



Superintendent's Circular

School Year 2011-2012

NUMBER:
LGL-13

DATE:
September 1, 2011

SEXUAL ASSAULT POLICY

INTRODUCTION

The Boston Public Schools is committed to providing to all students and employees a safe and healthy environment that promotes dignity, equality and respect. Consistent with this philosophy, the Boston Public Schools is committed to promoting an environment free from sexual assault. Sexual assault occurring in any school or work-related setting is unlawful and will not be tolerated by the Boston Public Schools whether the assault has been committed by staff, students or third parties. Further, any retaliation against an individual who has complained about a sexual assault or cooperated in an investigation of a sexual assault complaint will not be tolerated by this organization. The Boston Public Schools will respond promptly to complaints of sexual assault or retaliation and corrective action will be taken where necessary, including disciplinary action where appropriate.

Sexual assault is a crime. It is prohibited by the Massachusetts Criminal Code, including without limitation, sections 13B, 13F, 13H, 22, 22A, 23, 24, 24B and 26 of chapter 265 of the Massachusetts General Laws and sections 16 and 35A of chapter 272 of the Massachusetts General Laws. Sexual assault also may constitute child abuse. Sexual assault is a criminal act punishable by imprisonment for a term of years up to life, depending upon the nature of the crime.

- For children under 14 years of age, any touching of the genitalia is sexual assault.
- For children between the ages of 14-16, any sexual penetration is sexual assault.
- For children over the age of 16, any sexual act without consent is sexual assault.

Additionally, under Title VII of the Civil Rights Act of 1964, and Title IX of the Educational Amendments of 1972, sexual assault may be a form of sexual harassment and, as such, would constitute unlawful discrimination on the basis of sex. Any form of sexual assault will result in disciplinary action, up to and including termination for employees, and up to and including expulsion for students.

Please note that while this policy sets forth the goals of the Boston Public Schools in promoting an educational and work environment free from sexual assault, it is neither designed nor intended to limit the Boston Public Schools' authority to discipline or take remedial action for conduct which the Boston Public Schools deems to be unacceptable, regardless of whether that conduct satisfies the definition of sexual assault as a criminal act as stated below.

DEFINITION OF SEXUAL ASSAULT

For purposes of this policy, "sexual assault" is defined as any sexual act against another person either by force, against their will, or by threat of bodily injury. It also includes any sexual act against another person who is incapable of giving consent, either because of her/his temporary or permanent mental or physical incapacity, or because s/he is a minor. Such crimes as indecent assault and battery, rape, rape with force, rape and abuse, assault with intent to rape and unnatural and lascivious acts constitute a sexual assault.

Indecent assault and battery includes, but is not limited to, inappropriate and unwanted touching of private body parts. A person under the age of 14 is legally unable to consent to this type of sexual activity.

Persons under the age of 16 cannot legally consent to sexual intercourse of any type. Persons under the age of 18 cannot legally consent to posing in a state of nudity, being recorded in a state of nudity, or recording of sexual acts.

Unnatural and lascivious acts, possession, manufacturing or dissemination of child pornography, although not sexual assaults, are crimes and violation of school policy. Child pornography on any digital device (e.g. sexting on cell phones, laptops, computers or any electronic device) or in any form cannot be possessed by civilian school personnel. Only Police can take custody of this evidence in the lawful performance of their duties. This evidence shall be forwarded immediately to Police only.

Non consensual acts are always crimes.

Sexual assault can occur adult-to-adult, adult-to-student, student-to-adult, student-to-student, male-to-female, female-to-male, female-to-female and male-to-male.

Sexual assault reports may include:

- (1) Allegations of a student assaulting a student;
- (2) Allegations of a staff member assaulting a student;
- (3) Allegations of a student assaulting a staff member;
- (4) Allegations of an adult assaulting an adult;
- (5) Allegations of assault occurring outside of the school setting;
- (6) Enticement of a child for sexual purposes; and
- (7) Sexting, possession or dissemination or manufacture of child pornography, dissemination of harmful material to a minor.

Additionally, such conduct may also constitute sexual harassment, a form of discrimination that is prohibited by federal and state law as well as by the Boston Public Schools' Superintendent's Circular #LGL-2 - Sexual Harassment Policy.

