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| State Seal | Executive Office of Education Sexual Harassment Policy | **The Commonwealth of Massachusetts**  **Executive Office**  **OF Education** One Ashburton Place,14th Floor, Room 1403 **Boston, MA 02108** |
| Seven Pages |

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| **Approved By: James A. Peyser, Secretary of Education** | **Revised: October 13, 2015** |

Sexual Harassment Policy

#### Introduction

This Sexual Harassment Policy covers all departments within the Executive Office of Education (EOE), including the Department of Early Education and Care and the Department of Elementary and Secondary Education (the “Departments”).

It is the goal of the Departments to promote a workplace that is free of sexual harassment.  Sexual harassment of employees occurring in the workplace or in other settings related to their employment is unlawful and will not be tolerated by the Departments. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from sexual harassment, the conduct that is described in this policy will not be tolerated. We have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees.

Because the Departments take allegations of sexual harassment seriously, prompt action will be taken to investigate complaints of sexual harassment and where it is determined that such inappropriate conduct has occurred, address the conduct and impose corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit the Departments’ authority to discipline or take remedial action for unacceptable workplace conduct, regardless of whether that conduct satisfies the definition of sexual harassment.

**Authority**

Sexual harassment is illegal under Title VII of the Civil Rights Act of 1964, and Chapter 151B, Section 4, Paragraphs 1 and 16A of the Massachusetts General Laws. Chapter 151B, Section 3A, MGL, as inserted by Chapter 278 of the Acts of 1996, requires employers to develop a written policy against sexual harassment and to provide copies of it to all employees on an annual basis.

**Definition of Sexual Harassment**

Massachusetts cases define sexual harassment as a form of sex discrimination. Sexual harassment includes unwelcome sexual advances, requests for sexual favors or other behavior of a sexual nature when:

1. Submission to or rejection of such advances, requests or behavior is made, either explicitly or implicitly, a term or condition of employment or a basis for an employment decision; or
2. Such behavior has the purpose or effect of unreasonably interfering with work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

The Departments’ view of sexual harassment reflects, but is not limited to, the following considerations:

1. A man as well as a woman may be the victim of sexual harassment, and a woman as well as a man may be the harasser.
2. The victim does not have to be the opposite sex from the harasser.
3. The harasser does not have to be the victim’s supervisor. The harasser may be a supervisor who does not supervise the victim, a non-supervisory employee (co-worker), or in some circumstances, even a non-employee, such as a vendor.
4. The victim does not have to be the person at whom the unwelcomed sexual conduct is directed. The victim may be someone who is a witness to and personally offended by such conduct when it is directed toward another person.
5. Sexual harassment does not depend on the victim having suffered a concrete economic injury as a result of the harasser’s conduct; it can include the creation of a hostile environment within which the victim must work.
6. Sexual harassment can occur not only in the workplace itself, but during work assignments away from the workplace and at employer-sponsored off-site social events, if the behavior creates a hostile work environment for the victim or otherwise meets the definition of sexual harassment as described on pages 1-3. Sexual harassment does not refer to occasional compliments of a socially acceptable nature, or welcomed social relationships. It refers to deliberate or repeated behavior, consisting of verbal comments, gestures or physical contact of a sexual nature that is not welcome, that is personally offensive, that lowers morale and that, therefore, interferes with work productivity. This unwelcome sexual behavior is defined from the perspective of the victim, not the harasser. While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct, which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

* Unwelcomed sexual advances –whether they involve physical touching or not;
* Sexual assault;
* Sexual inquiries, jokes, or epithets;
* Derogatory comments about a person’s sex or sexual orientation;
* Other forms of verbal abuse of a sexual nature, such as whistling or catcalling;
* Offensive or unnecessary touching, such as patting, pinching or constant brushing against a person;
* Physical interference with a person’s movements;
* The display of sexually suggestive posters, photographs, pictures, cartoons, or objects in the workplace;
* Unwelcomed leering, sexual gestures, suggestive or insulting comments;
* The requirement that a person wear sexually revealing clothing; and/or
* Inquiries into or discussions of one's sexual experiences.

The above conduct is prohibited whether conducted in person, or through any other source, including but not limited to, voicemail, email, texting, graphics, printed materials, downloaded materials or websites. Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute sexual harassment.

**Investigations and Complaint Procedures**

***Roles and Responsibilities***

*Supervisors and managers are responsible for the following:*

* Immediately report any verbal or written concerns or complaints of alleged sexual harassment to the designated Sexual Harassment Officer for investigation.
* Attend mandatory training and remain in compliance with the terms of this policy.

*The Sexual Harassment Officer is responsible for the following:*

1. Publicize his/her availability to all employees and maintain an accessible office.
2. Attend training, and in turn provide or arrange for the provision of training of all Department supervisors and employees, in the identification and prevention of sexual harassment; assess additional Department training needs in this area on an on-going basis, such as the need for sensitivity training, and work with HRD in meeting those needs.
3. Distribute to each employee:

* an explanation of the Sexual Harassment Policy and complaint procedure as soon as possible after hire and annually thereafter;
* the name and contact number of the Sexual Harassment Officer;
* notification of any changes to the above, as soon as administratively possible.

