



**HAVERHILL PUBLIC
SCHOOLS**

Title IX Training



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Federal Law: Title IX

Title IX is a federal civil rights law passed as part of the Education Amendments of 1972. This law protects people from discrimination **on the basis of sex** in educational programs or activities that receive federal funds. Title IX obligations can include:

- recruitment, admissions, and counseling;
- financial assistance;
- athletics;
- sex-based harassment;
- treatment of pregnant and parenting students;
- discipline;
- single-sex education;
- and employment



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Title IX and Sexual Misconduct

Definitions under MA State Law:

In the **employment** context, 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.



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Title IX and Sexual Misconduct in Schools

In the **educational** context, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct ("quid pro quo harassment");
- 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 recipient's education program or activity ("hostile environment harassment"); or
- "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30)



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Title IX Complaint Process

- If you have actual knowledge of an event or allegation that may constitute sexual harassment or discrimination based on gender, contact the Title IX Coordinator, **Bonnie Antkowiak, Chief of Teaching, Learning and Leading**
- The Title IX Coordinator will then contact the complainant and do the following:
 - ➔ Discuss/offer supportive measures
 - ➔ Consider complainant's wishes about supportive measures
 - ➔ Explain that supportive measures can be received with or without filing a complaint
 - ➔ Determine whether a formal complaint will be filed
 - ➔ Review the purpose of filing a formal a complaint with complainant



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What is a Formal Complaint?

- A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting that the district investigate the allegation of sexual harassment.
- The complaint process will generally take place between 30-60 days but can be extended for good cause.
- If the complainant declines to file a formal complaint, the Title IX Coordinator may decide to still do so.

This is appropriate when safety or similar concerns lead the district to investigate and potentially sanction a respondent.

If the Title IX Coordinator chooses to do this, the decision will be documented in writing with an explanation as to why.



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Can a Formal Complaint be dismissed?

- Yes under these circumstances:
 - ➔ *The action would not constitute sexual harassment as defined even if proved*
 - ➔ *The action did not occur in the district's educational program or activity*
 - ➔ *Did not occur against a person in the United States*
- A dismissal of a Formal Complaint will include a written notice of dismissal signed by the Title IX Coordinator.



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Title IX: Written Notice of Complaint

- Prior to any investigation, the district will send written notice to both parties with details which include:
 - ➔ *Identities of the parties 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 inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.



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Title IX: Informal Resolution

- This can occur after a formal complaint has been filed and written notice has been issued.
- The Title IX Coordinator can consider offering mediation; both parties must give written consent for this process.
- Informal resolution cannot be used if the allegation is against an employee respondent.
- The mediation offered must not be biased in any way or run by anyone who is biased in any way. This includes having a conflict of interest.
- Informal resolution is entirely voluntary.
- If both parties feel their grievances have been sufficiently addressed this ends the process.



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Title IX: Investigation

- The Title IX Coordinator will designate an investigator and a decision maker, who may not be the same person.
- The investigator must not be biased against any of the parties at the outset of the investigation.
- The investigator will be responsible for interviewing parties and witnesses, finding facts, and making determinations related to credibility, all of which will go into a written report.
- The investigator must avoid all questions that are protected by legal privilege, unless the privilege has been waived, and should avoid asking about the complainant's sexual history unless it is directly relevant to prove consent to the conduct at issue or to prove that the conduct was committed by someone other than the respondent.



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Title IX: Investigation

- Complainants and respondents have a right to have advisors of their choice participate in all aspects of the proceedings.
- During the investigation, each party must be provided an equal opportunity to present both fact and expert witnesses.
- Prior to completion of the investigative report, the school district will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- School districts may not limit students' and employees' ability to discuss (i.e., speak or write about) the allegations under investigation, for example with a parent, friend, or other source of emotional support, or with an advocacy organization.



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Title IX: Investigative Report

- This is a formal report of the findings.
- This report will not include final determinations of responsibility for sexual harassment.
- A copy will be sent to the complainant and the respondent.
- It will also be sent to the decision-maker who will be the Superintendent of Schools or other designee as determined by the Title IX Coordinator.
The decision-maker will not be someone who is biased against either party.



