

Milton Public Schools August 2019

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TODAY'S TOPICS

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- ▶ Discrimination/Harassment
- ▶ Bullying
- ▶ Students with Disabilities
- ▶ Student Records Issues
- ▶ Residency
- ▶ 51A – Mandated Reporting
- ▶ Student Discipline

HARASSMENT/ DISCRIMINATION

UNDERSTANDING YOUR OBLIGATIONS UNDER FEDERAL AND STATE
CIVIL RIGHTS LAWS

CIVIL RIGHTS

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What are “civil rights”?

- ▶ Constitutional protections
- ▶ Educational entitlements
- ▶ Protect against discrimination
 - ▶ Race
 - ▶ Ethnicity/National Origin
 - ▶ Gender/Sexual Orientation/Gender Identity
 - ▶ Religion
 - ▶ Disability

Relevant Federal Laws Addressing Civil Rights

- ▶ Civil Rights Laws prohibiting discrimination:
- ▶ **Title VI – race, color, national origin**
- ▶ **Title IX – sex/gender**
- ▶ **Section 504 and Title II – disability**



Title VI of the Civil Rights Act of 1964

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► Federal Legislation

- Title VI of the Civil Rights Act of 1964 guarantees that "no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."
- In August 2000, President Clinton signed an Executive Order to "improve access to federally conducted and federally assisted programs and activities for persons, who, as a result of national origin, are limited in their English proficiency (LEP)."

Title IX of the Education Amendments of 1972

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- Prohibits discrimination based on sex in education programs and activities at all levels.
- Title IX protects students and employees from all forms of sex discrimination, including discrimination based on gender identity.
- Essence of the Law: You cannot exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex (unless expressly authorized by the regulations – exceptions to the general rule).

Sexual Harassment

- ▶ Sexual harassment is unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.
- ▶ Sexual violence is a form of sexual harassment and refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent).

Examples of Sexual Conduct

from U.S. Department of Education Office for Civil Rights, *Sexual Harassment: It's Not Academic*, Washington, D.C., 2008

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- ▶ Making sexual propositions or pressuring students for sexual favors;
- ▶ Touching of a sexual nature;
- ▶ Writing graffiti of sexual nature – including sexual violence or rape;
- ▶ Displaying or distributing sexually explicit drawing, pictures, or writing materials;
- ▶ Performing sexual gestures or touching oneself sexually in front of others;
- ▶ Telling sexual or dirty jokes;
- ▶ Spreading sexual rumors or rating other students as to sexual activity or performance; or
- ▶ Circulating or showing e-mails or Web sites of a sexual nature

Section 504

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- ▶ Section 504 of the Rehabilitation Act is an anti-discrimination act that prohibits discrimination against people with disabilities, including students, employees, and other members of the school community. This law applies to all school districts that receive Federal financial aid and it covers all programs and activities that the school district offers. The responsibility of the district is to identify, evaluate, and provide appropriate services to those individuals who meet the criteria set forth by the Act.

Discriminatory Harassment

Based on protected class

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Includes conduct that is:

- ▶ Severe, pervasive or persistent
- ▶ Creates a hostile environment at school - sufficiently serious that it interferes with a student's ability to participate or benefit from the opportunities offered by a school
- ▶ Based on religion, race, color, national or ethnic origin, gender or sexual orientation, gender identity

Form of Harassing Conduct

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- ▶ Harassing conduct may take many forms
 - ▶ Verbal acts and name-calling
 - ▶ Graphic and written statements
 - ▶ Physically threatening conduct
 - ▶ Harmful or humiliating conduct
- ▶ The more severe the conduct, the less there is a need to show a repetitive series of incidents to prove a hostile environment, especially if the conduct is physical.

****One single or isolated incident (if severe) may create a hostile environment.**

Bullying v. Harassment

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- ▶ State Law Prohibiting Bullying – MGL c. 71, section 37O
- ▶ Civil Rights Laws prohibit Harassment
- ▶ School districts must prohibit both Harassment and Bullying
 - ▶ Harassment—prohibited conduct directed at protected class; can include one incident; does not need to be directed at a target.
 - ▶ Bullying—prohibited conduct, but not toward protected class, although “vulnerable” students protected from being targets; repeated; directed at a target.

When do schools become responsible for addressing harassment?

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- ▶ Schools are responsible for harassment that they know about or should have known about (with certain exceptions).
- ▶ Schools are responsible for conduct that is severe, persistent and pervasive.
- ▶ Liability will attach when the school is found to act with “deliberate indifference.”

