facilitates an informal resolution process shall remain free of all conflicts of interest and biases whether for or against complainants or respondents generally or an individual Complainant or Respondent.

2. The School Department shall ensure that all such individuals receive training on the definition of sexual harassment, the scope of the School Department's education programs and activities, how to conduct an investigation and grievance process including appeals, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
3. The School Department shall further ensure that all decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.
4. Investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes all relevant evidence.
5. All training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

#### X. RECORDKEEPING

1. The School Department shall maintain the following records for a period of seven years:
  - a. Each sexual harassment investigation including any determination regarding responsibility and any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the School Department's education program or activity;
    - i. Any appeal and the result therefrom;
    - ii. Any informal resolution and the result therefrom; and
    - iii. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.
2. The School Department must make these training materials publicly available on its website.
3. For each response required under this policy, the School Department must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
4. For each response, the School Department must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the School Department's education program or activity. If a School Department does not

provide a Complainant with supportive measures, then the School Department must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

- a. The documentation of certain bases or measures does not limit the School Department in the future from providing additional explanations or detailing additional measures taken.

## XI. COMPLAINTS TO EXTERNAL AGENCIES

Nothing in this policy is intended to discourage a complainant from reporting acts of unlawful sexual harassment or sexual violence to local law enforcement. In the event a complainant chooses to file a report with local law enforcement in addition to filing a complaint with PSD under this policy, the school department will conduct its own investigation, independent of any law enforcement investigation.

In addition, any individual who believes they have been subjected to sexual harassment may file a formal complaint with:

The United States Department of Education  
Office for Civil Rights (“OCR”)  
Post Office Square  
Boston, MA 02109  
(617) 289-0111

## XII. RETALIATION AND MALICIOUS REPORTING PROHIBITED

PSD prohibits retaliation against any individual who makes a report of sexual harassment or who cooperates in an investigation. Any student or employee who believes they have been subject to retaliation is encouraged to report the retaliation to the Title IX Coordinator.

Any individual found to have retaliated against a student or employee for reporting sexual harassment or for cooperating in the investigation of a complaint is in violation of this policy and will be subject to disciplinary action.

[Title IX of the Education Amendments of 1972]  
[C.F.R. § 106.30 et seq.]

Policy Adopted: 06/08/21

Portsmouth School Department  
Portsmouth, Rhode Island