

## HARASSMENT, DISCRIMINATION, AND SEXUAL HARASSMENT OF STUDENTS

*Safe and Equitable Schools: Preventing and Addressing Harassment, Discrimination, and Sexual Harassment*

### **Affirming our Mission**

All students have the right to attend school free from discrimination and harassment, including sexual harassment, assault, and misconduct, based on membership in a protected category. This policy addresses harassment and discrimination of students based on race, color, sex, sexual orientation, gender identity, religion, ancestry or national origin, language, genetic information, pregnancy/family status, or disability (mental or physical) (hereinafter referred to collectively as “protected categories”).

Portland Public Schools (PPS) affirms our intention to create a climate of respect, inclusion, and equity for all. We acknowledge that historical and societal biases shape our school policies, culture, and interpersonal interactions. We commit to increased prevention programming and education and swifter intervention when problems are reported. We commit to repairing the harm caused to individuals and to school communities when there are incidents or patterns of bias, discrimination, harassment, or sexual harassment. We strive to create a school district where all students, staff, and faculty feel safe and welcome.

The Board prohibits discrimination and harassment, including sexual harassment, of students at school or at school-sponsored or school-related activities. The Board also prohibits retaliatory behavior or action against any person who reports, files a complaint or testifies about, or otherwise supports a complainant in alleging discrimination or harassment. Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as a violation of district policy if it interferes with access to any school program or services or creates a hostile school environment for the complainant or victim of the conduct.

PPS will use age-appropriate preventative and responsive strategies that empower victims of discrimination and harassment, ensure school safety, and support positive behavioral change. We will emphasize training and education of all school members to prioritize the prevention and de-escalation of bias related incidents. We will use educational interventions to resolve issues when possible, keeping the following at the forefront:

- We will focus on the safety and well-being of the targeted person/groups throughout the investigation and resolution of a report or complaint;
- When an individual’s physical or emotional safety and/or educational rights are in jeopardy, we will take swift action to stop the unsafe behaviors and address harm;

- We maintain privacy and confidentiality as required by law and school policy, and provide a non-punitive response when it serves the goals of this policy;
- We will provide support to those who experience direct and indirect harm from discrimination, harassment, including sexual harassment, after the resolution of a particular complaint as needed and desired by the complainant;
- We will work to address reports that suggest there are patterns of harassment or discrimination, even if those reports do not become formal complaints.

## Definitions

1. **“Discrimination”**: Treating individuals differently, or interfering with or preventing them from enjoying the advantages or privileges afforded to others because of their membership or targeted/perceived membership in a protected category.

Examples include (but not limited to):

1. disparities in access to educational programs, including extra curriculars, honor societies and classes.
2. disparities in discipline, including severity of consequences for misbehavior
3. disparities in the application of school policies, such as dress code enforcement or congregating in informal spaces

2. **“Harassment”**: Harassment based on membership in a protected category is a form of prohibited discrimination. Oral, written, graphic, electronic or physical conduct relating to an individual’s actual or perceived membership in a protected category that has a negative impact on a student and interferes with or limits that individual’s ability to participate in the school unit’s programs or activities by creating a hostile, intimidating or offensive environment.

Examples include (but not limited to):

1. teasing or joking about a person based on their identity that continues after the accused has been asked to stop
2. using racial epithets or images
3. threatening a person with violence if they don't conform to particular ways of expressing their gender identity (note : threats of violence can also be criminal violations under Maine's Hate Crime laws)

Harassment that rises to the level of physical assault, battery and/or abuse, and/or bullying behavior is also addressed in Board Policies JICIA – Weapons, Violence and School Safety and JICK – Bullying.

### **A. Sexual Harassment**

Sexual harassment is addressed under federal and state laws/regulations. The scope and definitions of sexual harassment under these laws and Board policy differ, as described below.

