



SPRINGFIELD PUBLIC SCHOOLS' POLICY OF NON-DISCRIMINATION, INCLUDING HARASSMENT AND RETALIATION, OF EMPLOYEES

INTRODUCTION

Springfield Public Schools (SPS) is committed to maintaining a work environment free from all forms of unlawful discrimination, including harassment and retaliation. In the employment context, discrimination or harassment of a SPS employee by administrators, teachers, certified and support personnel, students, vendors, and other individuals at school or at school-sponsored events based on an employee's race, color, religion, national origin, sex, gender identity, sexual orientation, homosexuality, transgender status, genetic information, pregnancy, or pregnancy related condition, ancestry, age, disability, veteran status or marital status is unlawful and is strictly prohibited.

SPS requires all of its employees to conduct themselves in an appropriate manner, with respect for their fellow employees, students, and all members of the school community.

DEFINITION OF DISCRIMINATION AND HARASSMENT

In General. Discrimination and harassment includes communications such as gestures, jokes, comments, innuendoes, notes, display of pictures or symbols, communicated in any form, including orally, in writing, or electronically via the Internet, social media, cell phones, text messaging or in any other way, that shows disrespect to others based upon a legally protected class. Legally protected classes for employment purposes include: race, color, religion, national origin, sex, gender identity, sexual orientation, homosexuality, transgender status, genetic information, ancestry, age, disability, military service or marital status.

By law, what constitutes harassment is determined from the perspective of a reasonable person with the characteristic on which the harassment is based. What one person may consider acceptable behavior may reasonably be viewed as harassment by another person. Therefore, individuals

should consider how their words and actions might reasonably be viewed by other individuals. It is also important for individuals to make it clear to others when a particular behavior or communication is unwelcome, intimidating, hostile, or offensive.

Sexual Harassment.

Sexual Harassment. Sexual harassment is unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature when:

- Submission or rejection of such conduct is made either explicitly or implicitly a term or condition of employment;
- Submission or rejection of such conduct is used as a basis for employment decisions affecting an employee;
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work; or
- Such conduct has the purpose or effect of unreasonably creating an intimidating, hostile, or offensive work environment.

Under Title IX, the definition of sexual harassment includes:

- unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to SPS's education program or activity;
- unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature;
- conduct by an SPS employee conditioning an educational benefit or service upon a student's participation in unwelcome sexual conduct, often called quid pro quo harassment;
- sexual assault as the Federal Clery Act defines that crime;
- sexual violence, as the Office of Civil Rights uses the term. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse and sexual coercion.

Under the definition stated above, direct or implied request by a teacher, supervisor or any individual in a position of work or school authority for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, continued employment, or other advantages constitutes sexual harassment.

While it is not possible to list all circumstances that may constitute sexual harassment, the following are some examples of conduct that are inappropriate and that, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances--whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons; e-mail, screen savers or computer graphics
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences;
- Discussion of one's sexual activities; or
- Sexually explicit voicemails, e-mails, graphics, downloaded materials or websites.

RETALIATION PROHIBITED

Retaliation against any individual who has brought a complaint of unlawful discrimination or harassment to the attention of the school or who has cooperated in an investigation of a complaint of unlawful discrimination or harassment is unlawful and will not be tolerated by the SPS.

With respect to reports or complaints of sexual harassment, any intimidation, threats, coercion, or discrimination, including charges against an individual for policy violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, constitutes retaliation.

REPORTING COMPLAINT

If a SPS employee believes that the employee has been unlawfully harassed or discriminated against, or has witnessed or learned about the unlawful harassment or discrimination of another person in the school environment, the employee has the right to make a complaint with SPS.

Employees can make a complaint to the employee's building principal, a SPS Human Resources Senior Administrator, SPS's Chief of Human Resources or the SPS's Civil Rights Coordinator/Title IX Coordinator. Complaints can be made in writing or verbally. Regarding Title IX complaints, the employee reporting the sexual harassment does not have to be the person at whom the unwelcome sexual conduct is directed. The person, regardless of gender, may be a witness to and personally offended by such conduct. SPS Administrators who observe incidents of unlawful harassment or discrimination involving any employee shall report such incidents to the employee's building principal, to SPS's Human Resources Senior Administrator, SPS's Chief of Human Resources or to SPS's Civil Rights Coordinator/Title IX Coordinator.

Any SPS employee to whom a complaint of sexual harassment is made shall immediately inform the employee's building principal, SPS's Human Resources Senior Administrator, SPS's Chief of Human Resources, or SPS's Civil Rights Coordinator/Title IX Coordinator about the complaint.

Except to the extent necessary to conduct an investigation, SPS must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witnesses.

