

The following items will be discussed at the meeting of the Standing Committee on Governance and Employee Issues to be held on Tuesday, March 6, 2018 at 4:00 p.m. in Room 410 at the Durkin Administration Building:

gb #4-284 - Mr. O'Connell/Mr. Monfredo/Miss Biancheria/Miss Ramirez (October 21, 2014)

To cooperate with the Main South Community Development Corporation as to the safety and security needs of the students and staff of the Worcester public schools located in the Main South area, regarding utilization of the proceeds of the Byrne Criminal Justice Innovation Program grant received by the Main South CDC.

gb #5-291 - Mr. Monfredo/Miss Biancheria/Mr. Foley (October 19, 2015)

Request that the School Committee review the policy on cell phones and gather information from all secondary principals.

gb #6-307 - Miss McCullough/Mr. O'Connell/Mr. Monfredo/Ms. Colorio/Miss Biancheria (September 7, 2016)

Request that the Administration provide options for teaching responsible cell phone and social media use for middle and high school students.

(Consider these items together.)

c&p #6-7 - Clerk (August 24, 2016)

To consider a communication from a citizen expressing an interest in promoting civic engagement in the Worcester Public Schools by initiating a "Municipal Governance Day" which would give high school students an opportunity to learn how the municipal government works.

gb #6-36 - Mr. O'Connell/Mr. Monfredo/Miss McCullough (January 11, 2016)

To establish a Special Committee, consisting of at least three School Committee members, to continue the review of policies proposed for the Worcester Public Schools by the Massachusetts Association of School Committees.

gb #6-145 - Mr. O'Connell/Mr. Foley/Mr. Monfredo/Miss McCullough/Mayor Petty (April 4, 2016)

To consider adoption of Policy JLCD of the Massachusetts Association of School Committees, regarding administration of medications to students.

gb #6-202 - Mr. O'Connell/Ms. Colorio/Mr. Monfredo/Miss Biancheria (May 23, 2016)

To ask that the Roman Catholic Diocese of Worcester take whatever actions are necessary to safeguard the baseball field of the Joe DiMaggio Little League, and its surrounding property, for the use and enjoyment of the young people of the Shrewsbury Street – East Central Street neighborhood.

gb #7-125 - Administration (March 21, 2017)

To consider approval of the draft Policy and Procedures for Physical Restraints.

gb #7-323.1 Administration/Mr.O'Connell/Mr.Monfredo/Ms.Colorio(December 12, 2017)

Response of the Administration to the request to review the interim guidance of the U.S. Department of Education Office for Civil Rights on Title IX of the Education Amendments of 1972, and to determine whether any revisions need to be made to the policies and practices of the Worcester Public Schools in light of the guidance.

gb #7-355 - Lorenzo Hernandez (October 24, 2017)

To consider the following item from Lorenzo Hernandez, Ex-Officio Member of the School Committee:

To consider offering a cost free Driver's Education course for students at Worcester Technical High School.

gb #8-22.1 - Administration/Miss Biancheria/Mr. O'Connell/Mr. Monfredo (January 24, 2018)

Response of the Administration to the request to provide the following information relative to the process for DCF referrals to include:

- the timeframe for a principal to make a call to DCF, when needed
- the individuals who are notified of the phone call and
- the follow-up regarding the incident

gb #8-31 -Miss McCullough/Mr. Foley/Mr. Monfredo/Mr. O'Connell/Miss Biancheria/Mr. Comparetto/Miss McCullough (January 19, 2018)

Request that the Administration provide an update on the Attendance Policy currently in place and provide an:

- explanation of excused vs unexcused absences and
- the impact that the letters that are going home for chronic absenteeism are having on students and families.

gb #8-32 - Mr. Foley/Mr. Monfredo/Mr. O'Connell/Miss Biancheria/Mr. Comparetto/Miss McCullough (January 19, 2018)

Request that the Administration review the policy regarding absences of students from school and consider distinguishing in their student records unexcused absences from excused absences due to documented illnesses or religious holidays.

(Consider these items together)

Committee Members

John F. Monfredo, Chairman
Dianna L. Biancheria, Vice-Chairman
John L. Foley

Administrative
Representative

Jennifer Boulais
Helen A. Friel, Ed.D.

OFFICE OF THE
CLERK OF THE SCHOOL COMMITTEE
WORCESTER PUBLIC SCHOOLS
20 IRVING STREET
WORCESTER, MA 01609

AGENDA #1

The Standing Committee on GOVERNANCE AND EMPLOYEE ISSUES will hold a meeting:

on: Tuesday, March 6, 2018
at: 4:00 p.m.
in: Room 410, Durkin Administration Building

ORDER OF BUSINESS

- I. CALL TO ORDER
- II. ROLL CALL
- III. GENERAL BUSINESS

gb #4-284 - Mr. O'Connell/Mr. Monfredo/Miss Biancheria/Miss Ramirez (October 21, 2014)

To cooperate with the Main South Community Development Corporation as to the safety and security needs of the students and staff of the Worcester public schools located in the Main South area, regarding utilization of the proceeds of the Byrne Criminal Justice Innovation Program grant received by the Main South CDC.

gb #5-207 - Mr. Monfredo/Mr. O'Connell/Miss Biancheria (August 7, 2015)

Request that the Worcester Public Schools consider sharing information regarding the National Attendance Awareness Month movement sponsored by 40 national partners.

gb #5-291 - Mr. Monfredo/Miss Biancheria/Mr. Foley (October 19, 2015)

Request that the School Committee review the policy on cell phones and gather information from all secondary principals.

c&p #6-7 - Clerk (August 24, 2016)

To consider a communication from a citizen expressing an interest in promoting civic engagement in the Worcester Public Schools by initiating a "Municipal Governance Day" which would give high school students an opportunity to learn how the municipal government works.

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To establish a Special Committee, consisting of at least three School Committee members, to continue the review of policies proposed for the Worcester Public Schools by the Massachusetts Association of School Committees.

gb #6-39 - Mr. O'Connell/Mr. Monfredo/Miss Biancheria/Ms. Colorio/Miss McCullough (January 11, 2016)

To review the Every Student Succeeds Act, to address its impact on the Worcester Public Schools, and to consider any options which it provides to states and school districts to modify current practices and to reduce present testing, record-keeping and reporting requirements.

gb #6-143 - Mr. O'Connell/Mr. Foley/Mr. Monfredo/Miss Biancheria/Miss McCullough/Mayor Petty (April 4, 2016)

To review, and to prepare recommendations for the Worcester legislative delegation, regarding Senate Bill 2203 - "an act enhancing reform, innovation and success in education."

gb #6-145 - Mr. O'Connell/Mr. Foley/Mr. Monfredo/Miss McCullough/Mayor Petty (April 4, 2016)

To consider adoption of Policy JLCD of the Massachusetts Association of School Committees, regarding administration of medications to students.

gb #6-202 - Mr. O'Connell/Ms. Colorio/Mr. Monfredo/Miss Biancheria (May 23, 2016)

To ask that the Roman Catholic Diocese of Worcester take whatever actions are necessary to safeguard the baseball field of the Joe DiMaggio Little League, and its surrounding property, for the use and enjoyment of the young people of the Shrewsbury Street – East Central Street neighborhood.

gb #6-271 - Mr. Monfredo/Mr. O'Connell/Ms. Colorio/Miss McCullough/Miss Biancheria/Mayor Petty (July 21, 2016)

Request that the Administration consider including training in the Heimlich maneuver as part of the Compression CPR Program and review the Heimlich Heroes Program, which was created by Deaconess Associations, Inc. (DAI) with the support from the Heimlich Institute, for possible implementation in the Worcester Public Schools.

gb #6-307 - Miss McCullough/Mr. O'Connell/Mr. Monfredo/Ms. Colorio/Miss Biancheria (September 7, 2016)

Request that the Administration provide options for teaching responsible cell phone and social media use for middle and high school students.

c&p #7-2 - Clerk (April 6, 2017)

To consider a petition from a citizen regarding a request to hold public hearings on the impact of standardized testing on students in the Worcester Public Schools.

gb #7-107 - Mr. O'Connell/Mr. Foley/Ms. Colorio/Mr. Monfredo (March 10, 2017)

To review, and to make recommendations as appropriate, as to the Federal FY18 Budget submitted by the President, as it relates to funding of the US Department of Education and its grants and programs.

gb #7-119 - Mr. Monfredo/Mr. Foley/Ms. Colorio/Mr. O'Connell (March 20, 2017)

Request that the School Committee forward letters to the Congressional Delegation in opposition to the President's Budget for Education and its impact on the school district and further request that the MASC consider organizing all districts in Massachusetts to oppose these cuts and voice opposition to the Massachusetts Delegation.

gb #7-125 - Administration (March 21, 2017)

To consider approval of the draft Policy and Procedures for Physical Restraints.

gb #7-323.1 Administration/Mr.O'Connell/Mr.Monfredo/Ms.Colorio(December 12, 2017)

Response of the Administration to the request to review the interim guidance of the U.S. Department of Education Office for Civil Rights on Title IX of the Education Amendments of 1972, and to determine whether any revisions need to be made to the policies and practices of the Worcester Public Schools in light of the guidance.

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Request that the Administration review the policy regarding absences of students from school and consider distinguishing in their student records unexcused absences from excused absences due to documented illnesses or religious holidays.

gb #8-34 - Administration (January 19, 2018)

To consider approval of the 2018-19 Policies Handbook of the Worcester Public Schools.

gb #8-74 - Mr. O'Connell/Mr. Monfredo/Miss Biancheria/Miss McCullough (February 14, 2018)

To formulate a policy, and appropriate protocols and guidelines, as to initiation of procedures in Juvenile Court under the "Children Requiring Assistance" statute (Massachusetts General Laws Chapter 119, Sections 21 and 39E – 39I), in light of the decision of the Supreme Judicial Court in Millis Public Schools v. M.P. et al (SJC-12384, February 6, 2018).

V. ADJOURNMENT

Helen A. Friel, Ed.D.
Clerk of the School Committee

"Municipal Government Day"

- To promote civic engagement in the Worcester Public Schools the school committee must initiate a "Municipal Government Day" to give high school students the opportunity to learn how our municipal government works and voice their positions on important local issues through prepared debate.
- Students will be selected to take on the role of as City Manager, School Superintendent, Mayor, Councilor At-Large, District Councilor and, or, School Committee Member to learn their responsibilities as an elected official.
- "Municipal Government Day" should occur on a Tuesday (City Council) and Thursday (School Committee) in April.

Sincerely,

Cotey J. Collins
25 Ekman Street Apt. 16E
Worcester MA, 01607
P: (508) 792-0672 | C: (774) 253-0320
E: CoteyJ.Collins@gmail.com

Since the entire Policy Manual has been approved by the School Committee, there is no need to have these members involved in reviewing proposed new policies. From this point forward, all additions to the Policy Manual will be handled by the MASC.

File: JIH - SEARCHES AND INTERROGATIONS

Searches by Staff

The right of inspection of students' school lockers is inherent in the authority granted school committees and administrators. This authority may be exercised as needed in the interest of safeguarding children, their own and school property.

Nevertheless, exercise of that authority by school officials places unusual demands upon their judgment so as to protect each child's constitutional rights to personal privacy and protection from coercion and to act in the best interest of all students and the schools.

Searches by school officials of students' automobiles or the student will be conducted in a way that protects the students' rights consistent with the responsibility of the school system to provide an atmosphere conducive to the educational process.

Interrogations by Police

The schools have legal custody of students during the school day and during hours of approved extracurricular activities. It is the responsibility of the school administration to make an effort to protect each student's rights with respect to interrogations by law enforcement officials. Therefore:

1. When law enforcement officials find it necessary to question students during the school day or periods of extracurricular activities, the school Principal or his/her designee will be present when possible. An effort will be made to contact the student's parent/guardian or guardian so that the responsible individual may be notified of the situation.
2. If custody and/or arrest are involved, the Principal will request that all procedural safeguards, as prescribed by law, be observed by the law enforcement officials.

SOURCE: MASC

File: JIH - SEARCHES AND INTERROGATIONS

Searches by Staff

Under the Fourth and Fourteenth Amendments to the U.S. Constitution, students are protected from unreasonable searches and seizures conducted by public school officials and teachers.

However, equipment assigned to students, such as lockers, desks and technology devices, belong to the District and school officials reserve the right to inspect such equipment at any time without notice. This authority may be exercised as needed in the interest of safeguarding children, their own and school property.

Students, and their person or personal property, including personal electronics and vehicles on school property, may be searched by a public school official pursuant to the following procedures:

1. There is reasonable suspicion to believe that a search will disclose evidence that the student has violated or is violating either the law or the rules of the school;
2. When such reasonable suspicion exists, a search may be conducted under the explicit authorization of the Principal or his/her designee;
3. The measures adopted are reasonably related to the objective of the search and are not excessively intrusive to the age and gender of the student and the nature of the infraction. The manner and method of the search must be tailored to the circumstances. The search should be limited to areas and objects that reasonably could be expected to obtain the contraband material or evidence being sought.
4. Items which might be used to disrupt or interfere with the educational process, such as weapons, will be removed from the student's possession and may be turned over to law enforcement officials.

Searches by school officials of students' automobiles or the student will be conducted in a way that protects the students' rights consistent with the responsibility of the school system to provide an atmosphere conducive to the educational process.

Interrogations, Arrests, and Searches by Police

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2. ~~Where the police have obtained a search warrant authorizing a search, school staff will assist or permit the police to search a student, his or her personal property, or school equipment assigned to such student.~~

3. If custody and/or arrest are involved, the Principal will request that all procedural safeguards, as prescribed by law, be observed by the law enforcement officials.

Legal Refs: U.S. Constitution, Amendments IV and XIV

SOURCE: MASC

Revised December 2017

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Students, and their person or personal property, including personal electronics and vehicles on school property, may be searched by a public school official pursuant to the following procedures:

1. There is reasonable suspicion to believe that a search will disclose evidence that the student has violated or is violating either the law or the rules of the school;
2. When such reasonable suspicion exists, a search may be conducted under the explicit authorization of the Principal or his/her designee;
3. The measures adopted are reasonably related to the objective of the search and are not excessively intrusive to the age and gender of the student and the nature of the infraction. The manner and method of the search must be tailored to the circumstances. The search should be limited to areas and objects that reasonably could be expected to obtain the contraband material or evidence being sought.
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Legal Refs: U.S. Constitution, Amendments IV and XIV

SOURCE: MASC

Revised December 2017

File: KBBA - NON-CUSTODIAL PARENTS' RIGHTS

As required by Massachusetts General Law, a non-custodial parent may have access to the student record in accordance with law and Dept. of Elementary and Secondary Education Regulations. The school district will follow the law and the regulations developed by the Massachusetts Dept. of Elementary and Secondary Education to standardize the process by which public schools provide student records to parents who do not have physical custody of their children ("non-custodial parents").

As required by law, a non-custodial parent may have access to the student record in accordance with the following provisions.