#### **1. Title IX Sexual Harassment<sup>i</sup>**

Under the federal Title IX regulations, sexual harassment includes the following conduct on the basis of sex which takes place within the context of the school district's education programs and activities:

- a. "Quid pro quo" sexual harassment by a school employee: Conditioning a school aid, benefit or service (such as a better grade or a college recommendation) on an individual's participation in unwelcome sexual conduct;
- b. "Hostile environment" sexual harassment: Unwelcome conduct based on sex that a reasonable person would determine is so severe, pervasive and

objectively offensive that it effectively denies an individual's equal access to the school unit's education programs and activities; or

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c. Sexual assault, dating violence, domestic violence and stalking as these terms are defined in federal laws.

## **2. Sexual Harassment Under Maine Law**

Under Maine law, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature in the following situations:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of a student's educational benefits;
- b. Submission to or rejection of such conduct by a student is used as the basis for decisions on educational benefits; or
- c. Such conduct has the purpose and effect of substantially interfering with a student's academic performance or creates an intimidating, hostile or offensive environment.

## **3. Sexual Harassment Under Board Policy**

Examples of types of conduct which are prohibited in the district include but are not limited to those listed below. These types of conduct may constitute sexual harassment under Title IX or Maine law when they satisfy one of the above definitions, but are prohibited as a matter of Board policy whether or not they violate the law.

- a. Unwelcome leering, sexual flirtations, or propositions;
- b. Unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments, or sexually degrading descriptions;
- c. Graphic verbal comments about an individual's body, unwanted sexual comments or questions, or overly personal conversation;
- d. Sexual jokes, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures, or computer-generated images of a sexual nature;
- e. Spreading sexual rumors;
- f. Teasing or sexual remarks about students enrolled in a predominantly single-sex class or activity;
- g. Massaging, grabbing, fondling, stroking, or brushing the body;
- h. Touching an individual's body or clothes in a sexual way;
- i. Impeding or blocking an individual's movements or any physical interference with school activities when directed at an individual on the

- basis of sex or gender expression;
- j. Displaying sexually suggestive objects;
- k. Sexual assault, sexual battery, or sexual coercion;
- l. Sexual violence which is the perpetration of a sexual act on a person without their affirmative consent;

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- m. Sharing of sexually explicit pictures without the consent of the person in the picture or pictures (Note: sharing sexual pictures can also be a criminal act if the picture is of a minor); or
- n. Electronic communications containing comments, words, or images described above.

### **Reports and Complaints of Harassment, Discrimination or Sexual Harassment**

All school employees are required to report possible incidents of harassment, discrimination or sexual harassment involving students to the Affirmative Action Officer/Title IX Coordinator. Failure to report such incidents may result in disciplinary action.

Students, parents/legal guardians and other individuals are strongly encouraged to report possible incidents of harassment, discrimination or sexual harassment involving students to the Affirmative Action Officer/Title IX Coordinator or school level Liaison. The Affirmative Action Officer/Title IX Coordinator and school level Liaison are also available to answer questions and provide assistance to any individual who is unsure whether harassment, discrimination or sexual harassment has occurred.

All reports and complaints of harassment, discrimination or sexual harassment against students shall be addressed through the Harassment, Discrimination, and Sexual Harassment of Students Complaint Procedure (ACAA-R).

Reports of abuse or sexual misconduct may require a report to the Department of Health and Human Services if the alleged victim is a minor and to the police if suspected criminal activity has occurred (see Board Policy JLF Reporting Child Abuse and Neglect).

### **Reporting without Fear of Consequences or Retaliation**

PPS encourages all students, staff and community members who witness or experience harassment or discrimination to report the behavior to an adult in the community. We acknowledge that students may want to first seek confidential resources and will notify students of these resources through our website, student handbook, and annual notifications.

PPS will establish an anonymous reporting process to provide students the option to make a report without elevating it to a formal complaint. However, this process will not necessarily allow for investigation, remedial action and accountability, but will be part of

the school's overall annual report on school climate and needs for change. The process for making anonymous reports will be in place by the fall of 2021 and may be changed by the Superintendent's office.

The experience of bringing a formal complaint can be difficult for anyone. Retaliation for making a complaint will absolutely not be tolerated. Support from community partners and school personnel will be offered to parties involved in formal complaint proceedings, and PPS will protect privacy and confidentiality (see procedures for details).

