



Back to School

Milton Public Schools

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TODAY'S TOPICS

- ▶ 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

MASSACHUSETTS & FEDERAL CIVIL RIGHTS LAWS

- ▶ Massachusetts & Federal Civil Rights Laws provide a remedy for actions which interfere or attempt to interfere with an individual's rights under the Constitution, state, or federal law.

CIVIL RIGHTS

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

CIVIL RIGHTS: LAWS YOU MUST KNOW

MASSACHUSETTS & FEDERAL CIVIL RIGHTS STATUTES

- ▶ Section 504 of the Rehabilitation Act
- ▶ IDEA
- ▶ Title IX of the Education Amendments of 1972
- ▶ Title VI of the Civil Rights Act of 1964
- ▶ Title II of the American With Disabilities Act
- ▶ Massachusetts statutes: c. 71B, c. 76, s. 5
 - And pertinent regulations.....

Title IX of the Education Amendments of 1972

- ▶ 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).

Title IX - Summary of Major Changes

- ▶ Narrows definition of Sexual Harassment (3 types of misconduct)
- ▶ School district obligation to respond based on “Actual Knowledge” of sexual harassment in a manner that is not “Deliberately Indifferent”
- ▶ Increases the rights of the accused - presumption accused is NOT responsible for alleged conduct
- ▶ Cannot restrict parties from discussing
- ▶ Supportive Interim Measures available to both Respondent (Alleged Harasser) and Complainant (Alleged Target)
- ▶ Respondent must be provided detailed notice of allegations by Complainant. Both parties must be provided with a copy of the Investigation Report and opportunity to respond prior to final determination
- ▶ Appeals Process (new)

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).

New definition of sexual harassment under Title IX- 3 prongs

1. An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct; or
2. Unwelcome conduct determined by a reasonable person to be severe, pervasive, and objectively offensive, that it effectively denies a person equal access to the district education program or activity; or
3. Sexual assault, including “dating violence”, “domestic violence” or “stalking.”

New Title IX Regulations cont.

- ▶ These new regulations also include:
 - ▶ A process for notice of alleged sexual harassment
 - ▶ Presumption that the alleged perpetrator is NOT responsible for the conduct until determined otherwise
 - ▶ A detailed investigation process
 - ▶ Appeal rights
 - ▶ Training requirements for Title IX personnel
 - ▶ Recordkeeping requirements

Title VI of the Civil Rights Act of 1964

- ▶ Title IV of the Civil Rights Act of 1964 (Title IV), 42 U.S.C. §§ 2000c *et seq.*, prohibits discrimination in public elementary and secondary schools based on race, color, or national origin, among other bases.
- ▶ The Department of Education's Office for Civil Rights (OCR) and the DOJ have responsibility for enforcing Title VI.

Two Types of Discrimination

- ▶ The administration of student discipline can result in unlawful discrimination based on race in 2 ways:
 1. If the student is subject to DIFFERENT TREATMENT based on the student's race; and
 2. If the policy is neutral on its face, and is administered in an even-handed manner, but has a DISPARATE IMPACT, i.e. a disproportionate and unjustified effect on students of a particular race.

Discriminatory Harassment Includes:

Conduct that is:

- ▶ Severe, pervasive or persistent (Title IX severe, pervasive AND objectively offensive)
- ▶ 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

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

- ▶ State Law Prohibiting Bullying - MGL c. 71 Section 370
- ▶ Civil Rights Laws prohibit Harassment
- ▶ Prohibit both Harassment and Bullying
 - ▶ Harassment—prohibited conduct directed at protected class.
 - ▶ Bullying—prohibited conduct, but not toward protected class, although “vulnerable” students protected from being targets.

School District Response

- ▶ Provide necessary interim measures
- ▶ 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.

Section 504

- ▶ 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.

When do schools become responsible for addressing harassment?

- ▶ 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.”

Preventing Retaliation

- ▶ 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,
investigate,
and take
appropriate
action

Definition of Bullying

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?

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

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:

- ▶ 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?

- ▶ 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

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

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

Can include IMPERSONATION of another (catfishing)

Scope of Law

- ▶ 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

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

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

- ▶ 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 the IDEA (IEP)

- ▶ 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, continued

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

2nd eligibility requirement: *Failure to Make Effective Progress*

- ▶ 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*

- ▶ Child needs **pecially 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

- ▶ 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

- ▶ 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, MTSS
- Social emotional difficulties in school
- Frequent absences

Child Find Obligations - Triggers

- ▶ 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

- ▶ 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

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

- ▶ 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?