- (a) A non-custodial parent is eligible to obtain access to the student record unless the school or district has been given documentation that:
 - 1. The parent has been denied legal custody or has been ordered to supervised visitation, based on a threat to the safety of the student and the threat is specifically noted in the order pertaining to custody or supervised visitation, or
 - 2. The parent has been denied visitation, or
 - 3. The parent's access to the student has been restricted by a temporary or permanent protective order, unless the protective order (or any subsequent order modifying the protective order) specifically allows access to the information contained in the student record, or
 - 4. There is an order of a probate and family court judge which prohibits the distribution of student records to the parent.
- (b) The school shall place in the student's record documents indicating that a non-custodial parent's access to the student's record is limited or restricted pursuant to regulation.
- (c) In order to obtain access, the non-custodial parent must submit a written request for the student record to the school principal.
- (d) Upon receipt of the request the school must immediately notify the custodial parent by certified and first class mail, in English and the primary language of the custodial parent, that it will provide the non-custodial parent with access after 21 days, unless the custodial parent provides the principal with documentation that the non-custodial parent is not eligible to obtain access as set forth in regulation.

- (e) The school must delete all electronic and postal address and telephone number information relating to either work or home locations of the custodial parent from student records provided to non-custodial parents. In addition, such records must be marked to indicate that they shall not be used to enroll the student in another school.
- (f) Upon receipt of a court order which prohibits the distribution of information pursuant to law, the school shall notify the non-custodial parent that it shall cease to provide access to the student record to the non-custodial parent.

LEGAL REF.: M.G.L. 71:34D; 71:34H

603 CMR 23.07 (5) Access Procedures for Non-Custodial Parents

20 U.S.C. §1232g Family Education Rights and Privacy Act (FERPA)

SOURCE: MASC October 2016

See attached Bulletin #25

File: KBBA - NON-CUSTODIAL PARENTS' RIGHTS

As required by Massachusetts General Law Chapter 71, Section 34H, a non-custodial parent may have access to the student record in accordance with law and Department of Elementary and Secondary Education Regulations pertaining to student records (603 CMR 23.00). The school district will follow the law and the regulations developed by the Massachusetts Dept. of Elementary and Secondary Education to standardize the process by which public schools provide student records to parents who do not have physical custody of their children ("non-custodial parents").

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2. The parent has been denied visitation, or
3. The parent's access to the student has been restricted by a temporary or permanent protective order, unless the protective order (or any subsequent order modifying the protective order) specifically allows access to the information contained in the student record, or
4. There is an order of a probate and family court judge which prohibits the distribution of student records to the parent.

(b) The school shall place in the student's record documents indicating that a non-custodial parent's access to the student's record is limited or restricted pursuant to regulation.

(c) In order to obtain access, the non-custodial parent must submit a written request for the student record to the school principal.

(d) Upon receipt of the request the school must immediately notify the custodial parent by certified and first class mail, in English and the primary language of the custodial parent, that it will provide the non-custodial parent with access after 21 days, unless the custodial parent provides the principal with documentation that the non-custodial parent is not eligible to obtain access as set forth in regulation.

(e) The school must delete all electronic and postal address and telephone number information relating to either work or home locations of the custodial parent from student records provided to non-custodial parents. In addition, such records must be marked to indicate that they shall not be used to enroll the student in another school.

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Revised December 2017

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1. The parent has been denied legal custody or has been ordered to supervised visitation, based on a threat to the safety of the student and the threat is specifically noted in the order pertaining to custody or supervised visitation, or
2. The parent has been denied visitation, or
3. The parent's access to the student has been restricted by a temporary or permanent protective order, unless the protective order (or any subsequent order modifying the protective order) specifically allows access to the information contained in the student record, or
4. There is an order of a probate and family court judge which prohibits the distribution of student records to the parent.

(b) The school shall place in the student's record documents indicating that a non-custodial parent's access to the student's record is limited or restricted pursuant to regulation.

(c) In order to obtain access, the non-custodial parent must submit a written request for the student record to the school principal.

(d) Upon receipt of the request the school must immediately notify the custodial parent by certified and first class mail, in English and the primary language of the custodial parent, that it will provide the non-custodial parent with access after 21 days, unless the custodial parent provides the principal with documentation that the non-custodial parent is not eligible to obtain access as set forth in regulation.

(e) The school must delete all electronic and postal address and telephone number information relating to either work or home locations of the custodial parent from student records provided to non-custodial parents. In addition, such records must be marked to indicate that they shall not be used to enroll the student in another school.

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SOURCE: MASC October 2016

Revised December

Worcester Public School District

Notice of Non-Custodial Parent Request for Student Records

Sent Via Registered and First Class Mail

Dear Custodial Parent of _____:

This is to notify you that a request from _____ was received on _____ for the following parts of your child's student record:

In accordance with Massachusetts law, non-custodial parents must be given access to their children's student records, unless the school has been given written documentation that establishes either:

1. The non-custodial parent has been denied legal custody or been ordered supervised visitation, based upon a threat to the student or to the custodial parent;
2. The non-custodial parent has been denied visitation; or
3. Access to the student or the custodial parent has been restricted by a protective order against the non-custodial parent, provided such protective order does not specifically allow access to student record information.
4. There is an order of a probate and family court judge which prohibits the distribution of student records to the non-custodial parent.

The requested records will be released on _____, unless the documentation indicated in the numbered paragraphs above has been received by the Principal of the school (or his/her designee). If you have any questions, please contact _____ at _____.

Sincerely,

Signature of Principal or Other
Authorized School Employee

Date

ITEM: gb #6-145

STANDING COMMITTEE: **GOVERNANCE AND EMPLOYEE ISSUES**

DATE OF MEETING: Tuesday, March 6, 2018

ITEM: Mr. O'Connell/Mr. Foley/Mr. Monfredo/Miss McCullough/Mayor Petty
(April 4, 2016)

To consider adoption of Policy JLCD of the Massachusetts Association of School Committees, regarding administration of medications to students.

PRIOR ACTION:

4-28-16 - Referred to the Standing Committee on Governance and Employee Issues.

BACKUP:

Due to the fact that the School Committee approved Section J-Students in the Policy Manual on October 19, 2017, the Administration recommends that the item be filed.

Response

Worcester Public Schools has purchased the iSafe Ventures Digital Learning curriculum (www.isafe.org).

I Safe is a standards-based ,common-core ready and age-appropriate digital learning curriculum.

Every student in the district is annually required to login to iSafe and participate 3 lessons. In the middle and high school curriculum that cover these topics. This also serves as an e-rate certification.

Lesson Titles include: Cell Phones, Digital Addiction, Advanced Texiquette, Cyber Harassment, Cyber Bullying, Social Networking, Cyber Safety and Photo Management, Your Digital Footprint, Understanding Social Networking, SMART Social Media, Safeguards in Social Networking, Safe Social Networking Strategies, Instagram Guide for Education and more.

PLEASE POST

OFFICE OF THE SUPERINTENDENT

WORCESTER PUBLIC SCHOOLS
WORCESTER, MASSACHUSETTS

2016-2017

BULLETIN #37 **PROFESSIONAL CONDUCT SERIES** **November 2016**

TO: ALL PERSONNEL
FROM: MAUREEN BINIENDA SUPERINTENDENT
SUBJECT: POLICY AND PROCEDURES FOR PHYSICAL RESTRAINT

The Worcester Public Schools policy reflects the content of Chapter 69, section 1B, and Chapter 71, section 37G of the Massachusetts General Laws. The purpose of these laws is to ensure that every student participating in a Massachusetts public education program is free from the unreasonable use of physical restraint.

POLICY:

Worcester Public School personnel are required to ensure that every student is free from the unreasonable use of physical restraint. Physical restraint shall be used only in emergency situations of last resort, after other lawful and less intrusive alternatives have failed or been deemed inappropriate, and with extreme caution. School personnel shall use physical restraint with two goals in mind:

1. To administer a physical restraint only when needed to protect a student and/or a member of the school community from assault or imminent, serious, physical harm; and
2. To prevent or minimize any harm to the student as a result of the physical restraint.

It is the policy of the Worcester Public Schools to comply with state law and the Massachusetts Department of Elementary and Secondary Education (DESE) physical restraint regulations, 603 CMR 46.00 et seq. ("Regulations"). The Regulations apply not only at school but also at school-sponsored events and activities, whether taking place on school property or in the community.

PROCEDURES:

Use of Restraint

Physical restraint may be used only in the following circumstances:

- As an emergency procedure of last resort after other lawful less intrusive alternatives have failed or are deemed to be inappropriate under the circumstances
- The student's behavior poses a threat of assault or imminent, serious, physical harm to self and/or others and the student is not responsive to verbal directives or other lawful and less intrusive behavior interventions.

Physical restraint shall be limited to the use of such reasonable force as is necessary to protect a student or another member of the school community from assault or imminent, serious, physical harm.

Prohibitions

Physical restraint is prohibited in the following circumstances:

- As a means of discipline or punishment;
- When a student cannot be safely restrained because it is medically contraindicated for reasons including, but not limited to, asthma, seizures, a cardiac condition, obesity, bronchitis, communication related disabilities or risk of vomiting;
- As a response to property destruction, disruption of school order, a student's refusal to comply with a school rule or staff directive, or verbal threats that do not constitute a threat of assault, or imminent, serious, physical harm; or
- As a standard response to any individual student.

Mechanical restraint, medication restraint and seclusion are prohibited. Prone restraint is prohibited except on an individual student basis and only under specific circumstances.

Referral to Law Enforcement or Other State Agencies

These procedures support the referral to law enforcement or other state agencies utilizing the Worcester Public Schools guidelines.

- School personnel have the right to report to appropriate authorities a crime committed by a student or other individual, including staff members;
- Law enforcement, judicial authorities or school security personnel may exercise their responsibilities, including the physical detainment of a student or other person alleged to have committed a crime or posing a security risk, or
- School personnel must exercise their responsibilities, as mandated reporters required to report abuse or neglect cases pursuant to the Worcester Public School Protocol.

PROPER ADMINISTRATION OF PHYSICAL RESTRAINT

Trained Personnel

It is the intent of the Worcester Public Schools to provide a safe, non-harmful behavior management system designed to aid staff members by maintaining the best possible care and welfare for agitated or dysregulated students even during their most violent moments. The first phase of the training will involve all staff in six hours of training in methods for preventing student violence, self-injurious behavior and suicide, including individual crisis planning and methods to de-escalate incidents of disruptive or potentially dangerous student behavior to ensure both student and staff safety. Only school personnel who have received the complete twelve hour Nonviolent Crisis Intervention training established by the Crisis Prevention Institute (CPI) shall administer physical restraint on students except in an emergency situation.

At the beginning of each school year, the principal or his/her designee shall identify staff authorized to serve as a school-wide resource to assist in ensuring proper administration of physical restraint. Such staff shall participate in in-depth competency based training in the use of physical restraint.

- Whenever possible, the administration of a restraint will be witnessed by at least one adult who does not participate in the restraint.
- The training requirement will not preclude a teacher, employee or agent of a public education program from using reasonable force to protect students, other persons or themselves from assault or imminent, serious, physical harm.

Use of Force

A person using a physical restraint will use only the amount of force necessary to protect the student or others from physical injury or harm, and, in the judgment of the trained staff member, such method is required to provide safety for the student or others present.

Safest Method

A person administering physical restraint will use the safest method available and appropriate to the situation subject to the safety requirements set forth in 603 CMR 46.05(5). Floor restraints, including prone restraints are prohibited with limited exceptions permitted by law.

Safety Requirements

No restraint shall be administered in such a way that the student is prevented from breathing or speaking. During the administration of a restraint, a staff member shall continuously monitor the physical status of the student, including skin temperature and color and respiration.

A restraint shall be released immediately upon a determination by the staff member administering the restraint that the student is no longer an immediate danger to himself or others or if the student is observed to be in severe distress, such as having difficulty breathing, or sustained or prolonged crying or coughing.

If a student is restrained for a period longer than twenty (20) minutes, staff shall obtain the approval of the principal. Such approval shall be based upon the student's continued agitation during the restraint justifying the need for continued restraint.

Staff shall review and consider any known medical or psychological limitations, known or suspected trauma history, and/or behavioral intervention plans regarding the use of physical restraint on an individual student.

Restraint shall be administered in such a way so as to prevent or minimize physical harm. If at any time during a physical restraint, the student expresses or demonstrates significant physical distress, including, but not limited to difficulty breathing, the student shall be released from the restraint immediately, and school staff shall take steps to seek medical assistance.

Following the release of a student from a restraint, the school shall implement follow-up procedures. These procedures shall include:

- Reviewing the incident with the student to address the behavior that precipitated the restraint. Reviewing the incident with the staff person(s) who administered the restraint to discuss whether proper restraint procedures were followed and consideration of whether any follow-up is appropriate for students who witnessed the incident.
- Assessing the student by the school nurse.

REPORTING REQUIREMENTS

Circumstances

School/Program staff shall report the circumstances under which a physical restraint was used and the use of all physical restraint as specified in 603 CMR 46.06.

Informing the Principal

The school/program staff member who administered the restraint shall verbally inform the principal of the restraint as soon as possible and by written report no later than the next school working day.

The written report shall be provided to the principal or the director of the school/program or his/her designee, except that the principal or director shall prepare the report if the principal or director has administered the restraint. The principal/director will forward a copy of this report to the appropriate Instructional & School Leadership Manager.

The Instructional & School Leadership Manager shall maintain an ongoing record of all reported instances of physical restraint which may be made available for review by the parent or the Department of Elementary and Secondary Education, upon request.

Informing Parents

The principal or director of the school/program or his/her designee shall make reasonable efforts to verbally inform the student's parents/guardians of restraints within 24 hours of the event, and by written report sent within three (3) school working days following the use of restraint to an email address provided by the parent for communication about the student or by regular mail postmarked no later than three school working days of the restraint.

If the school/program customarily provides a parent/guardian of a student with report cards and other necessary school-related information in a language other than English, the written restraint report shall be provided to the parent in that language.

The principal, director or designee shall provide the student and the parent an opportunity to comment orally and in writing on the use of the restraint and on information in the written report.

Contents of the Report

The written report required by 603 CMR 46.06(2) and (3) shall include:

- The name of the student; the names and job titles of the staff who administered the restraint, and observers, if any:
 - the date of the restraint;
 - the time the restraint began and ended;
 - the name of the administrator who was verbally informed following the restraint; and, as applicable,
 - the name of the administrator who approved continuation of a restraint beyond twenty (20) minutes.
- A description of the activity in which the restrained student and other students and staff in the room or vicinity were engaged immediately preceding the use of physical restraint:
 - the behavior that prompted the restraint
 - the efforts made to prevent escalation of the behavior, including specific de-escalation strategies used;
 - alternatives to restraint that were attempted; and
 - the justification for initiating the restraint.
- A description of the administration of the restraint including the holds used and reasons such holds were necessary:
 - the student's behavior and reactions during the restraint
 - how the restraint ended; and documentation of injury to the student and/or staff, if any, during the restraint, and any medical care provided.
- Information regarding any further action(s) that the school/program has taken or may take, including any consequences that may be imposed on the student.
- Information regarding opportunities for the student's parents to discuss with school officials the administration of the restraint, any consequences that may be imposed on the student, and any other related matter.