INVESTIGATION OF COMPLAINTS OF UNLAWFUL HARASSMENT OR DISCRIMINATION (OTHER THAN TITLE IX)

SPS will investigate complaints of unlawful harassment or discrimination in a fair and expeditious manner and as soon as practicable. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. The procedures are designed to promote the sensitive handling of employee issues, the thorough investigation of complaints, and a fair and equitable resolution of complaints.

Please note that while these procedures relate to SPS's policy of promoting a workplace free from unlawful discrimination and harassment, including retaliation, these procedures are not designed nor intended to limit SPS's authority to discipline or take remedial action for workplace conduct which SPS deems unacceptable.

No reprisals or retaliation shall be invoked against any individual, including complainants, respondents, and witnesses, for reporting unlawful harassment or discrimination in good faith, either on an informal or formal basis, or for participating or refusing to participate in any way in these complaint procedures.

If an employee is found to have made a materially false statement in bad faith during the employee's testimony, assistance or participation in any manner in an investigation, proceeding, or hearing of a sexual harassment complaint, charging the employee with a code of conduct violation does not constitute retaliation.

A. Procedures

1. Informal Resolution of Discrimination and Harassment Concerns

Before initiating the formal procedure, the employee should, if possible, attempt to resolve any complaint on an informal basis. The employee can raise the issue of unlawful discrimination or harassment to either his or her supervisor or to SPS's Chief of Human Resources. The appropriate department or school administrator shall attempt, within that person's authority, to work with the individual to resolve the complaint fairly and expeditiously within a reasonable time from receiving the complaint.

2. Formal Resolution of Discrimination and Harassment Concerns

If the employee is not satisfied with the informal resolution, or if the employee does not choose the informal resolution procedure, then the employee can begin the formal complaint process. In order to initiate the formal procedure, the employee shall submit a written complaint which identifies the name of the person alleged to have discriminated against or harassed the employee, the location of the school/department where the alleged discrimination or harassment occurred, the specifics of the conduct complained of, and the remedy the employee is seeking.

If a SPS employee chooses to proceed with the formal resolution procedure, the employee must submit the written complaint to SPS's Civil Rights Coordinator/Title IX Coordinator. Employees are encouraged to submit the complaint no later than twenty (20) calendar days after the alleged discriminatory or harassing conduct occurred in order for an expeditious

investigation to be conducted, unless extenuating circumstances exist. After submitting the formal written complaint, SPS's Civil Rights Coordinator/Title IX Coordinator or designee will promptly conduct the necessary investigation. If appropriate, interim measures will be put in place to protect the employee.

The investigation should generally include an interview with the person filing the complaint and also may include interviews with witnesses or other individuals who SPS believes would be useful to the investigation. SPS also may interview the person alleged to have engaged in the conduct that is the subject of the complaint. The investigation may also include a review of documents or other items that may be relevant to the allegations and to which the investigator has access.

If the complaint involves employee conduct that occurred off school grounds, outside of a school's education program or activity, SPS may, as part of its investigation, consider the effects of the off-school grounds conduct when evaluating whether there is a hostile environment on school grounds or during work.

Strict timelines cannot be set for conducting the investigation because each set of circumstances is different. For example, sometimes the employees that are involved in the complaint are not immediately available. SPS, however, will seek to handle the complaint as quickly as is feasible.

INVESTIGATION OF TITLE IX COMPLAINTS

Under Title IX, SPS is required to investigate every formal complaint and respond meaningfully to every known report of sexual harassment. Title IX regulations highlight the importance of supportive measures designed to preserve or restore access to the school's education program or activity, with or without a formal complaint. Where there has been a finding of responsibility, the regulation would require remedies designed to restore or preserve access to the school's education program or activity.

Due process protections for Title IX investigations include the following:

- 1) A presumption of innocence throughout the grievance process, with the burden of proof on the school;
- 2) A prohibition of the single investigator model, instead requiring a decision — maker separate from the Title IX Coordinator or investigator;
- 3) The preponderance of the evidence standard, subject to limitations;
- 4) The opportunity to test the credibility of parties and witnesses through cross examination, subject to "rape shield" protections;
- 5) Written notice of allegations and an equal opportunity to review the evidence;
- 6) Title IX Coordinators, investigators, and decision-makers must be free from bias or conflict of interest;
- 7) Equal opportunity for parties to appeal, where schools offer appeals;
- 8) Upon filing a formal complaint, SPS must give written notice to the parties containing sufficient details to permit a party to prepare for any initial interview and proceed with a factual investigation. SPS can chose to conduct a hearing regarding the complaint. When a hearing is conducted, the parties must be allowed to submit written questions to challenge each other's credibility before the decision-maker makes a determination. After the investigation, a written determination must be sent to both parties explaining each allegation, whether the respondent is responsible or not responsible, including the facts and evidence on which the conclusion was based by applying the preponderance of the evidence standard. As long as the process is voluntary for all parties, after being fully informed and written consent is provided by both parties, a school may facilitate informal resolution of a sexual harassment complaint. SPS may establish an informal investigation process that may, upon the request of the person bring the complaint be followed by a formal process.