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Title IX: Decision-Making

- The decision-maker will offer both the complainant and respondent the opportunity to submit proposed relevant, written questions to ask of any party or witness, to respond to questions posed by another party, and to offer additional limited follow-up.
 - ➔ 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.
 - ➔ The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.
 - ➔ The decision-maker must consider what is relevant, using the same criteria of relevancy as discussed during the investigation.



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Title IX: Formal Decision

- After this process is complete, the decision-maker will create a written determination (formal decision) regarding whether sexual harassment has occurred using a preponderance of the evidence standard.
- A preponderance of the evidence means more likely than not.
- A school district must think about how a reasonable person would view the conduct when determining whether the conduct constitutes sexual harassment. In making this determination, school districts may consider the age and number of parties involved.



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Title IX: Next Steps

- The decision-maker shall further recommend what action, if any, is required.
- If there is a finding that sexual harassment occurred, the school district will provide remedies to the complainant designed to restore or preserve equal access to the school 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.
- School 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.



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Title IX: Right to Appeal

- Any party may appeal the decision in writing on the following bases:
- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) 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.
- All parties will be notified about any appeal.
- Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- The appeal will review the investigation for comprehensiveness and accuracy and issue written findings to both parties.



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Title IX: Retaliation is 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.



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Title IX: Any questions can be directed to the Title IX Coordinator:

- **Bonnie Antkowiak, Chief of Teaching, Learning and Leading**
bantkowiak@haverhill-ps.org

Additional Resources:

- Sandra McArthur (staff) smcarthur@haverhill-ps.org
- Dianne Connolly (students) dconnolly@haverhill-ps.org

Legal references, FAQs, webpage:

- https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html
- <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/sex.html>



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***Section 504 of the
Rehabilitation Act of 1973***



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FEDERAL LAW: SECTION 504

Requires that no qualified disabled person shall be discriminated against or be excluded from participation in an activity.

- A disability is a mental or physical impairment that substantially limits one or more major life activities (including but not limited to self-care, walking, seeing, learning, breathing, speaking, concentrating, hearing, eating).
- Reasonable accommodations/modifications must be made to provide access to programs and/or facilities.



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FEDERAL LAW: SECTION 504

- Section 504 is a civil rights law that prohibits discrimination against individuals with disabilities. Section 504 ensures that the child with a disability has equal access to an education. The child may receive accommodations and modifications to assist with access.
- Unlike the Individuals with Disabilities Education Act (IDEA), Section 504 does not require the school to provide an individualized educational program (IEP) that is designed to meet the child's unique needs and provides the child with educational benefit. Under Section 504, fewer procedural safeguards are available to children with disabilities and their parents than under IDEA.



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FEDERAL LAW: SECTION 504

What are Section 504 accommodations?

Accommodations are adjustments and/or modifications made by the classroom teacher(s) and other school staff that enable students to have equal access and benefit from the educational program. The accommodations must go beyond what a teacher or school would normally provide as a part of best teaching practices. Types of accommodations may include:

1. Presentation Accommodations: Changes in the way information is presented to accommodate learning styles
2. Response Accommodations: Allows student to complete work in different ways or to use an assistive device or organizer
3. Setting Accommodations: Changes in the setting or location in which an assignment or test is given.



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FEDERAL LAW: SECTION 504

For Students:

- For benefits or services provided to be “equally effective,” they must afford students with disabilities an equal opportunity to obtain the same results, gain the same benefit, or reach the same level of achievement as other students.



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- No discrimination against a person with a disability will be permitted in any of the programs of the Haverhill Public School district.
- **504 Plans are legally binding documents - it is the responsibility of all staff working with a student to know and implement their 504 Plan**
- Teacher feedback and teacher participation in 504 eligibility or annual review meetings are essential to the evaluation process
- Questions about 504 plans are to be directed to the building based 504 coordinator.



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*Thank you for your attention to these laws which impact
your daily practice - it is your professional responsibility
to know and abide by these laws.*