Individual Student Review

The principal shall conduct a weekly review of restraint data to identify students who have been restrained multiple times during the week. With regard to any students identified, a review team(s) shall be convened as determined appropriate to assess the student's progress and needs. This assessment shall include the following:

- Review and discussion of the written restraint reports submitted and any student/parent comments;
- Analysis of the circumstances leading up to the restraint including factors such as time of day, day of the week, antecedent events, and individuals involved;
- Consideration of factors that may have contributed to escalation of behaviors, consideration of alternatives to restraint, including de-escalation techniques and possible interventions, and such

other strategies and decisions as appropriate with the goal of reducing/eliminating the use of restraint in the future; and

- Agreement on a written plan of action by the school.

If the principal directly participated in the restraint, the Superintendent shall designate a duly qualified individual to lead the review team's discussion. The principal shall ensure that a record of each individual student review is maintained and made available for review by the Department or the parent, upon request.

Administrative Review

The principal shall conduct a monthly review of school-wide restraint data. This review shall consider patterns of use of restraints by similarities in the time of day, day of the week, or individuals involved; the number and duration of physical restraints school-wide and for individual students; the duration of the restraints; and, the number and types or injuries, if any, resulting from restraint. The principal shall also determine whether it is necessary and appropriate to modify the school's restraint prevention and management policy, conduct additional staff training on restraint reduction/prevention strategies such as training on positive behavioral interventions and supports or take such other action necessary or appropriate to reduce or eliminate restraints. The principal shall provide copies of the monthly review to the Instructional & School Leadership Manager.

Reports to the Department of Education

When a physical restraint has resulted in any injury to a student or a school/program staff member, the school/program shall send a copy of the written report required by 603 CMR 46.06(4) to the Department of Elementary and Secondary Education postmarked no later than three (3) school working days of the administration of the restraint.

The school/program shall also provide the Department with a copy of the record of physical restraints maintained by the school/program administrator pursuant to 603 CMR 46.06(2) for the thirty (30)-day period prior to the date of the reported restraint.

The Department shall determine if additional action on the part of the public school/program is warranted and, if so, shall notify the public school/program of any required actions within thirty (30) calendar days of receipt of the required written report(s).

Every program shall collect and annually report data to DESE regarding the use of physical restraint; such data shall be reported in a manner and form directed by DESE.

Students with Disabilities

Physical restraint may not be used as a standard response for any individual student. Therefore, no written individual behavior plan or individualized education plan (IEP) may include use of physical restraint as a standard response to any behavior. Physical restraint is an emergency procedure of last resort. The Worcester Public Schools does not allow the use of medical, mechanical, and seclusion restraints.

DEFINITION OF TERMS

As used in 603 CMR 46.00, the following terms shall have the following meanings:

Mechanical Restraint:

The use of any device or equipment to restrict a student's freedom of movement. The term does NOT include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional, and are used for the specific and approved positioning or protective purposes for which such devices were designed. Mechanical Restraint is PROHIBITED in public education programs.

Medication Restraint:

The administration of medication for the purpose of temporarily controlling behavior. Medication Restraint is PROHIBITED in public education programs. Medical Restraint does not, however, include medication prescribed by a licensed physician and authorized by the parent for administration in the school setting.

Physical Escort:

Temporary touching or holding, without use of force, of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is agitated to walk to a safe location.

Physical Restraint:

Direct physical contact that prevents or significantly restricts a student's freedom of movement. Physical restraint does NOT include: brief physical contact to support student safety, providing physical guidance or prompting when teaching a skill, redirecting attention, providing comfort, or physical escort.

Public Education Program:

Public schools, including charter schools, virtual schools, collaborative education programs, special education schools approved under 603 CMR 28.09, except as provided in 603 CMR 18.05(5)(h), and school events and activities sponsored by such programs.

School Working Day:

Any day or partial day that students are in attendance at the public education program for instructional purposes.

Seclusion:

Involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion is PROHIBITED in public education programs. Seclusion does not, however, include timeout, which is permitted.

Time-Out:

A behavioral support strategy in which a student temporarily separates from the learning activity or classroom, either by choice or by direction from staff, for the purpose of calming. During time-out, a student must be continuously observed by a staff member. Staff shall be with the student or immediately available to the student at all times. The space used for time-out must be clean, safe, sanitary, and appropriate for the purpose of calming. Time-out shall cease as soon as the student has calmed.

The Worcester Public Schools is an Equal Opportunity/Affirmative Action Employer/Educational Institution and does not discriminate regardless of race, color, gender, age, religion, gender identity, national origin, marital status, sexual orientation, disability or homelessness. The Worcester Public Schools provides equal access to employment and the full range of general, occupational and vocational education programs. For more information relating to Equal Opportunity/Affirmative Action contact the Human Resource Manager, 20 Irving Street, Worcester, MA 01609, 508-799-3020.

DRAFT

File: JKAA - PHYSICAL RESTRAINT OF STUDENTS

Maintaining an orderly, safe environment conducive to learning is an expectation of all staff members of the school district. Further, students of the district are protected by law from the unreasonable use of physical restraint. Such restraint shall be used only in emergency situations of last resort after other lawful and less intrusive alternatives have failed or been deemed inappropriate, and with extreme caution.

When an emergency situation arises, and physical restraint is the only option deemed appropriate to prevent a student from injuring himself or herself, another student or school community member, a teacher or employee or agent of the school district may use such reasonable force needed to protect students, other persons or themselves from assault or imminent, serious, physical harm.

The definitions of forms of restraint shall be as defined in 603CMR 46.02.

The use of mechanical restraint, medical restraint, and seclusion is prohibited.

Physical restraint, including prone restraint where permitted under 603 CMR 46.03, shall be considered an emergency procedure of last resort and shall be prohibited except when a student's behavior poses a threat of assault, or imminent, serious, physical harm to themselves and/or others and the student is not responsive to verbal directives or other lawful and less intrusive behavior interventions are deemed inappropriate.

The Superintendent will develop procedures identifying:

- Appropriate responses to student behavior that may require immediate intervention;
- Methods of preventing student violence, self-injurious behavior, and suicide including crisis planning and de-escalation of potentially dangerous behaviors among groups of students or individuals;
- Descriptions and explanations of alternatives to physical restraint as well as the school's method of physical restraint for use in emergency situations;
- Descriptions of the school's training and procedures to comply with reporting requirements; including, but not limited to making reasonable efforts to orally notify a parent/guardian of the use of restraint within 24 hours of its imposition;
- Procedures for receiving and investigating complaints;
- Methods for engaging parents in discussions about restraint prevention and use of restraint solely as an emergency procedure;
- A statement prohibiting: medication restraint, mechanical restraint, prone restraint unless permitted by 603 CMR 46.03(1)(b), seclusion, and the use of physical restraint in a manner inconsistent with 603 CMR 46.00,
- A process for obtaining principal approval for a time out exceeding 30 minutes.

Each building Principal will identify staff members to serve as a school-wide resource to assist in ensuring proper administration of physical restraint. These staff members will participate in an in-depth training program in the use of physical restraint.

In addition, each staff member will be trained regarding the school's physical restraint policy and accompanying procedures. The Principal will arrange training to occur in the first month of each school year, or for staff hired after the beginning of the school year, within a month of their employment.

Physical restraint is prohibited as a means of punishment, or as a response to destruction of property, disruption of school order, a student's refusal to comply with a school rule or staff directive, or verbal threats that do not constitute a threat of imminent, serious physical harm to the student or others.

Physical restraint is prohibited when it is medically contraindicated for reasons including, but not limited to, asthma, seizures, a cardiac condition, obesity, bronchitis, communication-related disabilities, or risk of vomiting;

The use of "time out" procedures during which a staff member remains accessible to the student shall not be considered "seclusion restraint".

This policy and its accompanying procedures shall be reviewed and disseminated to staff annually and made available to parents of enrolled students. The Superintendent shall provide a copy of the Physical Restraint regulations to each Principal, who shall sign a form acknowledging receipt thereof.

SOURCE: MASC

ADOPTED: August 2015

LEGAL REF.: M.G.L. 71:37G
603 CMR 46.00



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

September 2017

Q&A on Campus Sexual Misconduct

Under Title IX of the Education Amendments of 1972 and its implementing regulations, an institution that receives federal funds must ensure that no student suffers a deprivation of her or his access to educational opportunities on the basis of sex. The Department of Education intends to engage in rulemaking on the topic of schools' Title IX responsibilities concerning complaints of sexual misconduct, including peer-on-peer sexual harassment and sexual violence. The Department will solicit input from stakeholders and the public during that rulemaking process. In the interim, these questions and answers—along with the *Revised Sexual Harassment Guidance* previously issued by the Office for Civil Rights¹—provide information about how OCR will assess a school's compliance with Title IX.

SCHOOLS' RESPONSIBILITY TO ADDRESS SEXUAL MISCONDUCT

Question 1:

What is the nature of a school's responsibility to address sexual misconduct?

Answer:

Whether or not a student files a complaint of alleged sexual misconduct or otherwise asks the school to take action, where the school knows or reasonably should know of an incident of sexual misconduct, the school must take steps to understand what occurred and to respond appropriately.² In particular, when sexual misconduct is so severe, persistent, or pervasive as to deny or limit a student's ability to participate in or benefit from the school's programs or activities, a hostile environment exists and the school must respond.³

¹ Office for Civil Rights, *Revised Sexual Harassment Guidance* (66 Fed. Reg. 5512, Jan. 19, 2001), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf> [hereinafter 2001 Guidance]; see also Office for Civil Rights, Dear Colleague Letter on Sexual Harassment (Jan. 25, 2006), available at <https://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html>.

² 2001 Guidance at (VII).

³ *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 631 (1999); 34 C.F.R. § 106.31(a); 2001 Guidance at (V)(A)(1). Title IX prohibits discrimination on the basis of sex “under any education program or activity” receiving federal financial assistance, 20 U.S.C. § 1681(a); 34 C.F.R. § 106.1, meaning within the “operations” of a postsecondary institution or school district, 20 U.S.C. § 1687; 34 C.F.R. § 106.2(h). The Supreme Court has explained that the statute “confines the scope of prohibited conduct based on the recipient’s degree of control over the harasser and the environment in which the harassment occurs.” *Davis*, 526 U.S. at 644. Accordingly, OCR has informed institutions that “[a] university does not have a duty under Title IX to address an incident of alleged harassment where the incident occurs off-campus and does not involve a program or activity of the recipient.” Oklahoma State University Determination Letter at 2, OCR Complaint No. 06-03-2054 (June 10, 2004); see also University of Wisconsin-Madison Determination Letter, OCR Complaint No. 05-07-2074 (Aug. 6, 2009) (“OCR determined that the alleged assault did not occur in the context of an educational program or activity operated by the University.”). Schools are responsible for redressing a hostile environment that occurs on campus even if it relates to off-campus activities. Under the Clery Act, postsecondary institutions are obliged to collect and report statistics on crimes that occur on campus, on noncampus properties controlled by the institution or an affiliated student organization and used for educational purposes, on public property within or immediately adjacent to campus, and in areas within the patrol jurisdiction of the campus police or the campus security department. 34 C.F.R. § 668.46(a); 34 C.F.R. § 668.46(c).

Each recipient must designate at least one employee to act as a Title IX Coordinator to coordinate its responsibilities in this area.⁴ Other employees may be considered “responsible employees” and will help the student to connect to the Title IX Coordinator.⁵

In regulating the conduct of students and faculty to prevent or redress discrimination, schools must formulate, interpret, and apply their rules in a manner that respects the legal rights of students and faculty, including those court precedents interpreting the concept of free speech.⁶

THE CLERY ACT AND TITLE IX

Question 2:

What is the Clery Act and how does it relate to a school’s obligations under Title IX?

Answer:

Institutions of higher education that participate in the federal student financial aid programs are subject to the requirements of the Clery Act as well as Title IX.⁷ Each year, institutions must disclose campus crime statistics and information about campus security policies as a condition of participating in the federal student aid programs. The Violence Against Women Reauthorization Act of 2013 amended the Clery Act to require institutions to compile statistics for incidents of dating violence, domestic violence, sexual assault, and stalking, and to include certain policies, procedures, and programs pertaining to these incidents in the annual security reports. In October 2014, following a negotiated rulemaking process, the Department issued amended regulations to implement these statutory changes.⁸ Accordingly, when addressing allegations of dating violence, domestic violence, sexual assault, or stalking, institutions are subject to the Clery Act regulations as well as Title IX.

INTERIM MEASURES

Question 3:

What are interim measures and is a school required to provide such measures?

Answer:

Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending.⁹ Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

⁴ 34 C.F.R. § 106.8(a).

⁵ 2001 Guidance at (V)(C).

⁶ Office for Civil Rights, Dear Colleague Letter on the First Amendment (July 28, 2003), *available at* <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>; 2001 Guidance at (XI).

⁷ Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Pub. L. No. 101-542, 20 U.S.C. § 1092(f).

⁸ *See* 34 C.F.R. § 668.46.

⁹ *See* 2001 Guidance at (VII)(A).

It may be appropriate for a school to take interim measures during the investigation of a complaint.¹⁰ In fairly assessing the need for a party to receive interim measures, a school may not rely on fixed rules or operating assumptions that favor one party over another, nor may a school make such measures available only to one party. Interim measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator, making every effort to avoid depriving any student of her or his education. The measures needed by each student may change over time, and the Title IX Coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs.

GRIEVANCE PROCEDURES AND INVESTIGATIONS

Question 4:

What are the school's obligations with regard to complaints of sexual misconduct?

Answer:

A school must adopt and publish grievance procedures that provide for a prompt and equitable resolution of complaints of sex discrimination, including sexual misconduct.¹¹ OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the school (i) provides notice of the school's grievance procedures, including how to file a complaint, to students, parents of elementary and secondary school students, and employees; (ii) applies the grievance procedures to complaints filed by students or on their behalf alleging sexual misconduct carried out by employees, other students, or third parties; (iii) ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (iv) designates and follows a reasonably prompt time frame for major stages of the complaint process; (v) notifies the parties of the outcome of the complaint; and (vi) provides assurance that the school will take steps to prevent recurrence of sexual misconduct and to remedy its discriminatory effects, as appropriate.¹²

Question 5:

What time frame constitutes a "prompt" investigation?

Answer:

There is no fixed time frame under which a school must complete a Title IX investigation.¹³ OCR will evaluate a school's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

Question 6:

What constitutes an "equitable" investigation?

¹⁰ 2001 Guidance at (VII)(A). In cases covered by the Clery Act, a school must provide interim measures upon the request of a reporting party if such measures are reasonably available. 34 C.F.R. § 668.46(b)(11)(v).

¹¹ 34 C.F.R. § 106.8(b); 2001 Guidance at (V)(D); *see also* 34 C.F.R. § 668.46(k)(2)(i) (providing that a proceeding which arises from an allegation of dating violence, domestic violence, sexual assault, or stalking must "[i]nclude a prompt, fair, and impartial process from the initial investigation to the final result").