School District Response

- ▶ Provide necessary interim measures to protect target (consider for perpetrator)
- ▶ Protect against retaliation during and after investigation
- ▶ Investigate promptly
- ▶ Notify law enforcement/DCF if potential crime
- ▶ Keep the complainant informed about the outcome of the investigation
- ▶ Take reasonable, prompt, age-appropriate and effective action to end the harassment and prevent it from recurring
- ▶ Take remedial action to remedy effects of harassment/discrimination, if found

Preventing Retaliation

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- ▶ Inform victim and witnesses about their protections against retaliation
- ▶ Inform perpetrator against taking any action that could be viewed as retaliatory - ie. through friends, social media
- ▶ Separate, when necessary and appropriate, the victim and alleged perpetrator
- ▶ Provide a point person for reporting any concerns regarding retaliation
- ▶ Promptly investigate and respond to allegations of retaliation

Bullying

REPORT, INVESTIGATION AND TAKING APPROPRIATE ACTION

Definition of Bullying

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Bullying is:

- A **repeated** action by one or more students or school staff members
- A written, verbal or electronic expression or a physical act or gesture or any combination thereof
- Directed at a target (victim)

WHO IS A BULLY?

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2013 Amendment to Bullying Law

“Bullying”, the repeated use by one or more students or by a member of a school staff including, but not limited to, an educator, administrator, school nurse, cafeteria worker, custodian, bus driver, athletic coach, advisor to an extracurricular activity or paraprofessional of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a victim that....

Vulnerable Students

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Plan must address protections for students who become a target based on actual or perceived characteristics:

race, color, religion, ancestry, national origin, sex, socioeconomic status, homelessness, academic status, gender identity or expression, physical appearance, pregnant or parenting status, sexual orientation, mental, physical, developmental or sensory disability or by association with a person who has or is perceived to have 1 or more of these characteristics

Bullying Is Directed At A Target and Causes:

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- ▶ Physical or emotional harm
- ▶ Damage to the target's property
- ▶ Places the target in reasonable fear of harm to him/herself or of damage to his/her property
- ▶ Creates a hostile environment at school for the target
- ▶ Infringes on the rights of the target at school; OR
- ▶ Materially and substantially disrupts education process

Who/How/What to Report?

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- ▶ Principal of building is responsible to investigate
- ▶ Use Administrative Procedures – document!
- ▶ Use 51A model - if you have a reasonable cause to believe that a student is being bullied, you should report it
- ▶ Non-reportable conduct may still require adult intervention/teaching moment (err on side of caution)

Response to Bullying Complaints

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1. Re-read your Bullying Plan (important info)
2. Contact parents
3. Investigate (with fidelity and documentation!)
4. Don't be afraid to call it bullying
5. If it is bullying – draft safety plan
6. If it is not bullying – draft support plan
7. If significant emotional impact, consider referral

Cyber-bullying = Bullying

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- ▶ Bullying through the use of technology or any electronic communication
- ▶ E-mail
- ▶ Facsimile
- ▶ Texting
- ▶ Internet - web, blogs, Facebook, Twitter, Instagram, Snapchat

Can include IMPERSONATION of another (catfishing)

Scope of Law

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- ▶ Applies to ALL sites and activities under control of district, including school grounds, bus stops, at school functions or events, or through use of school-owned technology or device
- ▶ Applies to NON-SCHOOL related sites/activities/technology IF the acts create a hostile environment at school for the target or materially and substantially disrupt the education process or the orderly operation of the school

Students on IEPs

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For a student on an IEP who has disability which affects social skills development or who is vulnerable to bullying, teasing or harassment, the IEP MUST address the skills and proficiencies needed to avoid and respond to the bullying, teasing or harassment

- ▶ Team must consider this for every student with autism

Appropriate Responses to Civil Rights Complaints

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When approached by an employee or student with a complaint of discrimination (or bullying based on protected class) at school:

DO:

Report To the Building Administrator Immediately

Take Immediate Steps to Ensure Safety

DON'T:

Wait to Report or Dissuade Alleged Victim from Reporting

Investigate yourself or make any pre-determinations

SECTION 504 and the IDEA

EDUCATING STUDENTS WITH DISABILITIES – WHAT YOU NEED TO KNOW

504 and Special Education: Federal and State Laws

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- ▶ Individuals with Disabilities Education Act (**IDEA**): federal special education law, most recently reauthorized in 2004
- ▶ **Section 504** of the Rehabilitation Act of 1973
- ▶ Title II of the Americans with Disabilities Act of 1990 (recently amended by **ADA** Amendments Act of 2008 – affects Section 504 as well)
- ▶ M.G.L. c. 71B (“**Chapter 766**”) - state special education law

Three requirements for eligibility UNDER IDEA (IEP)

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- ▶ The student **has a disability** or disabilities.
- ▶ The student **is not making effective progress in school** as a result of the disability or disabilities.
- ▶ The student requires **specially designed instruction** in order to make effective progress in the general curriculum, and/or requires a related service to access the general curriculum.