PROCEDURE FOR REPORTING OF SEXUAL ASSAULT

Reporting An Incident:

An **employee** who believes that s/he has been a victim of sexual assault may report the incident to any of the following individuals: (1) school principal/headmaster, (2) responsibility center manager, (3) academic superintendents, or (4) chief operating officer.

The person who receives the report must advise the employee who believes that s/he has been an adult victim of sexual assault of her/his right to contact the Boston Police Department School Police Unit at 617-343-5526 and must also refer the employee to the Superintendent's Circular #EQT-2 - Employee Grievances of Discrimination (which addresses informal resolution and filing of formal complaints of discrimination) and provide a copy of same upon request. In addition, the person receiving the report must notify the Chief Operating Officer and the Office of Safety Services.

A **student** who believes that he/she has been a victim of sexual assault may report the incident to any **school official (e.g. nurse, teacher, guidance counselor, school police, etc.)**.

The person who receives the report must **immediately** notify the building administrator. (If the report is against the building administrator, the academic superintendents or assistant academic superintendents must be **immediately** notified.)

The building administrator (academic superintendent or assistant academic superintendent) must **immediately** do the following:

(1) notify the parent(s) or legal guardian(s) of the victim – ***unless the parent/legal guardian is the alleged perpetrator and/or such notification will create a substantial risk to the student's health, safety, or welfare;***

(2) notify the Office of School Safety Services/Boston School Police at 617-635-8000 who will then notify the Boston Police Department School Police Unit;

Office of School Safety Services
213 Townsend Street
Dorchester, MA 02121

(3) school employees are ***mandated reporters and are required to report to the Department of Children and Families (formally the Department of Social Services) when they have reasonable cause to believe a child under the age of 18 is suffering physical or emotional injury resulting from abuse which causes harm or a substantial risk of harm to the child's health or welfare.***

Any questions related to your obligations to file a 51A report with DCF should be directed to the Office of Legal Advisor. Please also refer to the **Superintendent's Circular: Child Abuse and Neglect**, which addresses reporting obligations to DCF in filing of a 51A report. The building administrator must also refer the student and/or the student's parent(s) or legal guardian(s) to the Superintendent's Circular #EQT-3 - Uniform Procedures for Student Grievances of Discrimination, (which addresses informal resolution and filing of formal complaints of discrimination) and provide a copy of same upon request.

When a report of sexual assault is received by the Boston Public Schools, it will act promptly to notify the appropriate authorities of the alleged incident. Reporting of any such incident will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances.

Note: If the alleged perpetrator is a minor, the building administrator (academic superintendent or assistant academic superintendent) should also notify the parent(s) or legal guardian(s) of the alleged perpetrator. For reasons of confidentiality, do not inform the alleged perpetrator's family of the alleged victim's identity or gender.

In addition, in circumstances in which there are obvious medical concerns (visible injuries, bleeding, etc.) the building administrator and/or school nurse should request an immediate medical response (call 911). If there are concerns for the student's physical well-being but there are no obvious signs of injury present, school personnel should consult the responding Boston Police Officer or Detective regarding referrals for medical care and/or collection of forensic evidence in a Reported Sexual Assault (RSA) Evidence Collection Kit.

Documenting An Incident:

A staff member who receives a disclosure of a sexual assault from a student shall immediately notify the building administrator of the incident. ***This initial report must be documented on the Confidential Log and Follow Up Sheet and should only outline basic minimal facts of the alleged incident, including:***

- (1) When the incident occurred;***
- (2) Where the incident occurred;***
- (3) Who assaulted the student, if known;***
- (4) The nature of the incident; and***

(5) Whether there are known witnesses and/or other victims.

The time of disclosure, victim(s), suspect(s), and witness(es) name(s), address(es), telephone number, parent(s) name and contact information must appear on the Confidential Log. When completing the Confidential Log sheet, staff should be specific, using the student's/discloser's exact words, phrases, and/or descriptions as reported by the victim/discloser. Staff members gathering information, however, should not ask probing questions.

BPD or BPS Police Officers responding to the site will take the information from the staff person that receives the information from the victim/discloser. The Officer will stand by with this staff person while the 'Confidential Log and Follow-Up Sheet' is fully completed.