¹² 2001 Guidance at (IX); *see also* 34 C.F.R. § 668.46(k). Postsecondary institutions are required to report publicly the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, and stalking, 34 C.F.R. § 668.46 (k)(1)(i), and to include a process that allows for the extension of timeframes for good cause with written notice to the parties of the delay and the reason for the delay, 34 C.F.R. § 668.46 (k)(3)(i)(A).

¹³ 2001 Guidance at (IX); *see also* 34 C.F.R. § 668.46(k)(3)(i)(A).

Answer:

In every investigation conducted under the school's grievance procedures, the burden is on the school—not on the parties—to gather sufficient evidence to reach a fair, impartial determination as to whether sexual misconduct has occurred and, if so, whether a hostile environment has been created that must be redressed. A person free of actual or reasonably perceived conflicts of interest and biases for or against any party must lead the investigation on behalf of the school. Schools should ensure that institutional interests do not interfere with the impartiality of the investigation.

An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence—including both inculpatory and exculpatory evidence—and take into account the unique and complex circumstances of each case.¹⁴

Any rights or opportunities that a school makes available to one party during the investigation should be made available to the other party on equal terms.¹⁵ Restricting the ability of either party to discuss the investigation (e.g., through “gag orders”) is likely to deprive the parties of the ability to obtain and present evidence or otherwise to defend their interests and therefore is likely inequitable. Training materials or investigative techniques and approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the investigation proceeds objectively and impartially.¹⁶

Once it decides to open an investigation that may lead to disciplinary action against the responding party, a school should provide written notice to the responding party of the allegations constituting a potential violation of the school's sexual misconduct policy, including sufficient details and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, the specific section of the code of conduct allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident.¹⁷ Each party should receive written notice in advance of any interview or hearing with sufficient time to prepare for meaningful participation. The investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence. The reporting and responding parties and appropriate officials must have timely and equal access to any information that will be used during informal and formal disciplinary meetings and hearings.¹⁸

INFORMAL RESOLUTIONS OF COMPLAINTS

Question 7:

After a Title IX complaint has been opened for investigation, may a school facilitate an informal resolution of the complaint?

Answer:

If all parties voluntarily agree to participate in an informal resolution that does not involve a full investigation and adjudication after receiving a full disclosure of the allegations and their options for formal resolution and if a school determines that the particular Title IX complaint is appropriate for such a process, the school may facilitate an informal resolution, including mediation, to assist the parties in reaching a voluntary resolution.

¹⁴ 2001 Guidance at (V)(A)(1)-(2); *see also* 34 C.F.R. § 668.46(k)(2)(ii).

¹⁵ 2001 Guidance at (X).

¹⁶ 34 C.F.R. § 106.31(a).

¹⁷ 2001 Guidance at (VII)(B).

¹⁸ 34 C.F.R. § 668.46(k)(3)(i)(B)(3).

DECISION-MAKING AS TO RESPONSIBILITY

Question 8:

What procedures should a school follow to adjudicate a finding of responsibility for sexual misconduct?

Answer:

The investigator(s), or separate decision-maker(s), with or without a hearing, must make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the school's sexual misconduct policy. If the complaint presented more than a single allegation of misconduct, a decision should be reached separately as to each allegation of misconduct. The findings of fact and conclusions should be reached by applying either a preponderance of the evidence standard or a clear and convincing evidence standard.¹⁹

The decision-maker(s) must offer each party the same meaningful access to any information that will be used during informal and formal disciplinary meetings and hearings, including the investigation report.²⁰ The parties should have the opportunity to respond to the report in writing in advance of the decision of responsibility and/or at a live hearing to decide responsibility.

Any process made available to one party in the adjudication procedure should be made equally available to the other party (for example, the right to have an attorney or other advisor present and/or participate in an interview or hearing; the right to cross-examine parties and witnesses or to submit questions to be asked of parties and witnesses).²¹ When resolving allegations of dating violence, domestic violence, sexual assault, or stalking, a postsecondary institution must "[p]rovide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice."²² In such disciplinary proceedings and any related meetings, the institution may "[n]ot limit the choice of advisor or presence for either the accuser or the accused" but "may establish restrictions regarding the extent to which the advisor may participate in the proceedings."²³

Schools are cautioned to avoid conflicts of interest and biases in the adjudicatory process and to prevent institutional interests from interfering with the impartiality of the adjudication. Decision-making techniques or approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the adjudication proceeds objectively and impartially.

¹⁹ The standard of evidence for evaluating a claim of sexual misconduct should be consistent with the standard the school applies in other student misconduct cases. In a recent decision, a court concluded that a school denied "basic fairness" to a responding party by, among other things, applying a lower standard of evidence only in cases of alleged sexual misconduct. *Doe v. Brandeis Univ.*, 177 F. Supp. 3d 561, 607 (D. Mass. 2016) ("[T]he lowering of the standard appears to have been a deliberate choice by the university to make cases of sexual misconduct easier to prove—and thus more difficult to defend, both for guilty and innocent students alike. It retained the higher standard for virtually all other forms of student misconduct. The lower standard may thus be seen, in context, as part of an effort to tilt the playing field against accused students, which is particularly troublesome in light of the elimination of other basic rights of the accused."). When a school applies special procedures in sexual misconduct cases, it suggests a discriminatory purpose and should be avoided. A postsecondary institution's annual security report must describe the standard of evidence that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking. 34 C.F.R. § 668.46(k)(1)(ii).

²⁰ 34 C.F.R. § 668.46(k)(3)(i)(B)(3).

²¹ A school has discretion to reserve a right of appeal for the responding party based on its evaluation of due process concerns, as noted in Question 11.

²² 34 C.F.R. § 668.46(k)(2)(iii).

²³ 34 C.F.R. § 668.46(k)(2)(iv).

DECISION-MAKING AS TO DISCIPLINARY SANCTIONS

Question 9:

What procedures should a school follow to impose a disciplinary sanction against a student found responsible for a sexual misconduct violation?

Answer:

The decision-maker as to any disciplinary sanction imposed after a finding of responsibility may be the same or different from the decision-maker who made the finding of responsibility. Disciplinary sanction decisions must be made for the purpose of deciding how best to enforce the school's code of student conduct while considering the impact of separating a student from her or his education. Any disciplinary decision must be made as a proportionate response to the violation.²⁴ In its annual security report, a postsecondary institution must list all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking.²⁵

NOTICE OF OUTCOME AND APPEALS

Question 10:

What information should be provided to the parties to notify them of the outcome?

Answer:

OCR recommends that a school provide written notice of the outcome of disciplinary proceedings to the reporting and responding parties concurrently. The content of the notice may vary depending on the underlying allegations, the institution, and the age of the students. Under the Clery Act, postsecondary institutions must provide simultaneous written notification to both parties of the results of the disciplinary proceeding along with notification of the institution's procedures to appeal the result if such procedures are available, and any changes to the result when it becomes final.²⁶ This notification must include any initial, interim, or final decision by the institution; any sanctions imposed by the institution; and the rationale for the result and the sanctions.²⁷ For proceedings not covered by the Clery Act, such as those arising from allegations of harassment, and for all proceedings in elementary and secondary schools, the school should inform the reporting party whether it found that the alleged conduct occurred, any individual remedies offered to the reporting party or any sanctions imposed on the responding party that directly relate to the reporting party, and other steps the school has taken to eliminate the hostile environment, if the school found one to exist.²⁸ In an elementary or secondary school, the notice should be provided to the parents of students under the age of 18 and directly to students who are 18 years of age or older.²⁹

²⁴ 34 C.F.R. § 106.8(b); 2001 Guidance at (VII)(A).

²⁵ 34 C.F.R. § 668.46(k)(1)(iii).

²⁶ 34 C.F.R. § 668.46(k)(2)(v). The Clery Act applies to proceedings arising from allegations of dating violence, domestic violence, sexual assault, and stalking.

²⁷ 34 C.F.R. § 668.46(k)(3)(iv).

²⁸ A sanction that directly relates to the reporting party would include, for example, an order that the responding party stay away from the reporting party. *See* 2001 Guidance at vii n.3. This limitation allows the notice of outcome to comply with the requirements of the Family Educational Rights and Privacy Act. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.10; 34 C.F.R. § 99.12(a). FERPA provides an exception to its requirements only for a postsecondary institution to communicate the results of a disciplinary proceeding to the reporting party in cases of alleged crimes of violence or specific nonforcible sex offenses. 20 U.S.C. § 1232g(b)(6); 34 C.F.R. § 99.31(a)(13).

²⁹ 20 U.S.C. § 1232g(d).

Question 11:

How may a school offer the right to appeal the decision on responsibility and/or any disciplinary decision?

Answer:

If a school chooses to allow appeals from its decisions regarding responsibility and/or disciplinary sanctions, the school may choose to allow appeal (i) solely by the responding party; or (ii) by both parties, in which case any appeal procedures must be equally available to both parties.³⁰

EXISTING RESOLUTION AGREEMENTS

Question 12:

In light of the rescission of OCR's 2011 Dear Colleague Letter and 2014 Questions & Answers guidance, are existing resolution agreements between OCR and schools still binding?

Answer:

Yes. Schools enter into voluntary resolution agreements with OCR to address the deficiencies and violations identified during an OCR investigation based on Title IX and its implementing regulations. Existing resolution agreements remain binding upon the schools that voluntarily entered into them. Such agreements are fact-specific and do not bind other schools. If a school has questions about an existing resolution agreement, the school may contact the appropriate OCR regional office responsible for the monitoring of its agreement.

Note: The Department has determined that this Q&A is a significant guidance document under the Final Bulletin for Agency Good Guidance Practices of the Office of Management and Budget, 72 Fed. Reg. 3432 (Jan. 25, 2007). This document does not add requirements to applicable law. If you have questions or are interested in commenting on this document, please contact the Department of Education at ocr@ed.gov or 800-421-3481 (TDD: 800-877-8339).

³⁰ 2001 Guidance at (IX). Under the Clery Act, a postsecondary institution must provide simultaneous notification of the appellate procedure, if one is available, to both parties. 34 C.F.R. § 668.46(k)(2)(v)(B). OCR has previously informed schools that it is permissible to allow an appeal only for the responding party because "he/she is the one who stands to suffer from any penalty imposed and should not be made to be tried twice for the same allegation." Skidmore College Determination Letter at 5, OCR Complaint No. 02-95-2136 (Feb. 12, 1996); *see also* Suffolk University Law School Determination Letter at 11, OCR Complaint No. 01-05-2074 (Sept. 30, 2008) ("[A]ppeal rights are not necessarily required by Title IX, whereas an accused student's appeal rights are a standard component of University disciplinary processes in order to assure that the student is afforded due process before being removed from or otherwise disciplined by the University."); University of Cincinnati Determination Letter at 6, OCR Complaint No. 15-05-2041 (Apr. 13, 2006) ("[T]here is no requirement under Title IX that a recipient provide a victim's right of appeal.").

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November 30, 2017

Helen A. Friel, Ed.D.
Assistant to the Superintendent/
Clerk of the School Committee
Worcester Public Schools
20 Irving Street
Worcester, MA 01609-2493

RE: Title IX Policy

Dear Dr. Friel:

I write to respond to the School Committee's request for a legal opinion regarding Title IX and to provide the legal opinion and a revised policy for review.

On September 22, 2017, The U.S. Department of Education- Office for Civil Rights issued a Dear Colleague Letter ("2017 Letter") formally withdrawing the statements of policy and guidance previously issued by that office. Specifically withdrawn are the April 4, 2011 *Dear Colleague Letter on Sexual Violence* ("2011 Letter") and the *Questions and Answers on Title IX and Sexual Violence*, dated April 29, 2014 ("2014 Q&A").

Dear Colleague Letter

The recent Dear Colleague letter is highly critical of the 2011 Dear Colleague Letter and 2014 Q&A for a number of reasons, including the following:

- The requirement that schools adopt a minimal standard of proof – the preponderance of the evidence standard – in administering student discipline, rather than the higher clear and convincing evidence standard.
- The suggestion that schools with an appeals process allow complainants to appeal not-guilty findings, even though many schools previously followed procedures reserving appeal for accused students.
- The 2011 Dear Colleague Letter discouraged cross examination by the parties.
- The requirement that schools cannot rely on law enforcement investigations of criminal conduct to resolve Title IX complaints, and therefore "forc[e] schools to establish policing and judicial systems while at the same time direct[] schools to resolve complaints on an expedited basis."
- The recommendation that due process protections afforded to accused students should not "unnecessarily delay" resolving the charges against them.

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- The fact that the 2011 Letter and 2014 Q&A were imposed without affording notice and the opportunity for public comment.

The 2017 Letter also states that the 2011 Letter and 2014 Q&A are widely criticized by universities for placing “improper pressure upon universities to adopt procedures that do not afford fundamental fairness.” The Department stated it intends to “develop an approach to student sexual misconduct that responds to concerns of stakeholders and aligns with the purpose of Title IX”. Such policy changes will be implemented through a rulemaking process that responds to public comment. The Department indicated that the 2017 Letter does not add requirements to the applicable law.

At the same time it issued the 2017 Letter formally withdrawing the above-referenced guidance documents, the Department of Education issued a *Q&A on Campus Sexual Misconduct* (2017 Q&A). According to the Department, the purpose of the 2017 Q&A is to provide information about how OCR will assess a school’s compliance with Title IX during the interim period while the notice and public comment process is underway. The Department noted that the *Revised Sexual Harassment Guidance* issued in 2001 is still considered applicable guidance.

Q&A on Campus Sexual Misconduct

The 2017 Q&A is a seven page document that outlines the following:

- The school’s responsibility to address sexual misconduct complaints.
 - A school must take action when it knows or reasonably should know of an incident of sexual misconduct. A response by the school is required when the misconduct is so severe, persistent or pervasive as to deny or limit a student’s ability to participate in or benefit from the schools programs or activities and thus a hostile environment exists.
 - Schools must designate at least one employee to act as the Title IX Coordinator
- The relationship between Title IX and the Clery Act
 - Higher education institutions that participate in federal student financial aid programs are subject to requirements of the Clery Act, as well as Title IX. The Clery Act requires institutions to compile statistics for incidents of dating violence, domestic violence, sexual assault and stalking and to include certain policies, procedures, and programs pertaining to these incidents in the annual security reports.
 - The Clery Act does not apply to K-12 educational institutions.

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- Examples of interim measures that may be appropriate under the circumstances
 - Interim measures – individualized services offered as appropriate to either party (reporting and responding) prior to the investigation or while an investigation is pending.
 - Examples: counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, leaves of absence, increased security or monitoring of certain areas, etc.
 - A school cannot rely on fixed rules or operating assumptions that favor one party over another, nor may measures only be made available to one party.

- What procedures should be followed to adjudicate a finding of responsibility for sexual misconduct
 - Grievance procedures must be adopted and published by the school and must provide for a prompt and equitable resolution of complaints.
 - Prompt Investigation – There is no fixed time that a school must complete a Title IX investigation (previously was recommended that the investigation period be completed within 60 days). A school must engage in a good faith effort to conduct a fair, impartial investigation in a timely manner.