1st eligibility requirement: *EXISTENCE of a DISABILITY*

- ▶ Ten categories of impairments under state law (603 CMR 28.02(7))
- ▶ Include:
 - ▶ Autism (verbal and nonverbal communication and social interaction)
 - ▶ Developmental Delay (ages 3-9; cognition, language, physical, social, emotional, adaptive and/or self-help)
 - ▶ Intellectual Impairment

Categories of impairment, cont'd

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- ▶ Sensory Impairment (hearing, vision, or both)
- ▶ Neurological Impairment
- ▶ Emotional Impairment
- ▶ Communication Impairment (expressive and/or receptive)
- ▶ Physical Impairment
- ▶ Health Impairment (includes ADD, ADHD)
- ▶ Specific Learning Disability

2nd eligibility requirement:

Failure to Make Effective Progress

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- ▶ Failure to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program (603 CMR 28.02(17))
- ▶ Causal link to disability

3rd eligibility requirement:

Need for Special Education

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- ▶ Child needs **specially designed instruction** in order to progress effectively in the general curriculum; and/or
- ▶ Child needs **related service(s)** to access the general curriculum.
- ▶ In Massachusetts, need for related service alone is enough to qualify for IEP (not so in all states).

Overview of special education process UNDER THE IDEA

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- ▶ Referral
- ▶ Evaluation (initial + every 3 years)
- ▶ TEAM meeting; determination of eligibility
- ▶ Development of Individualized Education Program (“IEP” – goals, services, supports) and determination of placement
- ▶ Appeal to BSEA: Hearing or Mediation
- ▶ Appeal to Court

Referral for special needs evaluation

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- ▶ By parent or guardian; or
- ▶ By “any person in a caregiving or professional position concerned with the student’s development” (603 CMR 28.04(1) – broader than federal law, which says parent, state agency, or LEA)
 - ▶ Teacher or other school personnel
 - ▶ Physician
 - ▶ Psychologist, therapist, social worker
 - ▶ Day care provider
 - ▶ Court personnel
 - ▶ Etc.

If you receive a referral, immediately contact SPED – there are timelines!

CHILD FIND:

When should a child be referred?

When a disability that interferes or may interfere with educational progress is known or suspected

Student Not accessing the General Ed Curriculum

- RTI
- Social emotional difficulties in school
- Frequent absences

Child Find Obligations - Triggers

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- ▶ Absences (DESE is now closely monitoring attendance)
- ▶ Sudden Change In Academic Performance
- ▶ Sudden Change In Behavior
- ▶ Knowledge of Major Life Event – Trauma etc.
- ▶ Newly diagnosed medical condition
- ▶ Change in medical condition

Special Education - they are ALL our kids

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- ▶ READ the IEPs for the students in your building/caseload
- ▶ Understand that everyone in the building has a role in ensuring that students are not discriminated against on the basis of disability
- ▶ Understand the need to report lack of implementation of IEP – it is a LEGAL DOCUMENT

SECTION 504 Eligibility

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Individual With a Disability:

- physical or mental impairment which substantially limits
- a major life activity,
- has a record of such impairment,
- is regarded as having an impairment,
- needs accommodations to access programs run by publicly funded entities

504 Process

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- ▶ Child find
- ▶ Evaluation
- ▶ Parent Involvement
- ▶ Discussion and decisions by knowledgeable persons

Major Life Activities

1. Caring for oneself
2. Performing manual tasks
3. Seeing
4. Hearing
5. Eating
6. Sleeping
7. Walking
8. Standing
9. Lifting
10. Bending
11. Speaking
12. Breathing
13. Learning
14. Reading
15. Concentrating
16. Thinking
17. Communicating
18. Working
19. Operation of major bodily function

What Type of Evaluation?

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Need for evaluation that looks at whether student needs a formalized response via 504 or the IDEA

Well-intentioned, informal response is NOT SUFFICIENT

There is a need for actual evaluations and need to consider a variety of information from a variety of sources (including some standardized assessments)

Tips for School Staff

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- Consider whole child in determining eligibility
- Consider multiple sources of information
- Consider outside evaluations, but don't rely solely upon them
- Conduct own evaluations

Remember: No entitlement to IEE at public expense for 504 eligibility determination!!!