SPS's Superintendent, in consultation with the Civil Rights Coordinator/Title IX Coordinator, shall designate the principal of each SPS school, or their designee (or some other appropriate employee(s)) as the initial entity to receive the sexual harassment complaint. Also, in a matter of sexual harassment, SPS shall require that the Civil Rights Coordinator/Title IX Coordinator be informed, as soon as possible, of the filing of the complaint. Nothing in this policy shall prevent any person from reporting the prohibited conduct to someone other than those above designated complaint recipients. The investigating officer may receive the complaint orally or in writing, and the investigation shall be conducted in such a way as to maintain confidentiality

to the extent practicable under the circumstances and in compliance with applicable law. The investigation will be prompt, thorough, and impartial, and will include, at least, a private interview with the person filing the complaint and with witnesses. Also, the alleged harasser will be interviewed. When the investigation is completed, the complaint recipient will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

Except to the extent necessary to conduct an investigation, SPS must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witnesses.

DISCIPLINARY ACTION

If it determines that unlawful harassment or discrimination has occurred, SPS will take appropriate action designed to end the unlawful harassment or discrimination. Employees found to have engaged in discrimination, unlawful harassment, sexual harassment or retaliation may be subject to disciplinary action, including, but not limited to, reprimand, suspension, termination or other sanctions as determined by the school administration, subject to applicable procedural requirements. Confidentiality will be maintained to the extent consistent with the school's obligations under law and under applicable collective bargaining agreements and to the extent practicable.

An employee who knowingly makes a false accusation of unlawful discrimination or harassment shall be subject to appropriate discipline.

RECORD KEEPING REQUIREMENTS RELATED TO TITLE IX

SPS must create and maintain for a period of seven years records documenting every Title IX sexual harassment investigation regarding employees. This could include mediation, restorative justice, or other models of alternative dispute resolution. SPS must keep records regarding its response to every report of sexual harassment of which it becomes aware even if no formal complaint was filed, including documentation of supportive matters offered and implemented for the complainant.

This policy, or a summary thereof that contain the essential policy elements shall be disseminated by SPS to its students, employees, student parent or guardian, unions and applicants for admission or employment.

STATE AND FEDERAL REMEDIES

In addition to the informal or formal resolution procedures, the employee has the right to file a complaint with the appropriate state or federal agency. The state agency responsible for enforcing laws prohibiting unlawful discrimination or harassment in the employment context is the Massachusetts Commission Against Discrimination, whose Boston Office location is at One Ashburton Place, Boston, MA 02108 (617-727-3990) and Springfield Office location is at 436 Dwight Street, Room 220 Springfield, MA 01103 (413-739-2145). The agency responsible for enforcing federal law prohibiting harassment in the employment context is the Equal Employment Opportunity Commission, which is located at the John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203 (617-565-3200 or 1-800-669-4000).

NOTICE OF NONDISCRIMINATION

SPS does not discriminate on the basis of sex, in accordance with Title IX (20 U.S.C. §1681(a)) and 34 CFR Part 106. SPS does not discriminate in employment on the basis of race, color, religion, nation origin, sex, gender identity, sexual orientation, homosexuality, transgender status, genetic information, pregnancy, or pregnancy related condition, ancestry, age, disability, veteran status or marital status.

SPS's Civil Rights Coordinator for Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Chapter 622 of the Acts of 1971 ("Title IX Coordinator") is Kathleen O'Sullivan, Senior Administrator of Human Resources, who may be reached at 413-787-7100, ext. 55428, 1550 Main Street, Springfield, MA 01103, or osullivank@springfieldpublicschools.com. Inquiries regarding the application of Title IX and its implementing regulations at 34 C.F.R. Part 106 to SPS may be referred to SPS's Civil Rights Coordinator/Title IX Coordinator, Kathleen O'Sullivan, the U.S. Department of Education, Office for Civil Rights, 400 Maryland Avenue, SW, Washington, D.C. 20202, telephone number (800)

877-8339 or the Regional Director, U.S. Department of Education, Office for Civil Rights, 8th Floor,
5 Post Office Square, Boston, MA 02109, telephone number (617) 289-0111.

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