- Informal Resolution of Complaints
 - If all parties voluntarily agree to participate in an informal resolution and a school determines that the particular complaint is appropriate for such a process, the school may facilitate an informal process, including mediation.

- What constitutes an “equitable” investigation
 - Burden on the school – not on the parties – to gather sufficient evidence to reach a fair and impartial determination.
 - A trained investigator should analyze and document evidence, evaluate credibility of witnesses and take into account the unique circumstances of each case.
 - Any rights or opportunities that are made available to one party must be made available to the other party on equal terms.
 - Written notice must be provided to responding party of allegations and potential violation of the sexual misconduct policy.

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- Each party must receive written notice in advance of any interview or hearing with time to prepare for meaningful participation. The investigation should result in a written report summarizing relevant evidence.
- A school's obligation concerning notice of outcome and appeals
 - Written notice of the outcome of disciplinary proceedings should be provided to the parties concurrently and schools may set an appeals process that allows appeals by both parties or by the responding party. A school may not only allow right of appeal to the complainant.
- Appropriate evidentiary standards
 - Standard of Proof – Schools will have the option to continue to use the preponderance of evidence standard or a higher standard, the clear and convincing evidence standard, in the decision-making process for all claims of student misconduct.

Impact of Interim Guidance

It is important to note that the 2017 Letter does not add requirements to applicable law. It did however withdraw the 2014 Letter which provided a much higher level of detail as to how schools and universities should respond to complaints of sexual harassment and how Title IX investigations should be conducted.

The general message of the interim guidance is to enhance protections for the accused. It achieves this by providing for a greater degree of flexibility in Title IX procedures than the withdrawn guidance (2011 Letter and 2014 Q&A Guidance). For example, it eliminates any suggested timeframe in which to complete an investigation, allows informal resolution like mediation, and allows either a preponderance of the evidence or clear and convincing standard of proof, as long as institutions use the same standard in all disciplinary proceedings.

The interim guidance makes clear that the institution bears the burden to gather sufficient evidence, and, in a further departure from the prior guidance, which discourages cross-examination by the parties, the interim guidance states that institutions should ensure that any procedure afforded to one party be afforded to the other, including cross-examination of witnesses.

There will be a notice and public comment period and at some point in the future, the Department will issue updated guidance in this area. In the meantime, it is advised for schools and universities to review their Title IX policies to ensure they are in line with the 2017 Letter and Q&A.

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Worcester's Title IX Policy

Worcester has a Title IX policy currently in place. Included in the "Legal Policies" section of the "Policies Handbook for the Worcester Public Schools" the District has a lengthy "Nondiscrimination" policy prohibiting discrimination on the basis of race, color, religion, national origin, ancestry, sex, gender identity, age, criminal record, handicap, mental illness, retaliation, sexual harassment, genetics or military service. This policy specifically outlines the District's Sexual Harassment Policy as well as the grievance procedures for complaints of sexual harassment. The Policy sets forth a five (5) step grievance procedure.

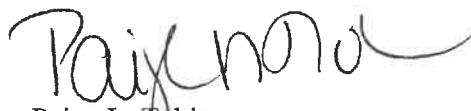
Worcester's policy on sexual harassment includes the majority of the requirements set forth in the relevant guidance. The District has designated a Title IX Coordinator and provided contact information for this person. The Policy sets forth its goal of prompt and equitable resolution of complaints and outlines detailed grievance procedures.

There are a few areas where the District's policy may fall short of what is advised in the interim guidance. Specifically, the Title IX policy does not mention interim measures and does not clearly outline written notice requirements.

Although the interim guidance recently issued did not make any changes to the law, a review of the District's current policy in light of the recent guidance suggests that minor revisions to the policy would be appropriate. I have taken the liberty of revising the policy and enclose it for your review.

In the interim, please do not hesitate to contact me with any questions. Thank you.

Very truly yours,


Paige L. Tobin

PLT/cmw
Enclosures (as stated)

cc: Maureen Binienda, Superintendent

Section IV

EDUCATIONAL SERVICES AND ACADEMIC PROGRESS UNDER MGL c. 71 §§37H, 37H½ AND 37H¾:

Any student who is serving an in-school suspension, short-term suspension, long-term suspension, or expulsion shall have the opportunity to earn credits, as applicable, make up assignments, tests, papers, and other school work as needed to make academic progress during the period of his or her removal from the classroom or school. The principal or his/her designee shall inform the student and parent/guardian of this opportunity in writing when such suspension or expulsion is imposed.

Any student who is expelled or suspended from school for more than ten (10) consecutive days, whether in school or out of school, shall have an opportunity to receive educational services and make academic progress toward meeting state and local requirements, through the school-wide education service plan.

Nondiscrimination

Equal Opportunity/Affirmative Action/Title IX

ADA Title I Section 504/Chapter 622 Grievance Procedure

The Worcester Public Schools is an Equal Opportunity/Affirmative Action Employer/Educational Institution and does not discriminate **regardless of** race, color, religion, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, genetics or military service. The Worcester Public Schools provides equal access to employment and the full range of general, occupational and vocational education programs. For more information relating to Equal Opportunity/Affirmative Action contact the Chief Human Resource Officer, 20 Irving Street, Worcester, MA 01609, 508-799-3020.

The Worcester Public Schools pledges to encourage the equitable and prompt **settlement** of complaints which may be raised by any employee or applicant on a claim of discrimination based on race, color, religion, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, genetics or military service, if the claim is justifiable.

The proceedings shall be kept confidential at each level of this procedure. No document relating to a grievance will be included in the employee's personnel file unless the employee requests this in writing. The grievance procedures are available to remedy unlawful discrimination regarding the hiring, employment, training, promotion, transfer or discipline of any person.

Your attention is called to the fact that the Worcester Public Schools, in accordance with federal and state laws, prohibits discrimination in its operations. This policy, providing equal employment and educational opportunities to all persons regardless of their race, color, religion, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, genetics or military service will apply to all persons affiliated with the Worcester Public Schools, including students, prospective and existing personnel, contractors and suppliers of goods and services.

The Chief Human Resource Officer, 20 Irving Street, Worcester, Massachusetts 01609, telephone number (508) 799-3020, is responsible for the coordination of Title IX, Section 504 ADA Title I and Chapter 622 in the Worcester Public Schools and will be responsible for coordinating the following grievance procedures:

A grievance shall be a complaint by a student, parent/guardian, prospective employee or staff member alleging discrimination on account of race, color, religion, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, genetics or military service, which is filed no more than 30 business days after the alleged act and/or statement.

An aggrieved party must institute proceedings hereunder within **thirty (30) business days** of the event or events giving rise to the grievance or within **thirty (30) business days** from the date the aggrieved party had knowledge or reasonably should have had knowledge of the event or events giving rise to the grievance. The four levels of the grievance process for complaints include:

Level I

- a. A staff member, student or prospective employee with a grievance shall present his/her complaint to his/her immediate superior or principal, whoever is appropriate.
- b. The immediate superior shall make a determination, which shall be final unless the aggrieved party elects to appeal to the next level or the Managers for Instruction and School Leadership, as stated in "c" below. The determination shall be within five (5) business days after the receipt of the formal complaint by the immediate superior.
- c. In the event that no decision has been reached within five (5) business days after presentation of the grievance, the aggrieved party may reduce the grievance to writing and submit it within ten (10) business days to the Managers for Instruction and School Leadership.
- d. This level is an alternate level and a grievant is permitted at his/her discretion to initiate his/her action at Level II.

Level II

- a. If the grievance is not resolved at Level I after five (5) business days, or if a grievant exercises his/her discretion to initiate the complaint at Level II, it shall be reduced to writing by the grievant and forwarded to the Chief Human Resource Officer.
- b. The Chief Human Resource Officer shall meet with appropriate parties to attempt to settle the complaint. The determination shall be within five (5) business days after the receipt of the formal complaint by the Chief Human Resource Officer.
- c. In the event that no decision has been reached within five (5) business days after presentation of the grievance, the aggrieved party may reduce the grievance to writing and submit it within ten (10) business days to the Superintendent.

Level III

- a. The Superintendent, or his/her designee, shall meet within five (5) business days thereafter with the aggrieved person and attempt to settle the grievance.
- b. The grievance shall be answered in writing. In the event that the grievance shall not have been disposed of to the satisfaction of the aggrieved party at Level III, or in the event that no written answer has been received within ten (10) business days after the meeting on the grievance, the aggrieved person may forward the grievance with a copy of the answer, if any, to the Clerk of the School Committee within ten (10) business days.

Level IV

- a. The School Committee will hold a hearing on said grievance within fifteen (15) business days. Said hearing is to be open only at the mutual consent of both parties.
- b. The School Committee will render to the grievant a written decision and the reasons therefore within fifteen (15) business days of said hearing.

Waiver

Failure of the grievant to comply with any provision of the aforesaid grievance procedure shall be deemed to be a waiver of the complaint under the terms of this policy. Failure of the Equal Opportunity/Affirmative Action Officer, Director, Principal, Supervisor, etc. to comply with the time limits set forth in this procedure shall cause the complaint to be automatically appealed to the next Level in the grievance procedure. The time limits specified in the grievance procedure may, however, be extended in any specific instance by mutual written agreement of the parties.

NOTE: Individuals with grievances are not required to use and/or exhaust the Worcester Public Schools grievance procedures. Written complaints, signed by grievant or an authorized representative, may be filed within 300 days as follows:

Equal Employment Opportunity
Commission (E.E.O.C.)
Boston Area Office
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
1-800-669-4000

Additional Agencies include:

Massachusetts Department
of Elementary and
Secondary Education
75 Pleasant Street
Malden, MA 02148-4906
781-388-3300

Massachusetts Commission
Against Discrimination (M.C.A.D.)
One Ashburton Place - Room 601
Boston, MA 02108
617-994-6000
Worcester Office 
484 Main Street, Room 320
Worcester, MA 01608
(508) 453-9630

United States Department of Education
POCH Building, 5 Post Office Square
9th Floor, Room 24
Boston, MA 02110
617-289-0100

Retaliatory Action

The School Committee, through its Superintendent, assures that no retaliatory action will be taken against those persons who file complaints of discrimination on the basis of race, color, religion, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, genetics or military service.

Findings of Discrimination

If discrimination should be found to exist in any employment decisions, actions or practices within the Worcester Public Schools, all appropriate measures will be undertaken to terminate such discrimination. Furthermore, should findings be made of intentional discrimination on the part of any employee, appropriate disciplinary action, up to and including termination, shall be taken under the direction of the Superintendent and/or the School Committee.

Record Keeping

Confidentiality will be maintained throughout the investigative process to the extent practicable. All records involving any complaint filed in accordance with the Worcester Public Schools' Grievance Procedure shall be kept by the Equal Opportunity/Affirmative Action Officer; such records and information will be considered confidential and shall be used only in accordance with the grievance procedure, unless otherwise required by law.

Sexual Harassment Policy

It is the policy of the Worcester Public Schools, as well as state and federal law, that sexual harassment of a student, present or prospective employee, or visitor shall not be tolerated.

Definition

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

1. Submission to such conduct is either made explicitly or implicitly a term or condition of an individual's study, work or employment, in the Worcester Public Schools.
2. Submission to or rejection of such conduct by an individual is used as the basis for educational or employment decisions affecting such individual.
3. Such conduct has the purpose or effect of substantially interfering with the educational performance or work of an individual with reasonable sensitivity.

Considerations

Sexual harassment is not limited to prohibited conduct by a male toward a female, by a supervisory employee toward a non-supervisory employee or by a teacher toward a student, by a student toward a teacher, or by a student toward a student. The Worcester Public Schools' view of sexual harassment includes, but is not limited to, the following considerations:

- a. A male, as well as a female, may be the victim of sexual harassment and a female, as well as a male, may be the harasser.

- b. The harasser does not have to be the victim's superior.
- c. The victim may be the same or opposite sex as the harasser.
- d. The victim does not have to be the person to whom the unwelcome sexual conduct is directed. The victim may also be someone who is affected by such conduct when it is directed toward another person. For example, inappropriate attempts at humor or sexual harassment of one female/male may create an intimidating, hostile or offensive environment for another female/male or may unreasonably interfere with an individual's educational or work performance.
- e. Sexual harassment does not depend on the victim's having suffered an educational or economic consequence as a result of the harasser's conduct.

Violations

Violations of this policy and of the law, if proven, will result in disciplinary action. Any person who believes that he/she has been the victim of sexual harassment may seek redress through the Worcester Public Schools' Sexual Harassment Grievance Procedures.

Sexual Harassment Grievance Procedures

Preface

A formal grievance may be filed at any time by a student, employee, administrator, and/or applicant who believes that his/her rights as outlined in the sexual harassment policy have been violated. Each student, faculty member, administrator, or staff member has an obligation to make every effort to resolve problems informally as they arise. All members of the Worcester Public Schools community are urged to resolve problems fairly and informally so that they do not become sources of grievances to be pursued formally through the grievance procedure. If a suitable solution cannot be reached informally through independent means, which may include consultation with the Chief Human Resource Officer, a formal grievance may be initiated.

Definitions

A "grievance" shall be a complaint by an individual alleging that there has been a violation of the sexual harassment policy.

Step I (Informal)

- a. Any and all grievances must be presented in writing within thirty (30) working days of the date when the grievant became aware, or should have been aware, of the event or events giving rise to the grievance. The person(s) opting to exercise the informal grievance procedure should so notify the concerned staff or faculty member, or administrator, present him/her with a written summary of the grievance and set up a time to meet and discuss the problem.
- b. However, due to the private and sensitive nature of sexual harassment, the grievant may choose a third party mediation to help resolve the grievance on an informal basis. Such mediation activities shall continue for a period of no more than twenty (20) days, or until resolution is achieved, if that is less. Should such resolution efforts fail in addressing these issues, the grievant may initiate the formal grievance procedure at Step II.

- c. This level is an alternative level, and a grievant is permitted at his/her discretion to initiate his/her action at Step II.

Step II

- a. If the grievant believes a further review of the grievance is warranted, he/she shall, within five (5) school/working days of receiving the Step I decision, notify the appropriate parties if he/she wishes to pursue the next step. In cases where this is the first formal step in an alleged sexual harassment charge, the grievant should forward the written grievance to the Chief Human Resource Officer.
- b. Once the Chief Human Resource Officer receives the grievance, he/she shall forward the grievance to the individual involved in the grievance, and to his/her supervisor.

The following individuals will be notified pursuant to Paragraph b:

- 1. If the person charged with sexual harassment is a teacher, notify the teacher and the principal of the school.
- 2. If the person charged with sexual harassment is a non-instructional staff member, notify the person and his/her immediate supervisor.
- 3. If the person charged with sexual harassment is a principal or administrator, notify the person and his/her immediate supervisor.
- 4. If the person charged with sexual harassment is the Superintendent, notify the person and the Chairperson of the School Committee.
- 5. If the person charged with sexual harassment is a student, notify the principal of the student's school.
- 6. If the person charged with sexual harassment is a non-school personnel, notify the person and the principal of the school and/or the immediate supervisor of the school.
- c. Within ten (10) working days of receipt of the grievance, the aggrieved party, (as well as the accused) and the appropriate supervisor, as noted above, shall meet with the Chief Human Resource Officer to discuss the grievance.
- d. The Chief Human Resource Officer shall respond in writing within five (5) working/school days following the discussion.