1. Receive and investigate reports of alleged sexual harassment in a confidential and expeditious manner.
2. Maintain accurate and current records of reports of sexual harassment and their disposition.

*Employees are responsible for the following:*

1. Ensure that they do not sexually harass any other employee, applicant for employment, recipient of public services, or any other individual in the workplace.
2. Cooperate in an investigation of alleged sexual harassment by providing any information requested by the Departments concerning the matter under investigation.
3. Actively participate in the Departments’ efforts to prevent sexual harassment.
4. Attend mandatory training and remain in compliance with the terms of this policy.

*Protection of All Parties*

1. Pursuant to Chapter 151B, Section 3B, paragraph 4, any employee who in good faith files a sexual harassment claim or cooperates in an investigation shall not be subjected to retaliation or reprisal. An employee believing he/she may have been retaliated against may amend his/her complaint or file a separate complaint which will be investigated pursuant to this policy.

***Reporting and Investigating Sexual Harassment Complaints***

*Complaints of Sexual Harassment*

EOE Sexual Harassment Officer: Director of Diversity, Patricia McCarthy: **617-979-8354**

If any Department employee believes that he/she has been subjected to sexual harassment, the employee has the right to file a complaint.  This may be done in writing or orally.

An employee who feels that he/she has been sexually harassed should report the complaint to EOE’s sexual harassment officer. The sexual harassment officer is also available to discuss any concerns you may have and to provide information to you about the Department’s policy on sexual harassment and complaint process. If an employee does not feel comfortable reporting the complaint to the Sexual Harassment Officer, a complaint may be reported to Dianne Canavan: 781-338-6109 or Sarah Harding: 617-988-6604.

As explained in the section entitled “Protection of All Parties”, all individuals involved with a complaint, either directly or indirectly, are advised to maintain confidentiality to the extent practical under the circumstances.

*Sexual Harassment Investigation*

1. All complaints of sexual harassment will be investigated and addressed in a timely manner.
2. The alleged harasser will be notified when a formal complaint is filed.

* When EOE receives a complaint, it will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted by the Sexual Harassment Officer or his/her designee in such a way as to maintain confidentiality to the extent practicable under the circumstances.

1. False accusations of sexual harassment (i.e. the allegations of incidents or behavior that are proven, through investigation, not to have occurred at all) may result in disciplinary action up to and including termination of employment. A finding that either sexual harassment did not occur or that there was insufficient evidence does not necessarily, in itself, establish that an accusation was false.
2. If it is determined that inappropriate conduct has occurred, the appropriate appointing authority will act promptly to address the offensive conduct, and where it is appropriate will impose disciplinary action.

**Disciplinary Action**

If it is determined that an employee has engaged in inappropriate conduct, the appropriate appointing authority, in conjunction with EOE, will take appropriate action based on the circumstances.  Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action deemed appropriate under the circumstances.

The nature of disciplinary actions should be proportionate to the severity of the conduct. Disciplinary actions may consist of:

* Sensitivity training (e.g. role-playing, to raise person’s awareness of the effects of his/her behavior on others)
* An oral warning or reprimand
* A written warning or reprimand to be placed in a personnel file
* Suspension, demotion, transfer or termination
* A combination of the above or any other action the Department determines is warranted.

**Procedures for Maintaining Records of Complaints**

The Sexual Harassment Officer will keep a complete record of all formal written complaints, their supporting documentation and their resolution in confidential files separate from official personnel files.

**State and Federal Remedies**

In addition to the above, if you believe you have been subjected to sexual harassment, you may file a formal complaint with the government agencies set forth below. Using our complaint process does not prohibit you from filing a complaint with these agencies.  Each of the agencies has a short time period for filing a claim (EEOC - 300 days; MCAD - 300 days).

**U.S. Equal Employment Opportunity Commission**

One Congress Street, 10th Floor

Boston, Massachusetts 02114

617-565-3200 or 800-669-4000

Time Limitations: Must file written complaint within 300 days of date of violation

**Massachusetts Commission Against Discrimination (MCAD)**

Boston Office: Springfield Office:

One Ashburton Place, Room 601 424 Dwight Street, Room 220

Boston, Massachusetts 02108-1599 Springfield, Massachusetts 01103

Telephone 617-727-3990 Telephone 413-739-2145

Time Limitations: Must file complaint within 300 days of the alleged discrimination; MCAD recommends that complaints be filed in person at their Boston or Springfield Offices.

**Human Resources Division, Office of Affirmative Action**

One Ashburton Place, Room 213

Boston, Massachusetts 02108-1516

Telephone 617-727-7441

Time Limitations: Must file complaint within 180 days of the alleged discrimination.

**ACKNOWLEDGEMENT**

By signing my name below I am acknowledging that I have received, read, had the opportunity to ask questions about, and have been advised that I am responsible for complying with the Executive Office of Education’s *Sexual Harassment Policy.*

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Staff Signature Date

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Print Name

Created September 29, 2014: Approved by Matthew Malone, **Secretary of Education**

Revised October 13, 2015: Approved by James A. Peyser, **Secretary of Education**