



Superintendent's Circular

School Year 2021-2022

NUMBER:
EQT-03

DATE:
September 9, 2021

SEXUAL MISCONDUCT TOWARD STUDENTS¹²

This policy circular only applies to School Year 2021-2022.

INTRODUCTION

The Boston Public Schools is committed to ensuring that students learn in an environment free of sexual misconduct. Sexual misconduct committed against a BPS student will not be tolerated. In addition, acts of retaliation against an individual who reports an allegation of sexual misconduct or cooperates with a related investigation are unacceptable and will not be tolerated.

Students participating in the academic, educational, extracurricular, athletic, and school programs or activities are protected from sexual misconduct by other students, parents, BPS employees, and third parties (e.g., visitors). In addition, BPS students may be protected from sexual misconduct that occurs outside the context of a school's education program, activity, or school property, if the behavior was in connection with a school program or activity which includes locations, events, or circumstances over which the district exercised substantial control over both the person accused of the conduct and the context in which the sexual misconduct occurred.

The Boston Public Schools treats reports of sexual misconduct with the utmost seriousness. We will address any sexually inappropriate communication or behavior directed toward students, regardless of whether that conduct is unlawful. This policy is neither designed nor intended to limit the district's authority to discipline or take remedial action for conduct that the Boston Public Schools deems unacceptable.

DEFINITION OF SEXUAL MISCONDUCT

For the purposes of this policy, sexual misconduct constitutes sexually inappropriate comments and/or behaviors of any kind. Below are examples of sexual misconduct:

Sexual violence

Sexual violence is broadly defined as any sexual activity that is forced, coerced, or unwanted. It also includes any sexual act against another person who is incapable of giving consent, either because of their temporary or permanent mental or physical incapacity, or because they are a minor.

Consent is defined as clear, active agreement and permission to engage in any form of verbal or nonverbal sexual communication or activity with another person. The initiator of the sexual contact is responsible for obtaining consent before engaging in any sexual contact. Consent can be withdrawn by either party at any point. Consent must be voluntary, and may not be valid if a person is being subjected to an emotional, psychological, physical, reputational, or financial threat, intimidation, or coercion. Consent to engage in one sexual activity, or past agreement to engage in a particular sexual activity,

¹ This circular replaces Superintendent Circular LGL-13, "Sexual Assault Policy."

² This circular is consistent with the Title IX Rule effective August 14, 2020.

cannot be presumed to constitute consent to engage in a different sexual activity or to engage again in a sexual activity. Consent cannot be validly given by a person who is incapacitated or under the age of sixteen.

Sexual violence may include criminal acts, such as indecent assault and battery, rape, abuse, or assault with intent to rape. Any acts that may be criminal will be referred to law enforcement.

Examples of sexual violence may include, but are not limited to, the following:

- Unwelcome sexual touching;
- Non-consensual sexual contact that occurs during school or non-school hours, on or off school grounds, including dating violence; or
- Recruiting, transporting, obtaining, or providing a student of any gender for the purpose of sex.

Other forms of sexual misconduct

Sexual misconduct includes unwelcome conduct of a sexual nature that denies or limits, on the basis of sex, a student's ability to participate in or to receive benefits, services, or opportunities in the school's program or activities.

Examples of behavior that may constitute sexual misconduct depending upon the totality of the circumstances, the ages of the student or other individuals involved, and the severity and pervasiveness of the conduct, include but are not limited to:

- Sexual advances, whether or not they involve touching;
- Requests for sexual favors;
- Making an educational decision or benefit contingent upon a student's submission to unwelcome sexual conduct;
- Offensive public sexual display of affection, including groping, fondling, gestures, or inappropriate touching of one's self or others;
- Consensual groping, fondling, sexual touching, or sex on school property or at any school-sponsored activity;
- Sexual jokes or references;
- Comments regarding a student's body or a student's sexual activity or orientation;
- Offensive name calling or profanity that is sexually suggestive, sexually degrading, or based on sexual stereotypes or sexual orientation;
- Different treatment because of pregnancy status;
- Displaying or distributing sexually explicit drawings, pictures, or other materials in any form (such as sexting);
- Trafficking of youth for sexual purposes, such as recruiting, transporting, or otherwise exploiting a minor in exchange for money, shelter, or food;
- Sexual advances or contact, whether or not they are consensual, between a student and employee, contractor, or community partner;
- Sexual activity between students in a school, or any building where BPS business is conducted; or
- Other verbal, nonverbal, or physical conduct of a sexual nature.

Any student, regardless of gender identity or sexual orientation, can be a target of sexual misconduct, and the alleged targets and the subject of the concern can be of the same or different genders.

Employees of the Boston Public Schools who become aware of any possible sexual misconduct toward or involving students must report the incident or concern to their school leader, supervisor, and/or the Office of Equity as soon as practicable, generally within the same school day. The same reporting requirement applies to partners or contractors providing services to students in or under the auspices of the Boston Public Schools.