Step III

- a. If the grievant believes a further review of the grievance is justified, he/she may submit the grievance to the Superintendent within five (5) working/school days of receipt of the decision rendered under Step II. The grievance should be accompanied by a statement of the resolution sought and copies of all documents.
- b. Within fifteen (15) days of receipt of the grievance, the Superintendent shall review all previously written statements and resolutions and hold a hearing. The persons to be present at said hearing will consist of the Superintendent, the Chief Human Resource Officer, the grievant, the charged individual and the appropriate supervisor. The Superintendent may include other persons in the hearing process.
- c. In the event that the charged individual is the Superintendent, the persons to be present at said hearing will consist of the School Committee, the Chief Human Resource Officer, and the grievant. The School Committee, at

its discretion, may include other persons in the hearing upon request of the grievant, the Superintendent, or other participants at this level.

- d. Within fifteen (15) working days after the hearing, the Superintendent and/or the Chairperson of the School Committee will render a determination in writing and take any appropriate action.

Step IV

- a. If the grievant still believes a further review of the grievance is justified at Step III, or in the event that no written response has been received within fifteen (15) working days of the hearing or the grievance, he/she may present a petition to the School Committee within five working days.
- b. Within fifteen (15) working days after hearing the petition, the School Committee will render a determination in writing and take any appropriate action.

Step V

- a. The School Committee will, within fifteen (15) working days, hold a hearing. The persons to be present at said hearing will consist of the Superintendent, the Chief Human Resource Officer, the grievant, the charged individual, and the appropriate supervisor. The School Committee, at its discretion, may include other persons in the hearing upon request of the grievant, the charged individual or other participants at this level.
- b. Within fifteen (15) working days after the hearing, the School Committee will render a determination in writing and take any appropriate action.

Miscellaneous Provisions

1. Grievance procedures for all employees and students regarding any matter follow a standard process, but can vary to accommodate the sensitivity of the charges, as well as the grievant or the individual, against whom the grievance is made.
2. Grievants are not limited to a formal grievance procedure, but may seek relief from other agencies, including the Equal Employment Opportunity Commission, the Massachusetts Commission Against Discrimination, or the Office of Civil Rights of the Department of Education.
3. Any retaliatory action of any kind taken by an employee or student of the Worcester Public Schools against any other employee or student of the Worcester Public Schools as a result of that person's seeking redress under these procedures, cooperating in an investigation, or otherwise participating in any proceeding under these procedures, is prohibited, and shall be regarded as a separate and distinct grievable matter.
4. Whenever a grievance involves issues of sexual harassment of any kind, the Chief Human Resource Officer shall be notified in writing by the grievant, or by the administrators or agents of the Worcester Public Schools to whom the grievance is brought. .
5. All grievance proceedings, informal and formal, **will to the greatest feasible extent, be held in confidence by all persons directly or indirectly involved in them.**

6. Failure of the grievant to meet the time specifications acknowledges the grievant's acceptance of the decision of the previous step. He/she forfeits the right to pursue the grievance further.

← 7. The Chief Human Resource Officer shall act as a resource for students and for the School Committee.

Penalties in Cases of Sexual Harassment

Remedial actions will depend on the severity of the incident. Due to the private nature of incidents involving sexual harassment and the emotional and moral complexities surrounding such issues, every effort will be made to resolve problems on an informal basis. When a grievance is resolved informally only a short summary of the incident will be maintained on file.

Any admission of guilt, an acknowledgment of the verbal warning, a promise not to commit such abuse again, and action taken to provide appropriate relief may be a sufficient resolution. At the informal stage, it is hoped to sensitize the person at fault to the effects of such behavior, to be constructive and not unduly punitive in the disciplinary action. If informal resolutions are not adhered to, or if no resolution can be agreed to at the formal stage, the Superintendent and/or the School Committee may deem it necessary to take appropriate action that can include formal letters of reprimand, suspension, or a recommendation of dismissal.

ANTI-HAZING LAW (G.L. c. 269)

Section 17. Whoever is a principal organizer or participant in the crime of hazing, as defined herein, shall be punished by a fine of not more than \$3,000.00 or by imprisonment in a house of correction for not more than one year, or both such fine and imprisonment.

The term "hazing" as used in this section and in Sections 18 and 19, shall mean any conduct or method of initiation into any student organization, whether on public or private property, which willfully or recklessly endangers the physical or mental health of any student or other person. Such conduct shall include whipping, beating, branding, forced calisthenics, exposure to the weather, forced consumption of any food, liquor, beverage, drug or other substance, or any other brutal treatment or forced physical activity which is likely to adversely affect the physical health or safety of any such student or other person, or which subjects such student or other person to extreme mental stress, including extended deprivation of sleep or rest or extended isolation.

Notwithstanding any other provisions of this section to the contrary, consent shall not be available as a defense to any prosecution under this action.

Section 18. Whoever knows that another person is the victim of hazing as defined in Section 17 and is at the scene of such crime shall, to the extent that such person can do so without danger or peril to himself or others, report such crime to an appropriate law enforcement official as soon as reasonably practicable. Whoever fails to report such crime shall be punished by a fine of not more than \$1,000.00.

Section 19. Each institution of secondary education and each public and private institution of post secondary education shall issue to every student group, student team or student organization which is part of such institution or is recognized by the institution or permitted by the institution to use its name or facilities or is known by

**Nondiscrimination
 Equal Opportunity/Affirmative Action/Title IX
 ADA Title I Section 504/Chapter 622 Grievance Procedure**

Original approved changes in Annex C	Amendments proposed by Murphy, Lamere and Murphy in Annex E
<p>Page 1 Replace the word "regardless"</p> <p>Replace the word "settlement"</p>	<p>Page 1 Replace with "exclude or discriminate based upon..."</p> <p>Replace with "resolution"</p>
<p>Page 3 Delete "Boston Area Office"</p> <p>Delete the following agency: United States Department of Education POCH Building, 5 Post Office Square 9th Floor, Room 24 Boston, MA 02110 617-289-0100</p>	<p>Page 3 Deleted "Boston Area Office"</p> <p>Added "(MCAD)" after Worcester Office</p> <p>Agency deleted</p>
<p>Page 4 Replace the title "Retaliatory Action"</p>	<p>Page 3 Replace the Title to "Prohibition of Retaliation"</p>
<p>Page 4 Under "Findings of Discrimination," add new wording after "...terminate such discrimination"</p>	<p>Page 3 add "and remedy any effects of the discrimination" at the end of the sentence.</p>
<p>Page 4 New proposed language under "Sexual Harassment Policy"</p>	<p>Page 4 Add the following to the last sentence: visitor shall not be tolerated. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating in an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated.</p>

**Nondiscrimination
Equal Opportunity/Affirmative Action/Title IX
ADA Title I Section 504/Chapter 622 Grievance Procedure**

ANNEX D
gb #7-323.1
Page 2

Original approved changes in Annex C	Amendments proposed by Murphy, Lamere and Murphy in Annex E
<p>Page 5 New Paragraph added under "Sexual Harassment Grievance Procedures"</p>	<p>Page 5 The grievance procedures outlined below apply to complaints of sex discrimination filed by students against school employees, other students, or third parties. These procedures are intended to provide prompt and equitable resolution of complaints of discrimination and/or harassment on the basis of sex.</p>
<p>Pages 7 and 8 New language added (1-3) under "Miscellaneous Provisions" and renumber</p>	<p>Pages 7 and 8</p> <ol style="list-style-type: none"> 1. Upon notice of possible sexual harassment of students, the Worcester Public Schools will take immediate steps to investigate or otherwise determine what occurred and take prompt and effective corrective action to stop the harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. 2. All investigations of complaints of sexual harassment shall include due process protections to both parties, including the opportunity to present witnesses and other evidence and notice to the parties of the outcome of the complaint. 3. It may be appropriate for a school to take interim measures during the investigation of a complaint.
<p>Page 8 Replace "Penalties in Cases of Sexual Harassment"</p> <p>Replace the word "problems"</p> <p>Add new paragraph at the end of "Penalties in Cases of Sexual Harassment"</p>	<p>Page 8 Change Title to "Remedial Actions in Cases of Sexual Harassment"</p> <p>Change to "complaints"</p> <p>Remedial action by Worcester Public Schools will also include taking necessary steps to end the harassment, eliminate any hostile environment that has been created, and prevent its recurrence.</p>

Nondiscrimination

Equal Opportunity/Affirmative Action/Title IX ADA Title I Section 504/Chapter 622 Grievance Procedure

The Worcester Public Schools is an Equal Opportunity/Affirmative Action Employer/Educational Institution and does not **exclude or discriminate based upon** race, color, religion, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, genetics or military service. The Worcester Public Schools provides equal access to employment and the full range of general, occupational and vocational education programs. For more information relating to Equal Opportunity/Affirmative Action contact the Chief Human Resource Officer, 20 Irving Street, Worcester, MA 01609, 508-799-3020.

The Worcester Public Schools pledges to encourage the equitable and prompt **resolution** of complaints which may be raised by any employee or applicant on a claim of discrimination based on race, color, religion, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, genetics or military service, if the claim is justifiable.

The proceedings shall be kept confidential at each level of this procedure. No document relating to a grievance will be included in the employee's personnel file unless the employee requests this in writing. The grievance procedures are available to remedy unlawful discrimination regarding the hiring, employment, training, promotion, transfer or discipline of any person.

Your attention is called to the fact that the Worcester Public Schools, in accordance with federal and state laws, prohibits discrimination in its operations. This policy, providing equal employment and educational opportunities to all persons regardless of their race, color, religion, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, genetics or military service will apply to all persons affiliated with the Worcester Public Schools, including students, prospective and existing personnel, contractors and suppliers of goods and services.

The Chief Human Resource Officer, 20 Irving Street, Worcester, Massachusetts 01609, telephone number (508) 799-3020, is responsible for the coordination of Title IX, Section 504 ADA Title I and Chapter 622 in the Worcester Public Schools and will be responsible for coordinating the following grievance procedures: A grievance shall be a complaint by a student, parent/guardian, prospective employee or staff member alleging discrimination on account of race, color, religion, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, genetics or military service, which is filed no more than 30 business days after the alleged act and/or statement.

An aggrieved party must institute proceedings hereunder within thirty (30) business days of the event or events giving rise to the grievance or within thirty (30) business days from the date the aggrieved party had knowledge or reasonably should have had knowledge of the event or events giving rise to the grievance. The four levels of the grievance process for complaints include:

Level I

- a. A staff member, student or prospective employee with a grievance shall present his/her complaint to his/her immediate superior or principal, whoever is appropriate.
- b. The immediate superior shall make a determination, which shall be final unless the aggrieved party elects to appeal to the next level or the Managers for Instruction and School Leadership, as stated in "c" below. The determination shall be within five (5) business days after the receipt of the formal complaint by the immediate superior.
- c. In the event that no decision has been reached within five (5) business days after presentation of the grievance, the aggrieved party may reduce the grievance to writing and submit it within ten (10) business days to the Managers for Instruction and School Leadership.
- d. This level is an alternate level and a grievant is permitted at his/her discretion to initiate his/her action at Level II.

Level II

- a. If the grievance is not resolved at Level I after five (5) business days, or if a grievant exercises his/her discretion to initiate the complaint at Level II, it shall be reduced to writing by the grievant and forwarded to the Chief Human Resource Officer.
- b. The Chief Human Resource Officer shall meet with appropriate parties to attempt to settle the complaint. The determination shall be within five (5) business days after the receipt of the formal complaint by the Chief Human Resource Officer.
- c. In the event that no decision has been reached within five (5) business days after presentation of the grievance, the aggrieved party may reduce the grievance to writing and submit it within ten (10) business days to the Superintendent.

Level III

- a. The Superintendent, or his/her designee, shall meet within five (5) business days thereafter with the aggrieved person and attempt to settle the grievance.
- b. The grievance shall be answered in writing. In the event that the grievance shall not have been disposed of to the satisfaction of the aggrieved party at Level III, or in the event that no written answer has been received within ten (10) business days after the meeting on the grievance, the aggrieved person may forward the grievance with a copy of the answer, if any, to the Clerk of the School Committee within ten (10) business days.

Level IV

- a. The School Committee will hold a hearing on said grievance within fifteen (15) business days. Said hearing is to be open only at the mutual consent of both parties.
- b. The School Committee will render to the grievant a written decision and the reasons therefore within fifteen (15) business days of said hearing.

Waiver

Failure of the grievant to comply with any provision of the aforesaid grievance procedure shall be deemed to be a waiver of the complaint under the terms of this policy. Failure of the Equal Opportunity/Affirmative Action Officer, Director, Principal, Supervisor, etc. to comply with the time limits set forth in this procedure shall cause the complaint to be automatically appealed to the next Level in the grievance procedure. The time limits specified in the grievance procedure may, however, be extended in any specific instance by mutual written agreement of the parties.

NOTE: Individuals with grievances are not required to use and/or exhaust the Worcester Public Schools grievance procedures. Written complaints, signed by grievant or an authorized representative, may be filed within 300 days as follows:

Equal Employment Opportunity Commission (EEOC)
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
(800)660-4000

Massachusetts Commission Against Discrimination (MCAD)
One Ashburton Place-Room 601
Boston, MA 02108
(617) 994-6000

Worcester Office (MCAD)
484 Main Street, Room 320
Worcester, MA 01608
(508) 453-9630

Additional Agencies include:

Massachusetts Department of Elementary and Secondary
Education 75 Pleasant Street
Malden, MA 02148
(781) 338-3000

Prohibition of Retaliation

The School Committee, through its Superintendent, assures that no retaliatory action will be taken against those persons who file complaints of discrimination on the basis of race, color, religion, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, genetics or military service.

Findings of Discrimination

If discrimination should be found to exist in any employment decisions, actions or practices within the Worcester Public Schools, all appropriate measures will be undertaken to terminate such discrimination **and remedy any effects of the discrimination**. Furthermore, should findings

be made of intentional discrimination on the part of any employee, appropriate disciplinary action, up to and including termination, shall be taken under the direction of the Superintendent and/or the School Committee.

Record Keeping

Confidentiality will be maintained throughout the investigative process to the extent practicable. All records involving any complaint filed in accordance with the Worcester Public Schools' Grievance Procedure shall be kept by the Equal Opportunity/Affirmative Action Officer; such records and information will be considered confidential and shall be used only in accordance with the grievance procedure, unless otherwise required by law.

Sexual Harassment Policy

It is the policy of the Worcester Public Schools, as well as state and federal law, that sexual harassment of a student, present or prospective employee, or visitor shall not be tolerated. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating in an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated.