In an attempt to minimize the emotional stress victims of sexual assault experience and to preserve the integrity and reliability of the necessary DCF and law enforcement investigations, **additional interviews or probing questioning are not to be conducted by school officials.**

A student who is the victim of a sexual assault **should not be asked the following:**

- (1) to submit a written report detailing the incident; or
- (2) to discuss the incident with the alleged perpetrator ***present at any time or under any circumstances.***

School personnel are mandated reporters and as such must conduct a basic minimal investigation as outlined above ***but should not engage in a detailed investigation of the allegation.*** Any documentation, information, or evidence concerning these matters shall be forwarded to the appropriate investigating agencies.

The Confidential Log and Follow Up Sheets:

Attached to this policy are Confidential Logs and Follow Up Sheets for documenting the reporting procedures outlined above. **These logs should be treated as "confidential" documents** and shared only with the appropriate school department personnel and law enforcement authorities or as otherwise provided by law.

The following information should be given and/or faxed immediately to the Office of Safety Services/Boston School Police at 617-635-8006:

- (1) the completed Confidential Log and Follow-up Sheet;
- (2) the LIZA demographic sheet containing contact information for each student party involved (victim, suspect, witness, etc);
- (3) the completed DCF 51A report (both sides), where applicable/appropriate;
- (4) any information on school administrative actions taken; and
- (5) any other written notes, reports, or statements.

Office of Safety Services/Boston School Police will work directly with the Boston Police Department School Unit in responding to the incident. Thereafter, the Boston Police Crimes Against Children Unit (CACU) will conduct the follow-up investigation of child victims.

Upon receipt of a report of a child sexual assault (i.e., child is the perpetrator), the Boston Police Department, the Department of Children & Families, and the District Attorney's Office may coordinate a multidisciplinary team investigation. Although all reports of sexual assault do not result in prosecution, a team investigation of such reports will typically include an interview with the alleged victim(s), alleged perpetrator(s), and witness(es).

All pertinent information for discipline and school safety purposes will be shared in a timely manner between the Boston Public Schools, appropriate Police agencies, and the Office of the District Attorney.

DISCIPLINARY ACTION

If it is determined that inappropriate **and/or criminal** conduct has been committed, the Boston Public Schools will take such action as it deems appropriate under the circumstances. Such action may range from counseling, discipline of an employee up to termination of employment, or suspension or expulsion of a student from school.

OTHER REMEDIES

In addition to reporting a sexual assault incident in accordance with the procedures described above, an employee or student who believes s/he has been a victim of sexual assault also may file a complaint of sexual harassment in accordance with the procedures set forth in either Superintendent's Circular #LGL-2 - Sexual Harassment Policy, Superintendent's Circular #EQT-2 - Uniform Procedures for Employee Grievances of Discrimination; or Superintendent's Circular #EQT-3 - Uniform Procedures for Student Grievances of Discrimination.

ATTACHMENTS

1. Log Sheet – Student Report (Go to www.mybps.org → Central Administration → Operations → Safety Services. Scroll to Log Sheet/Reporting of Sexual Assault Where Student is Victim or Where Employee is Victim)
2. Log Sheet – Employee Report (see above)
3. Questions & Answers on Sexual Assault Policy

For more information about this circular, contact:

Name:	Alissa Ocasio
Department:	Office of Legal Advisor
Mailing Address:	26 Court Street, Boston, MA 02108
Phone:	617-635-9320
Fax:	617-635-9327
E-mail:	aocasio@boston.k12.ma.us

Carol R. Johnson, Superintendent

CONFIDENTIAL
LOG SHEET FOR REPORTING INCIDENT OF SEXUAL ASSAULT
WHERE STUDENT IS VICTIM

School Name & Phone Number: _____

Name of Staff Member Receiving Initial Disclosure: _____

Name of Staff Member Completing This Report: _____

Date / Time of Report: _____

Place of Report: _____

Student/Victim Name and Contact Information: _____

Questions for Staff Member to Ask Reporting Student:

1.) When did the incident occur?

2.) Where did the incident occur?

3.) Who assaulted the student? Include contact information, if known.