The above list of examples is not exhaustive. If you are unsure whether a student may have been a target of sexual misconduct or if you have knowledge of a possible incident of sexual misconduct involving a student, immediately contact your school principal/head of school, supervisor, or the Office of Equity at 617-635-9650 or bpsequity@bostonpublicschools.org.

REPORTING AND INVESTIGATING SEXUAL MISCONDUCT

A student, parent, or other third party who believes that a student has been subjected to inappropriate sexual conduct may report the incident to the principal/head of school or the Office of Equity.

The Boston Public Schools will promptly investigate allegations of sexual misconduct even when the incident is being investigated by law enforcement or another entity. Our obligation is to determine if there has been a violation of a BPS circular and/or the BPS Code of Conduct. The investigation will be conducted in a manner maintaining confidentiality to the extent practicable under the circumstances. Incidents that a BPS employee becomes aware of directly or indirectly, such as from a note or an overheard conversation, will also be investigated.

Interim measures for the safety of the students involved must be taken upon receipt of the report to ensure equal access to educational programs and activities.

If the investigation results in a finding of a violation of this policy, Boston Public Schools will take steps to end the misconduct, prevent any further misconduct, remedy its effects where appropriate, and take disciplinary action, as deemed appropriate under the circumstances.

REPORTING PROCEDURES (see Appendix A checklist):

These instructions assume that the Office of Equity has already been informed of an incident as required, and that a school administrator has been instructed to follow this protocol.

After receiving a report of sexual misconduct, the building administrator must immediately (within the same school day, with rare exceptions):

1. **Ensure that a student who discloses sexual misconduct is not interviewed by any other BPS employee subsequent to the initial disclosure**, unless otherwise specifically directed by law enforcement, the state Department of Children and Families (DCF), or the Office of Equity. To minimize the alleged target's emotional distress and to preserve the integrity and reliability of any investigation, the initial disclosure conversation should be limited to the essential facts. The BPS staff member who first receives the report must document the conversation as thoroughly as possible.
2. **Assess the need for emergency interim safety measures** to prevent any additional incidents and ensure that the target is able to fully engage in the school's programs and activities. Implement any plan as appropriate.
3. **Report the incident to Safety Services at 617-635-8000 if the allegation involves sexual assault or violence**, such as physical contact or threats. Call Safety Services even if you are not sure if the alleged incident constitutes sexual violence. Inform the School Nurse if medical care is needed.

If Safety Services are not available, call 911.

Depending on the nature of the allegations, the Office of Safety Services may work directly with the Boston Police Department School Unit. Thereafter, the Boston Police Crimes Against Children Unit may conduct the investigation. A team investigation may include other agency involvement. By law, the Police cannot provide the Boston Public Schools with a written report regarding an incident of sexual violence.

4. **Contact the Department of Children and Families (DCF)** to file a 51A Report if the allegation warrants. As mandated reporters, employees of the Boston Public Schools are required to report situations when there is reasonable cause to believe a student is suffering from physical or emotional injury that causes harm or a substantial risk of harm to the student's health or welfare.

Questions related to school employees' obligation to file a 51A report with DCF should be directed to the Office of Legal Advisor. Please also refer to Superintendent's Circular SSS-17 on Child Abuse and Neglect.

If the alleged subject is over 18 years old, under 7 years old, or has a disability that might manifest as inappropriate sexual conduct, please call the Office of Equity prior to filing a 51A.

5. **Upon request of the Office of Equity, alert the school's Elementary or Secondary School Superintendent, Elementary or Secondary School Assistant Superintendent, and/or Operational Leader.** The Office of Equity will instruct the administrator to contact the School Superintendent, Assistant Superintendent, or Operational Leader depending on the severity and complexity of the allegations and on the building administrator's past experience addressing similar allegations. The School Superintendent, Assistant Superintendent, or Operational Leader will then partner with the building administrator to complete the internal investigation.
6. **Submit the confidential log** to the Office of Equity at bpsequity@bostonpublicschools.org or 617-635-7940 (fax). The Office of Equity and the Office of Legal Advisor will determine when a health or safety emergency exists, such that sharing the confidential log with Safety Services, local law enforcement, or others is appropriate.
7. **Notify the parent(s) or legal guardian(s) of the reporter or alleged victim**, if a minor, unless the parent/legal guardian is the subject of the concern and/or such notification will create a substantial risk to the student's health, safety, or welfare.
8. **If the subject of the concern is a minor, the building administrator (or other Office of Equity Designee) should notify the subject's parent(s) or legal guardian(s).** For reasons of confidentiality, do not inform the subject's family of the alleged target's identity or gender.
9. **Investigate and document the allegation.** If it is determined by a preponderance of the evidence that inappropriate conduct occurred, the Boston Public Schools will take such actions as it deems appropriate under the circumstances. For students, such actions will be consistent with the Code of Conduct, and may also include training, mediation, or restorative justice. For employees, such actions will be consistent with the district's labor practices, and may include training and/or discipline.
10. **Submit the Equity investigation summary.** When completing the narrative, staff should document witness statements and the subject's response to the allegation. Additionally, staff should document the investigatory findings and any remedial action taken, if any. These documents should be treated as confidential and sent to the Office of Equity only. It may be necessary to share these documents with the Office of the Legal Advisor or appropriate school department personnel and law enforcement authorities or as otherwise provided by law. The summary can be submitted digitally via this [link](#).