Definition

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

1. Submission to such conduct is either made explicitly or implicitly a term or condition of an individual's study, work or employment, in the Worcester Public Schools.
2. Submission to or rejection of such conduct by an individual is used as the basis for educational or employment decisions affecting such individual.
3. Such conduct has the purpose or effect of substantially interfering with the educational performance or work of an individual with reasonable sensitivity.

Considerations

Sexual harassment is not limited to prohibited conduct by a male toward a female, by a supervisory employee toward a non-supervisory employee or by a teacher toward a student, by a student toward a teacher, or by a student toward a student. The Worcester Public Schools' view of sexual harassment includes, but is not limited to, the following considerations:

- a. A male, as well as a female, may be the victim of sexual harassment and a female, as well as a male, may be the harasser.
- b. The harasser does not have to be the victim's superior.
- c. The victim may be the same or opposite sex as the harasser.
- d. The victim does not have to be the person to whom the unwelcome sexual conduct is directed. The victim may also be someone who is affected by such conduct when it is

directed toward another person. For example, inappropriate attempts at humor or sexual harassment of one female/male may create an intimidating, hostile or offensive environment for another female/male or may unreasonably interfere with an individual's educational or work performance.

- e. Sexual harassment does not depend on the victim's having suffered an educational or economic consequence as a result of the harasser's conduct.

Violations

Violations of this policy and of the law, if proven, will result in disciplinary action. Any person who believes that he/she has been the victim of sexual harassment may seek redress through the Worcester Public Schools' Sexual Harassment Grievance Procedures.

Sexual Harassment Grievance Procedures

Preface

A formal grievance may be filed at any time by a student, employee, administrator, and/or applicant who believes that his/her rights as outlined in the sexual harassment policy have been violated. Each student, faculty member, administrator, or staff member has an obligation to make every effort to resolve problems informally as they arise. All members of the Worcester Public Schools community are urged to resolve problems fairly and informally so that they do not become sources of grievances to be pursued formally through the grievance procedure. If a suitable solution cannot be reached informally through independent means, which may include consultation with the Chief Human Resource Officer, a formal grievance may be initiated.

The grievance procedures outlined below apply to complaints of sex discrimination filed by students against school employees, other students, or third parties. These procedures are intended to provide prompt and equitable resolution of complaints of discrimination and/or harassment on the basis of sex.

Definitions

A "grievance" shall be a complaint by an individual alleging that there has been a violation of the sexual harassment policy.

Step I (Informal)

- a. Any and all grievances must be presented in writing within thirty (30) working days of the date when the grievant became aware, or should have been aware, of the event or events giving rise to the grievance. The person(s) opting to exercise the informal grievance procedure should so notify the concerned staff or faculty member, or administrator, present him/her with a written summary of the grievance and set up a time to meet and discuss the problem.
- b. However, due to the private and sensitive nature of sexual harassment, the grievant may choose a third party mediation to help resolve the grievance on

an informal basis. Such activities shall continue for a period of no more than twenty (20) days, or until resolution is achieved, if that is less. Should such resolution efforts fail in addressing these issues, the grievant may initiate the formal grievance procedure at Step II.

- c. This level is an alternative level, and a grievant is permitted at his/her discretion to initiate his/her action at Step II.

Step II

- a. If the grievant believes a further review of the grievance is warranted, he/ she shall, within five (5) school/working days of receiving the Step I decision, notify the appropriate parties if he/she wishes to pursue the next step. In cases where this is the first formal step in an alleged sexual harassment charge, the grievant should forward the written grievance to the Chief Human Resource Officer.
- b. Once the Chief Human Resource Officer receives the grievance, he/she shall forward the grievance to the individual involved in the grievance, and to his/her supervisor. The following individuals will be notified pursuant to Paragraph b:
 - 1. If the person charged with sexual harassment is a teacher, notify the teacher and the principal of the school.
 - 2. If the person charged with sexual harassment is a non-instructional staff member, notify the person and his/her immediate supervisor.
 - 3. If the person charged with sexual harassment is a principal or administrator, notify the person and his/her immediate supervisor.
 - 4. If the person charged with sexual harassment is the Superintendent, notify the person and the Chairperson of the School Committee.
 - 5. If the person charged with sexual harassment is a student, notify the principal of the student's school.
 - 6. If the person charged with sexual harassment is a non-school personnel, notify the person and the principal of the school and/or the immediate supervisor of the school.
- c. Within ten (10) working days of receipt of the grievance, the aggrieved party, (as well as the accused) and the appropriate supervisor, as noted above, shall meet with the Chief Human Resource Officer to discuss the grievance.
- d. The Chief Human Resource Officer shall respond in writing within five (5) working/school days following the discussion.

Step III

- a. If the grievant believes a further review of the grievance is justified, he/she may submit the grievance to the Superintendent within five (5) working/ school days of receipt of the decision rendered under Step II. The grievance should be accompanied by a statement of the resolution sought and copies of all documents.

- b. Within fifteen (15) days of receipt of the grievance, the Superintendent shall review all previously written statements and resolutions and hold a hearing. The persons to be present at said hearing will consist of the Superintendent, the Chief Human Resource Officer, the grievant, the charged individual and the appropriate supervisor. The Superintendent may include other persons in the hearing process.
- c. In the event that the charged individual is the Superintendent, the persons to be present at said hearing will consist of the School Committee, the Chief Human Resource Officer, and the grievant. The School Committee, at its discretion, may include other persons in the hearing upon request of the grievant, the Superintendent, or other participants at this level.
- d. Within fifteen (15) working days after the hearing, the Superintendent and/ or the Chairperson of the School Committee will render a determination in writing and take any appropriate action.

Step IV

- a. If the grievant still believes a further review of the grievance is justified at Step III, or in the event that no written response has been received within fifteen (15) working days of the hearing or the grievance, he/she may present a petition to the School Committee within five working days.
- b. Within fifteen (15) working days after hearing the petition, the School Committee will render a determination in writing and take any appropriate action.

Step V

- a. The School Committee will, within fifteen (15) working days, hold a hearing. The persons to be present at said hearing will consist of the Superintendent, the Chief Human Resource Officer, the grievant, the charged individual, and the appropriate supervisor. The School Committee, at its discretion, may include other persons in the hearing upon request of the grievant, the charged individual or other participants at this level.
- b. Within fifteen (15) working days after the hearing, the School Committee will render a determination in writing and take any appropriate action.

Miscellaneous Provisions

1. Upon notice of possible sexual harassment of students, the Worcester Public Schools will take immediate steps to investigate or otherwise determine what occurred and take prompt and effective corrective action to stop the harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.
2. All investigations of complaints of sexual harassment shall include due process protections to both parties, including the opportunity to present witnesses and other evidence and notice to the parties of the outcome of the complaint.

3. It may be appropriate for a school to take interim measures during the investigation of a complaint.
4. Grievance procedures for all employees and students regarding any matter follow a standard process, but can vary to accommodate the sensitivity of the charges, as well as the grievant or the individual, against whom the grievance is made.
5. Grievant are not limited to a formal grievance procedure, but may seek relief from other agencies, including the Equal Employment Opportunity Commission, the Massachusetts Commission Against Discrimination, or the Office of Civil Rights of the Department of Education.
6. Any retaliatory action of any kind taken by an employee or student of the Worcester Public Schools against any other employee or student of the Worcester Public Schools as a result of that person's seeking redress under these procedures, cooperating in an investigation, or otherwise participating in any proceeding under these procedures, is prohibited, and shall be regarded as a separate and distinct grievable matter.
7. Whenever a grievance involves issues of sexual harassment of any kind, the Chief Human Resource Officer shall be notified in writing by the grievant, or by the administrators or agents of the Worcester Public Schools to whom the grievance is brought.
8. All grievance proceedings, informal and formal, will to the greatest feasible extent, be held in confidence by all persons directly or indirectly involved in them.
9. Failure of the grievant to meet the time specifications acknowledges the grievant's acceptance of the decision of the previous step. He/she forfeits the right to pursue the grievance further.

The Chief Human Resource Officer shall act as a resource for students and for the School Committee.

Remedial Actions in Cases of Sexual Harassment

Remedial actions will depend on the severity of the incident. Due to the private nature of incidents involving sexual harassment and the emotional and moral complexities surrounding such issues, every effort will be made to resolve complaints on an informal basis. When a grievance is resolved informally only a short summary of the incident will be maintained on file.

Any admission of guilt, an acknowledgment of the verbal warning, a promise not to commit such abuse again, and action taken to provide appropriate relief may be a sufficient resolution. At the informal stage, it is hoped to sensitize the person at fault to the effects of such behavior, to be constructive and not unduly punitive in the disciplinary action. If informal resolutions are not adhered to, or if no resolution can be agreed to at the formal stage, the Superintendent and/or the School Committee may deem it necessary to take appropriate action that can include formal letters of reprimand, suspension, or a recommendation of dismissal.

Remedial action by Worcester Public Schools will also include taking necessary steps to end the harassment, eliminate any hostile environment that has been created, and prevent its recurrence.

STANDING COMMITTEE: **GOVERNANCE AND EMPLOYEE ISSUES**

DATE OF MEETING: Tuesday, March 6, 2018

ITEM: Lorenzo Hernandez (October 24, 2017)

To consider the following item from Lorenzo Hernandez, Ex-Officio Member of the School Committee:

To consider offering a cost free Driver's Education course for students at Worcester Technical High School.

PRIOR ACTION:

- 11-2-17 - It was moved and voice voted to refer the item to the Standing Committee on Governance and Employee Issues.
Mr. O'Connell made the following motions:
Request that the Administration provide a report as to what other school districts do in terms of costs for Driver Education Programs and indicate if they provide cost free programs or scholarship initiatives to needy students.
Request that the Administration seek information from other school districts, specifically Wachusett Regional High School, to determine how such a Driver Education course is provided at that school.
Request that the Administration study the feasibility of offering South High Community School's Driver Education Course again.
On a voice vote, the motions were approved.

BACKUP:

The Administration suggested that a grant could possibly be written to receive the funds necessary to provide free Driver's Education courses across the city to students.

PLEASE POST

OFFICE OF THE SUPERINTENDENT

WORCESTER PUBLIC SCHOOLS
WORCESTER, MASSACHUSETTS

2017-2018

BULLETIN #1

PROFESSIONAL CONDUCT SERIES

AUGUST 1, 2017

TO: ALL PERSONNEL

FROM: MAUREEN BINIENDA, SUPERINTENDENT

SUBJECT: SUMMARY OF WORCESTER PUBLIC SCHOOLS' POLICY AND
PROCEDURES FOR REPORTING CHILD ABUSE AND NEGLECT

The attached Policy and Procedures reflect the content of Chapter 119 (Sections 51A & B) of the Massachusetts General Laws, which indicates that all professional school employees are "mandated reporters" for cases of suspected child abuse and neglect. I appreciate your strict adherence to the Worcester Public Schools' Policy and Procedures.

The contact agency for reporting cases is:

The Massachusetts Department of Children & Families
13 Sudbury Street
Worcester, MA 01609

Telephone: (508) 929-2000
DCF Hotline: (800) 922-8169

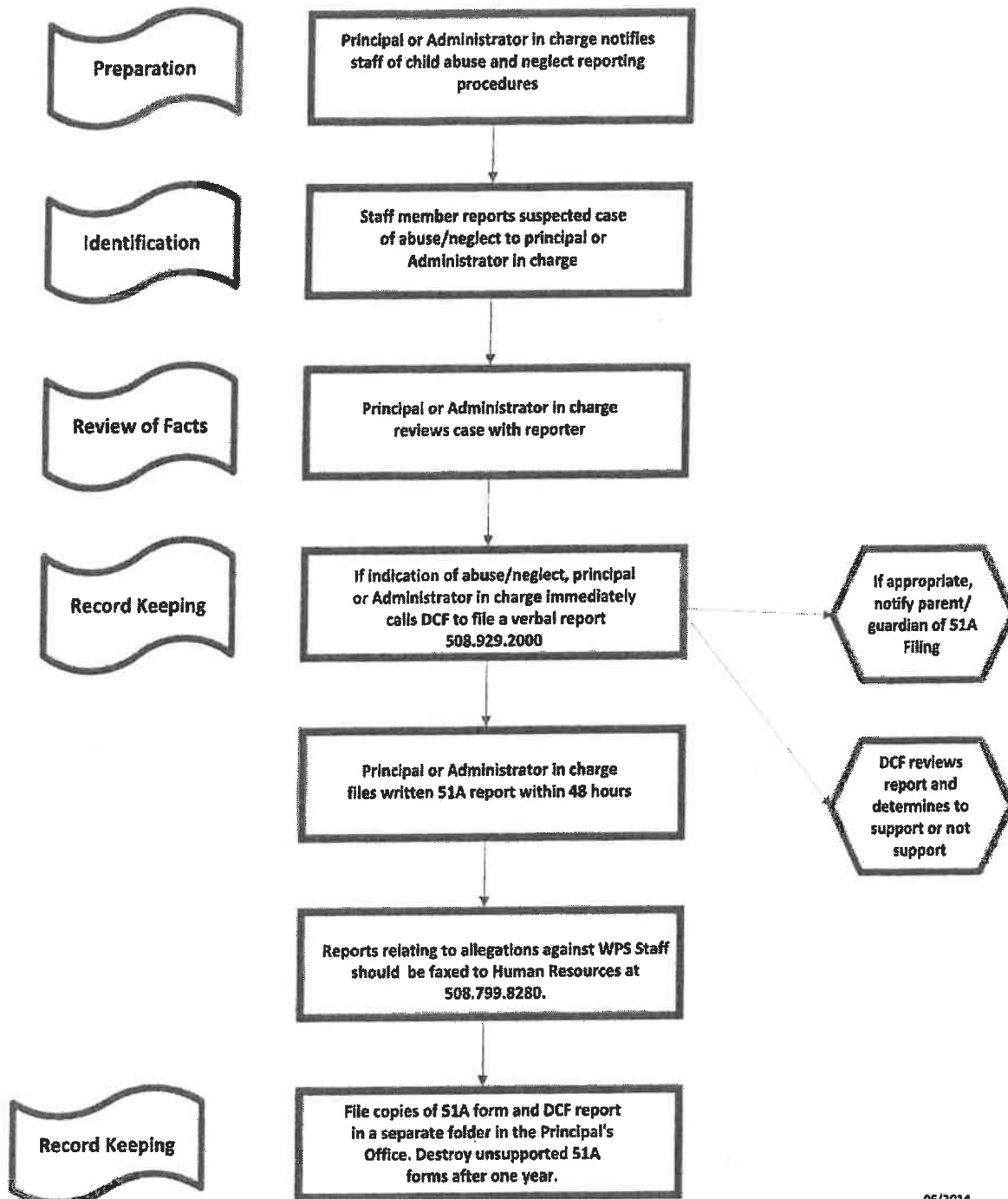
8:45 A.M. - 5:00 P.M.
all other times (weekends & holidays)

Attachments (All Personnel should receive pages 1-4)

REPORTS RELATING TO ALLEGATIONS AGAINST WPS STAFF, SHOULD BE FAXED TO HUMAN RESOURCES AT 508-799-8280.