- 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)

COVID-19 Considerations

► Long COVID and the Impact on Students

- According to CDC, a wide range of new, returning, or ongoing health problems can be experienced more than four weeks after first being infected with the virus that causes COVID-19
- Preliminary studies show that children and students of all ages may experience long COVID, which can produce a combination of symptoms, including but not limited to fatigue, difficulty thinking or concentrating, headache, dizziness, chest or stomach pain, cough, joint or muscle pain, mood changes, sleep problems
- A child or student experiencing long COVID or other conditions that have arisen as a result of COVID-19 **may be eligible for special education and related services under IDEA and/or may be entitled to protections and services under Section 504.**

COVID-19 Considerations, Cont.

- ▶ Long COVID impacts children and students in a variety of ways, and therefore, the determination of whether a child or student is eligible for IDEA and/or Section 504 services must be made on an individual basis
- Conduct evaluation in timely manner
- Evaluation should be individualized and not conclusory based on child's diagnosis alone
- Group of people knowledgeable about child and child's evaluation data should determine what supports, if any, are needed
 - For example, a student who has had COVID-19 and who continues to have difficulty concentrating may require an evaluation to determine if the student has a disability and needs special education or related services such as additional time to finish classwork and tests.
- For students who already receive services under Section 504, schools must provide reevaluations periodically and as needed

Tips for School Staff

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

Questions to Consider:

- 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

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

- ▶ 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!

What is a Complaint?

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

Examples include:

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

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

Who is responsible?

- ▶ 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...

- ▶ 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:

- ▶ 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

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

M.G.L. c. 119 sec. 51A

A mandated reporter must immediately report to DCF when s/he has reasonable cause to believe that a child under the age of eighteen years is suffering physical or emotional injury resulting from:

- 1) abuse, including sexual abuse, which causes harm or substantial risk of harm to the child's health or welfare;
- 2) neglect, including malnutrition, or
- 3) physical dependence upon an addictive drug at birth

WHAT IS REASONABLE CAUSE?

Reasonable cause can be based on your expertise as an educator and/or past experiences with this child or family.

DEFINITIONS

Abuse: as the non-accidental commission of any act by a caregiver which causes or creates a substantial risk of physical or emotional injury or sexual abuse to a child; **or** the victimization of a child, by a caregiver or non-caregiver, due to sexual exploitation and/or human trafficking. This definition is ***not*** dependent upon location. Abuse can occur while the child is in an out-of-home or in-home setting.

➤ ***A suspicion of child abuse is sufficient to trigger the requirements of §51A.***

Neglect: failure by a caregiver, 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, education, emotional stability and growth, or other essential care; or to prevent malnutrition; or failure to thrive. A neglect determination cannot result solely from inadequate economic resources. Similarly, a neglect determination cannot be due solely to the existence of a parent's/caregiver's disability or limited physical condition.

Timelines for Reporting

- 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 and jail time
- Again - err on the side of caution and report

What to Report

- 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)

If the alleged abuser of a student is a school employee, should the matter be reported to DCF under G.L. c.119, § 51A? Should it be reported to the police or to anyone else? What other steps may the school take?

Yes, the matter must be reported **immediately** to DCF if the student is under the age of 18. DCF will refer allegations of criminal abuse to the DA and police.

Note also that [G.L. c. 19C](#) requires that suspected abuse or neglect of a person with a disability aged 18 and over be reported to the Disabled Persons Protection Commission (DPPC). The DPPC Abuse Reporting Hotline is at 800-426-9009. Additional information on DPPC and the duty to report abuse or neglect of disabled adults may be found at [Disabled Persons Protection Commission website](#).

If school officials believe that criminal laws may have been violated, they should report those matters to the police, particularly if the incident may involve criminal violations not included under §51A.

In addition, school authorities have a general duty to take reasonable measures to protect the safety of their students, and under federal and state civil rights laws a school or school district may be liable for sexual abuse or sexual harassment of students by school employees. For these reasons, besides reporting to DCF, school officials must take prompt and effective steps to address any allegation that a school employee has sexually abused or sexually harassed a student. School districts should consult with their legal counsel when such situations arise to discuss the appropriate response and coordinate with other entities that may be involved.

Considerations for Schools

1. Has the school/district explored and documented all possible opportunities to support and assist the student and their family to overcome barriers to engagement and attendance (e.g., technology access if the student is learning remotely, support, etc.)? What additional supports might be needed and how can students and families get connected to those supports? What alternative learning opportunities might be available to support engagement?
2. Has the school/district reviewed data to identify whether there is an over-reliance on 51A filings as an intervention for specific student groups (e.g., students of color, students with disabilities, etc.)?

► *Promoting Student Engagement, Learning, Wellbeing and Safety , Summer 2021*

Student Discipline

UNDERSTANDING THE SPIRIT OF
THE LAW

Student Discipline Regulations:

- ▶ 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

- ▶ Substantive Due Process
- ▶ Procedural Due Process

TIPS

- ▶ 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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