The alleged target should not discuss the incident with the subject of the concern present at any time or under any circumstances.

For detailed guidance on investigating and documenting allegations of sexual misconduct, please follow the Boston Public Schools Protocols for Sexual Misconduct Investigations Conducted by School Leaders and Central Office Managers.

PROHIBITION OF RETALIATION

Retaliation against an individual who reports sexual misconduct and retaliation against individuals for cooperating with a related investigation is unlawful and will not be tolerated by the Boston Public Schools.

Reports of retaliation should be brought to the building administrator or the person who is conducting the investigation. A student who feels there has been retaliation following a complaint may also call the Office of Equity at 617-635-9650.

BPS TITLE IX COORDINATOR

The Boston Public Schools' Title IX Coordinator is responsible for ensuring compliance with the investigatory process outlined in EQT-3, and tracking incidents across the district. Any parent or employee who raises concerns regarding the investigatory process and/or outcomes may contact the district's Title IX Coordinator:

Quinnelle Gomez
Boston Public Schools
2300 Washington Street
Roxbury, MA 02119
Phone: 617-635-9650, Fax: 617-635-7940
Email: qgomez@bostonpublicschools.org

OTHER RESOURCES

United States Department of Education Office for Civil Rights (OCR)
5 Post Office Square, 8th Floor, Boston, MA 02109
(617) 289-0111

Massachusetts Commission Against Discrimination (MCAD)

Boston Office:
One Ashburton Place, Room 601
Boston, MA 02108
(617) 994-6000

Springfield Office:
436 Dwight Street, Suite 220
Springfield, MA 01103
(413) 739-2145

New Bedford Office:
800 Purchase Street, Room 501
New Bedford, MA 02740
(508) 990-2390

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

Massachusetts Department of Elementary and Secondary Education

Program Quality Assurance
75 Pleasant Street, Malden, MA 02148-4906
(781) 338-3700

For more information about this circular, contact:

Name:	Quinnelle Gomez
Department:	Office of Equity
Mailing Address:	2300 Washington St., Roxbury, MA 02119
Phone:	617-635-9650
Fax:	617-635-7940
E-mail:	qgomez@bostonpublicschools.org

For matters involving DCF, contact:

Department:	Office of Legal Advisor
Mailing Address:	2300 Washington Street, Boston, MA 02119
Phone:	617-635-9320
Fax:	617-635-9327
E-mail:	legal@bostonpublicschools.org

Dr. Brenda Cassellius, Superintendent

**APPENDIX A:
CHECKLIST FOR SCHOOL ADMINISTRATORS**

These instructions assume that the Office of Equity has already been informed of an incident as required, and that a school administrator has been instructed to follow this protocol.

After receiving a report of sexual misconduct, including sexual harassment and sexual violence, the school or central office administrator (**or the Elementary or Secondary School Superintendent, Elementary or Secondary School Assistant Superintendent, and/or Operational Leader** if the complaint is against the school or central office administrator) must immediately:

1. **Receive a disclosure of sexual misconduct.** Whoever the students report to first must document the following:
 1. Who is the subject of the concern?
 2. What did the subject say or do?
 3. If physical contact was made, where did the subject touch you (clarify if contact was made above clothing or directly on the student's skin)?
 4. Is this the first time something like this happened?
 5. Was anyone else there when it happened?
 6. Did you tell anyone else what happened?

Students cannot be interviewed more than once by a BPS employee, and should only be interviewed with one adult in the room.

2. **Assess the need for emergency interim measures**, and implement as appropriate.
3. **Report the incident to Safety Services at (617) 635-8000** if the allegation involves sexual violence, such as physical contact or threats. Call Safety Services even if you are not sure if the alleged incident constitutes sexual violence. If Safety Services are not available, call 911.
4. **Contact DCF** to file a 51A Report if the allegation warrants.
5. **Alert the school's Elementary or Secondary School Superintendent, Elementary or Secondary School Assistant Superintendent, and/or Operational Leader**, if directed by the Office of Equity to do so.
6. **Submit the confidential log to the Office of Equity** at bpsequity@bostonpublicschools.org or 617-635-7940 (fax) within the same school day that the report was made.
7. **Notify the parent(s) or legal guardian(s) of the alleged target**, unless the parent/legal guardian is the subject of the investigation and/or such notification will create a substantial risk to the student's health, safety, or welfare.
8. **Notify the subject's parent(s) or legal guardian(s)** if that individual is a minor.
9. **Investigate and document the allegations** consistent with the Office of Equity Protocols to determine if a violation of the circular has occurred. If a Code of Conduct violation is found, conduct disciplinary proceedings.
10. **Submit the investigation summary to the Office of Equity within 10 days of the incident.**