Questions to Consider:

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- What is the nature and severity of the impairment?
- What is the expected duration of the impairment?
- How has the student responded to interventions?
- Does the student consistently need extended time to complete assignments?
- Does the student consistently need significant changes made to the curriculum?
- Does the student demonstrate consistent behavior difficulties?
- Is there a pattern of absences

Implementing the Plan

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1. Provide plan to all who need it
 - teachers (classroom and specialists)
 - substitute teachers
 - bus drivers/cafeteria workers
2. Document receipt of plan
3. Review plan at minimum annually
4. Document if student chooses not to accept accommodations – address as necessary

Complaints and Due Process

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- ▶ 504 requires that the district have an internal grievance process:
- ▶ Additional Forums
 - Office for Civil Rights
focus is procedure followed
 - Bureau of Special Education Appeals
considers both substantive and procedural issues.

Process for referring for sped evaluation when suspected eligibility!
Don't wait too long!!!

What is a Complaint?

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Allegation (in whatever form – even verbal) that an individual covered by 504 has been discriminated against.

Examples include:

- Failure/refusal to implement required accommodations
- Disparate treatment, including harassment, refusal to allow participation (eg **field trips**), etc.

It is CRITICAL that everyone understands conduct as potential violation of Section 504.

Who is responsible?

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- ▶ All employees are responsible to report
- ▶ Building based responsibility: principal or designee
- ▶ District-appointed coordinator:
 - ▶ **Remember—504 covers students, employees and any other person covered by the statute seeking access to publicly funded programs.**
 - ▶ **Much more broad than IDEA!**

Student Records and Confidentiality

COMPLYING WITH FERPA AND THE
MASSACHUSETTS STUDENT RECORDS LAW

The Basics...

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- ▶ State and Federal Laws protect the confidentiality of Student Records – documents **and information**
- ▶ Information in **any form** (paper, electronic data)
- ▶ Identifiable to a particular student
- ▶ Can be part of the Temporary or Permanent Record
- ▶ No disclosure except to authorized school personnel without written parental/student consent
 - ▶ Some limited exceptions under the law

Communication Issues:

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- ▶ You are “the district” when communicating with parents and third parties. Be aware of:
 - * The pitfalls of e-mails
 - * Necessary professional boundaries
 - * Need to use and respect internal channels

Student Residency and Mandated Reporting

KNOW YOUR POLICY AND THE LAW

Residency

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State law and School Policy:

- Every person has the right to attend the public schools of the town where he actually resides.
- If a person does not actually reside in the city or town, they are not entitled to attend the local public schools.
- Temporary residency for the sole purpose of attending school is NOT residency – must be center of student's civic life.

Possible exceptions: homeless students; students in foster care

Protecting Students at Risk – 51A

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- ▶ M.G.L. c. 119, s. 51A **requires** reporting where reasonable cause to believe physical or emotional injury/neglect to child under eighteen.
- ▶ School personnel are **mandatory** reporters; may use administrative channels to report.
- ▶ Err on the side of protecting students, let responsible agencies investigate: DCF/DA.
 - ▶ There are protections for reporters for this reason!

Timelines for Reporting

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- ▶ Must make oral report immediately
- ▶ Must follow up with written report within 48 hours
- ▶ Standard: Reasonable cause to believe that a child under the age of 18 is suffering from abuse and/or neglect
- ▶ Penalties for failure to report: fines!! jail!!
 - ▶ Again – err of the side of caution and report!!!

What to Report

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Any relevant information which might aid DCF in investigating the complaint

Keep in mind that parent will likely receive a copy of the report- again, keep the information relevant

Note: can disclose “student record” information (exception to the law)

Process After 51 A Filed

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1. Case is screened in for investigation or screened out;
2. DCF will investigate (51B) process – includes a home visit and discussion with the child and caretaker

What to do if the 51A involves a school staff member as the possible abuser?

- do your own investigation (contact HR)
- report to law enforcement

Student Discipline

UNDERSTANDING THE SPIRIT OF THE NEW LAW

Student Discipline Regulations:

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- ▶ New Student Discipline Regulations, 603 CMR 53.00 *et seq.* were adopted and approved by the Board on April 29, 2014.
- ▶ Purpose of the Regulations:
 - a.) to limit the use of long-term suspension as a consequence
 - b.) to promote engagement of a student's parent in discussion of the student's misconduct, and options for responding to it;
 - c.) to assure opportunity to make academic progress;
 - d.) to keep schools safe and supportive for all students while ensuring fair and effective disciplinary practices

Focus is on PROCESS

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- ▶ Substantive Due Process
- ▶ Procedural Due Process

TIPS

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- ▶ Removal from extracurricular activities is not subject to the same due process as suspension
 - ▶ Extracurricular activities are a privilege, not a right
 - ▶ Provide written notice to parent/guardian
- ▶ Be careful when removing a student from class
 - ▶ Removal for more than half of the school day is considered an in-school suspension
 - ▶ Calling a parent to come pick up their student, if that student will miss more than half of the school day, is an out-of-school suspension
 - ▶ NEED TO FOLLOW PROCESS

Questions?

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