The Worcester Public Schools is an Equal Opportunity/Affirmative Action Employer/Educational Institution and does not discriminate regardless of race, color, gender, age, religion, gender identity, national origin, marital status, sexual orientation, disability, or homelessness. The Worcester Public Schools provides equal access to employment and the full range of general, occupational and vocational education programs. For more information relating to Equal Opportunity/Affirmative Action contact the Chief Human Resources Officer, 20 Irving Street, Worcester, MA 01609. 508-799-3020.

WORCESTER PUBLIC SCHOOLS CHILD ABUSE AND NEGLECT REPORTING PROCEDURES



SUMMARY OF WORCESTER PUBLIC SCHOOLS' POLICY AND PROCEDURES FOR REPORTING CHILD ABUSE AND NEGLECT

The Worcester Public Schools' policy reflects the content of Chapter 119, Section 51A, of the Massachusetts' General Laws as amended by Chapter 1076 of 1973. The purpose of the Law is to protect children and prevent further neglect or abuse.

POLICY:

Worcester Public School personnel are required to report abuse or neglect cases if in their "professional capacity, they have reasonable cause to believe that a child under the age of eighteen years is suffering physical or emotional injury resulting from abuse inflicted upon him/her, including sexual abuse, or from neglect, including malnutrition". M.G.L. C. 119, S. 51A

PROCEDURES:

- School personnel who have reasonable cause to believe that a child is suffering physical or emotional injury resulting from abuse or neglect, whether or not the alleged perpetrator is a caretaker or not, shall report such cases to the principal*.
- The principal or his/her designee will immediately contact the Department of Children and Families, 13 Sudbury Street, by telephone (929-2000) and give the following information:
 - a. Name and address of student.
 - b. Name and address of parents/guardian.
 - c. Age and sex of student.
 - d. Nature and extent of injuries or description of neglect.
 - e. Any evidence of prior injuries or neglect.
 - f. Circumstances under which the person first became aware of abuse or neglect.
 - g. Action taken to assist child if any is taken.
 - h. Name, address, and telephone number of person(s) making report and facility representative.

The oral report should be as complete as possible since the Department of Children and Families will make a decision relative to "reasonable cause" based on this conversation. Any doubts about a reportable condition should be discussed as the Department of Children and Families has "screeners" trained to receive both oral and written reports.

Reports relating to allegations against Worcester Public School's staff shall be faxed to Human Resources at 508-799-8280.

The principal* must forward a written report (Form 51A) within 48 hours after the oral communication. In the event, that the written report has been compiled by the principal's designee, the principal must co-sign the report.

Mandated reporters can be fined up to \$1,000 for not reporting a case of alleged child abuse/neglect.

Mandated reporters are not liable in any civil or criminal action for submitting a report that is made in good faith.

*** In his/her absence, the Administrator in charge.**

DEFINITION OF TERMS:

- **Mandated Reporter:** Any... school teacher, educational administrator, guidance or family counselor who, in his or her professional capacity shall have reasonable cause to believe that a child under the age of 18 is suffering physical or emotional injury resulting from abuse inflicted upon him or her including sexual abuse, or from neglect, shall immediately report such condition to the Department of Children and Families by oral communication and by making a written report within 48 hours.
- **Abuse:** The non-accidental commission of any act by a caretaker upon a child under age eighteen (18) which causes, or creates a substantial risk of, serious physical or serious emotional injury or constitute a sexual offense under the laws of the Commonwealth. This definition is not dependent upon location (i.e. abuse can occur while the child is in an out-of-home or in-home setting).
- **Neglect:** Means failure by a caretaker, either deliberately or through negligence or inability to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; provided, however, that such inability is not due solely to inadequate economic resource or solely to the existence of a handicapping condition. This definition is not dependent upon location (i.e. neglect can occur while the child is in an out-of-home or in-home setting).
- **Caretaker:** The "caretaker" definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with responsibility for the child. Examples of caretakers are:
 - Parent
 - Step-parent
 - Guardian
 - Any household member entrusted with the responsibility for a child's health or welfare
 - Any other person trusted with the responsibility for a child's health or welfare whether in a child's home, a relative's home, a school setting, a day care setting, a foster home, a group care facility, or any other comparable residential setting.

This is only a summary. Comprehensive procedures are available in the principal's office, the health office, and the school library. You are encouraged to read the policy in its entirety.

WORCESTER PUBLIC SCHOOLS CHILD ABUSE AND NEGLECT COMPREHENSIVE PROCEDURES FOR SCHOOL PERSONNEL

Child abuse and neglect are always very serious problems. Discussing a situation of abuse or neglect with a child can be a difficult and sensitive matter. It is not uncommon for the child to be frightened and prefer to avoid any discussion. For this reason, adults who are trying to help the child are encouraged to express warmth, patience, and support in reviewing the suspected case of abuse/neglect. Efforts to help a child believed to be abused/neglected must also involve the child's parent or guardian unless you think discussion with the parent would increase the risk to the child. It is best to discuss the alleged case of child abuse/neglect in a face-to-face situation with the child's parent or guardian. The essence of the conversation should deal with the facts supporting the alleged abuse, the responsibility of the school under the law, and the services provided by the Department of Children and Families. In most cases of child abuse/neglect, the parent or guardian is aware of the problem, wants to help, but is unable to take the necessary steps to get help. Therefore, your effort to report the child abuse/neglect situation can be viewed by the parent or guardian as the initial step in securing help for the family and child.

The following are procedures for reporting alleged cases of child abuse/neglect:

1. Principals are to notify teachers and other school personnel who have contact with students to immediately report alleged cases of child abuse/neglect to the Principal or, in his/her absence, to the Administrator in charge.
2. An effort should be made to determine the extent of the following:
 - Who is responsible for the alleged abuse/neglect?
 - Is there indication that harm inflicted upon the child was deliberate?
 - Is there indication that the child is in personal danger or feels in personal danger?

The abuse/neglect must be reported to the Department of Children and Families (929-2000).

3. The Principal* must file a verbal report with the Department of Children and Families. Any staff member completes his/her legal responsibility when he/she has reported to the Principal*. The Principal* remains the mandated reporter. This does not preclude a staff member from directly filing a 51A Form f, in conscience, he/she feels obligated to do so.
 4. The Principal, or the Principal's Designee, will call the Department of Children and Families (929-2000), immediately and give an oral report.
 - A. The DCF worker will evaluate the report to determine the severity of the case and what further action will be taken. The case must be investigated in ten calendar days and must include viewing of the child/children reported and speaking with the parent/guardian.
 - B. If the reporter believes the case to be an emergency (s) he should request an immediate visit citing the reasons, and although the final decision is with the screening supervisor, the reporter's request is always strongly considered.
 - C. It is the policy of DCF to keep the identity of the reporter confidential from the family, unless ordered by the Court, or unless the DCF investigation results in a report to the District Attorney's Office or the Office of Child Care Services.
- * Or in his/her absence, the Administrator in charge.
5. Form 51A must be completed by the Principal/Designee and mailed within 48 hours of the oral report.

In the event, that the written report has been compiled by the principal's designee, the principal must co-sign the report. Reports related to allegations against WPS staff should be faxed to 508-799-8280.

6. It is recommended that the parent/guardian be informed by the Principal or his/her Designee, that the child has been referred to the Department of Children and Families, but DO NOT do so if you think it would increase risk to the child. It is preferred that the parent/guardian be notified personally rather than by telephone or letter. The Principal/Designee should not disclose the identity of the staff member who brought the information, which caused the 51A to be filed, to the Principal's/Designee's attention. In discussing the situation with the parent/guardian, it is suggested that the following be emphasized:
 - A. The school has serious concerns regarding the child's health and safety.
 - B. The school is required by law to report alleged cases of child abuse/neglect to DCF.
 - C. The DCF will determine whether or not the family is in need of services and will act accordingly. DCF will notify the mandated reporter, in writing, of its decision on the report.
 - D. If the family is not notified by the Principal or his/her Designee, DCF should be informed.
7. In an EMERGENCY SITUATION where the abuse/neglect is so severe that the Department of Children and Families concludes that the child is seriously at risk and will not be sent home, the Department has the authority to take the child into immediate physical custody. It is the responsibility of the Department of Children and Families to notify the parent/guardian that this action has been taken. In addition, it is the responsibility of the Principal* to notify both the parent/guardian and the appropriate Worcester Public Schools' supervisor that this action has been taken. The child is then prepared for the placement in the most therapeutic way possible by both the social worker and school personnel who have been involved with the child.
8. Interviewing of children, by the Department of Children and Families during the school day, can occur provided that the DCF has obtained parental permission and provided any such interview does not interfere with the child's education.
9. The following are school guidelines relative to record keeping of child abuse/neglect cases:
 - A. School personnel should keep a separate file of suspected incidents, with dates and specifics in order to document patterns of neglect or abuse.
 - B. Filed copies of the 51A Form and the DCF report of their findings, should be kept in a separate folder in the Principal's office.
 - C. When the student changes schools, the Principal should consider consulting with the new Principal regarding concerns of abuse/neglect.
 - D. Unsupported 51A Forms should be destroyed after one year.
 - E. Supported 51A Forms should be kept no later than five years after the student transfers, graduates, or withdraws from the School System.
10. In unsupported cases, should the school personnel remain convinced that the child is abused/neglected, the reporter may seek consultation from the investigator's supervisor or an administrative staff person at the DCF.
11. In the event of a new abuse/neglect situation involving a child who is already serviced under the DCF, a new 51A Form must be filed.

MASSACHUSETTS GENERAL LAWS
CHAPTER 119

SECTION 51A

Mandated reporters could be assessed by a fine up to \$1,000 for not reporting a case of alleged child abuse/neglect.

Mandated reporters will not be liable in any civil or criminal action for submitting a report.

Mandated reporters shall immediately report such conditions (i.e., abuse/neglect) to the Department of Children and Families (DCF) provided, however, that whenever such person so required to report is a member of the staff of a public or private school (s) he shall immediately notify DCF or notify the person in charge of such school, or that person's designated agent, whereupon such person shall then become responsible to make the report in the manner required by this section.

No employer of those persons required to report pursuant to this section shall discharge or in any manner discriminate or retaliate against any person who in good faith makes such a report, testifies or is about to testify in any proceeding involving child abuse or neglect. Any such employer who discharges, discriminates or retaliates against such a person shall be liable to such person for treble damages, costs, and attorney's fees.

NOTE: Should a school reporter be harassed or threatened by the parent/guardian/caretaker following the report, (s) he should immediately notify his/her supervisor.

SECTION 51B, Paragraph 3

Custody: The Department shall take a child into immediate temporary custody if the Department has reasonable cause to believe that the removal of the child is necessary to protect him or her from further abuse or neglect; provided, however, that the Department shall make a written report stating the reasons for such removal, and provided further, that if any child is so taken into custody, the Department must file a petition pursuant to Section 24 on the next court day.

The Department of Children and Families Regulations provides the following DEFINITIONS OF TERMS:

1. Mandated Reporter: Any school teacher, educational administrator, guidance or family counselor, who, in his or her professional capacity shall have reasonable cause to believe that a child under the age of 18 is suffering physical or emotional injury resulting from abuse inflicted upon him or her including sexual abuse, or from neglect, shall immediately report such condition to the Department of Social Services by oral communication and by making a written report within 48 hours after such oral communication.
2. Abuse: The non-accidental commission of any act by a caretaker upon a child under the age of 18 which causes, or creates a substantial risk of, physical or emotional injury or constitute a sexual offense under the laws of the Commonwealth. This definition is not dependent upon location (i.e., abuse can occur while the child is in an out-of-home or in-home setting).
3. Physical Injury such as:
 - A. Death; or
 - B. Fracture of a bone, a subdural hematoma, burns, impairment of any organ, and other such non-trivial injury; or
 - C. Sexual Abuse; or
 - D. Soft tissue swelling or skin bruising depending upon such factors as the child's age, circumstances under which the injury occurred, and the number and location of bruises; or
 - E. Addiction to a drug at birth; or
 - F. Failure to thrive
4. Emotional Injury: Means an impairment to or disorder of the intellectual or psychological capacity of a child as evidenced by observable and substantial reduction in the child's ability to function within a normal range of performance and behavior.
5. Neglect: Means failure by a caretaker, either deliberately or through negligence or inability to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; provided, however, that such inability is not due solely to inadequate economic resource or solely to the existence of a handicapping condition. This definition is not dependent upon location (i.e., neglect can occur while the child is in an out-of-home or in-home setting).

6. Caretaker: means a child's

- A. Parent
- B. Stepparent
- C. Guardian
- D. Any household member entrusted with the responsibility for a child's health or welfare
- E. Any other person trusted with the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting, a foster home, a group care facility, or any other comparable residential setting.

The "caretaker" definition is meant to be construed broadly and inclusively to encompass any person, who is, at the time in question, entrusted with responsibility for the child.

ITEM: gb #8-31

STANDING COMMITTEE: **GOVERNANCE AND EMPLOYEE ISSUES**

DATE OF MEETING: Tuesday, March 6, 2018

ITEM: Miss McCullough/Mr. Foley/Mr. Monfredo/Mr. O'Connell/
Miss Biancheria/Mr. Comparetto/Miss McCullough (January 19, 2018)

Request that the Administration provide an update on the Attendance Policy currently in place and provide an:

- explanation of excused vs unexcused absences and
- the impact that the letters that are going home for chronic absenteeism are having on students and families.

PRIOR ACTION:

2-1-18 - (Considered with gb # 8-32).
Referred to the Standing Committee on Governance and Employee Issues.

BACKUP: (Consider with gb 8-32).

Since implementing initiatives aimed at improving attendance, the daily attendance at all but a few schools has improved. This includes attendance progress reports and other activities.

Regarding excused vs unexcused absences, WPS outlines excused, which "do not count towards retention or loss of credit". These include religious holy days, loss of immediate family member, court appearance, hospitalization and illness that "requires submission of medical documentation that requires student's absence from school" DESE includes both categories when determining chronic absenteeism.

ITEM: gb #8-32

STANDING COMMITTEE: **GOVERNANCE AND EMPLOYEE ISSUES**

DATE OF MEETING: Tuesday, March 6, 2018

ITEM: Mr. Foley/Mr. Monfredo/Mr. O'Connell/Miss Biancheria/
Mr. Comparetto/Miss McCullough (January 19, 2018)

Request that the Administration review the policy regarding absences of students from school and consider distinguishing in their student records unexcused absences from excused absences due to documented illnesses or religious holidays.

PRIOR ACTION:

2-1-18 - (Considered with gb # 8-31).
Referred to the Standing Committee on Governance and Employee Issues.

BACKUP: (Consider with gb 8-31).

Since implementing initiatives aimed at improving attendance, the daily attendance at all but a few schools has improved. This includes attendance progress reports and other activities

Regarding excused vs unexcused absences, WPS outlines excused, which "do not count towards retention or loss of credit". These include religious holy days, loss of immediate family member, court appearance, hospitalization and illness that "requires submission of medical documentation that requires student's absence from school" DESE includes both categories when determining chronic absenteeism.