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School faculty and staff will work in partnership with students to identify and address patterns of discrimination, harassment, and sexual harassment that threaten educational equity. We will use a variety of tools, including engaging student activists, climate surveys, listening sessions, and incorporating suggestions from students and community partners as problems and solutions are identified.

Legal Reference: Americans with Disabilities Act (42 U.S.C. §12101 et seq., as amended; 28 C.F.R. § 35.107)

Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 C.F.R. § 104.7)

Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.); 34 C.F.R. Part 106

Clery Act (20 U.S.C. §1092(f)(6)(A)(v) - definition of sexual assault) Violence Against Women Act (34 U.S.C. § 1092(f)(6)(A)(v) – definition of sexual assault; 34 U.S.C. § 12291(a)(10) – dating violence; 34 U.S.C. §12291(a)(3) – definition of stalking; 34 U.S.C. §12291(a)(8) – definition of domestic violence)

Title VI of the Civil Rights Act of 1964 (42 USC § 2000d)

Maine Human Rights Act, 5 MRSA § 4551 et seq.

20-A MRSA § 6553

MHRC/MDOE Joint Rule Chapter 94-348 and 05-071, ch. 4

Cross Reference: ACAA-R – Student Discrimination/Harassment and Title IX Sexual Harassment Complaint Procedures

AC – Nondiscrimination/Equal Opportunity and Affirmative Action

ACAD – Hazing

GBEB – Staff Conduct with Students

JFCK – Student Use of Cellular Telephones and Other Electronic Devices

JICIA – Weapons, Violence and School Safety

JICK – Bullying

JLF – Child Abuse and Neglect

## <sup>i</sup> Understanding Title IX

Title IX of the Education Amendments Act of 1972 prohibits discrimination on the basis of sex in public education. In 2011, the Obama Administration offered guidance to schools that included recognition that sexual harassment, assault, and misconduct could interfere with a student's capacity to receive an equal education as compared to another student who does not have this experience. The guidance noted that a pattern of less severe but persistent harassment—sometimes called “microaggressions”—could have the effect of interfering with the educational progress of a student, and that students in a targeted identity category could experience an overall hostile climate even if not directly victimized. This recognition, as well as evidence that girls and women, trans and gender nonbinary students, and students identifying as

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or targeted as lesbian, gay, or bisexual were the most likely targets of sexual harassment, led to a wide array of prevention programs and intervention strategies. In 2020, the Trump administration changed this guidance. The changes affirmed:

1. a school's duty to maintain an environment that is safe for all students, including providing prevention education;
2. that all K-12 staff are considered “responsible adults” with mandatory reporting to trained Title IX coordinators when they witness or learn about potential violations to Title IX;
3. that schools must designate and train a Title IX coordinator who is known to the whole community;
4. That the whole community, including students, parents/guardians, staff and faculty, athletic and extra-curricular staff and volunteers must be notified of this policy and procedures for filing informal reports.

New changes to Title IX guidance include:

1. to be considered actionable under Title IX, a student must experience harassment that reaches the threshold of *severe, pervasive, AND persistent* (whereas the threshold in the general anti harassment procedures are that an experience of harassment or discrimination that is severe, pervasive, OR persistent requires response).
2. to be considered actionable under Title IX, a student or reporting adult must file a formal written complaint, not just an oral one (our general anti-harassment procedures encourage intervention and response to any incident of bias, discrimination, harassment, or violence);
3. Once a formal complaint is made, there are clear guidelines for investigation and resolution of complaints, outlined in the procedures. These formal guidelines include the requirement that interim accommodations not favor either the accused or accusing party (whereas in the general anti-harassment policy the accusing student is given preferential treatment when accommodations are needed).
4. Once a formal complaint is made, the investigatory process must include written questions and answers from all parties involved. Before reaching the threshold of a formal Title IX complaint, PPS may investigate reports and complaints without this requirement. In both instances, PPS will use

trauma-informed processes and rely on trained independent investigators when possible.

5. The Trump administration uses a narrower definition of “sex” than is interpreted under Maine law, where students are protected based on gender diversity and sexual orientation statuses. Whether these are protected categories under current federal Title IX law remains contested. Students’ rights to safety at school are also protected in the PPS transgender students policy.