4.) Please indicate the nature of the incident as reported by the student (describe the incident using the students/discloser's exact words, phrases, and/or descriptions):

Student Witness Name(s) and Contact Information

Follow Up Actions

1. Parent/Legal Guardian of Victim

Name of parent/legal guardian contacted: _____

Date and time of call: _____

Name of Person who made telephone call: _____

2. Parent/Legal Guardian of Perpetrator

Name of parent/legal guardian contacted: _____

Date and time of call: _____

Name of Person who made telephone call: _____

3. Office of Safety/Boston School Police

Name of Officer to whom report was given: _____

Date and time of call: _____

Name of Person who made telephone call: _____

4. Boston Police School Police Unit

Name of Officer to whom report was given: _____

Date and time of call: _____

Name of Person who made telephone call: _____

5. Department of Children and Families

Was 51A report filed? Yes No

If Yes, date report was filed: _____

Name of DCF Screener/Employee to whom 51A report was given: _____

Date and time of call: _____

Name of Person who made telephone call: _____

6. Was student referred to Superintendent's Circular #EQT-3 Uniform Procedures for Student Grievances on Discrimination? Yes No

Signature of Staff Member Completing This Report

Date

Attach: 1. Copy of Incident Report
2. Copy of 51A Report (if filed)

CONFIDENTIAL
LOG SHEET FOR REPORTING INCIDENT OF SEXUAL ASSAULT
WHERE EMPLOYEE IS VICTIM

Name of Staff Member Receiving Initial Disclosure: _____

Name of Staff Member Completing This Report: _____

Date/Time of Report: _____

Place of Report: _____

Name of Victim: _____

1. Was employee referred to Boston Police Department Sexual Assault Unit at 617-343-4400?
 Yes No

2. Was employee referred to Superintendent's Circular #EQT-2 - Uniform Procedures for Employee Grievances on Discrimination?
 Yes No

3. Office of Human Resources

Name of person to whom report was given: _____

Date and time of call: _____

Name of Person who made telephone call: _____

4. Office of Safety/Boston School Police

Name of Officer to whom report was given: _____

Date and time of call: _____

Name of Person who made telephone call: _____

Signature of Staff Member Completing This Report

Date

Attach copy of Incident Report

BOSTON PUBLIC SCHOOLS
SEXUAL ASSAULT POLICY Q & A

The purpose of the attached Q & A on the Boston Public Schools' Sexual Assault Policy is to distinguish between "sexual assault" and "sexual harassment" and to provide a quick reference guide regarding the Boston Public Schools' Sexual Assault Policy. The Q & A is divided into five categories of frequently asked questions: (A) The Difference Between Sexual Assault and Sexual Harassment; (B) Sexual Assault Involving Students; (C) Sexual Assault Involving Employees; (D) General Information Regarding Sexual Assault Investigations; and (E) General Information Regarding Disciplinary Actions.

Please note that if you have any questions regarding the Boston Public Schools' Sexual Assault Policy or this Q & A, you may call the Boston Public Schools Office of Legal Advisor at 617-635-9320.

The Difference between Sexual Harassment and Sexual Assault

Question #1:

How can a supervisor/building administrator distinguish between charges of sexual harassment and/or sexual assault.

Answer:

In Massachusetts, the legal definition for "**sexual harassment**" is this:

"Sexual harassment" means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

- (a) Submission to or rejection of such advances, requests, or conduct is made, either explicitly or implicitly, a term or condition of education or employment or as a basis for education or employment decisions; or
- (b) such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating, or sexual offensive educational or work environment.

Under these definitions, direct or implied requests by a supervisor of 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.

While it is not possible to list 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:

- unwelcome sexual advances, whether they involve physical touching or not;
- sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life;
- comments on an individual's body, comments about an individual's sexual activity, deficiencies, or prowess;

- displaying sexually suggestive objects, pictures, or cartoons;
- unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- inquiries into one's sexual experiences;
- discussion of one's activities or sexual orientation.

"Sexual assault" is defined as any sexual act against another person either by force, against their will, or by threat of bodily injury. It also includes any sexual act against another person who is incapable of giving consent either because of her/his temporary or permanent mental or physical incapacity or because s/he is a minor. Such crimes as indecent assault and battery, rape, rape with force, rape and abuse, assault with intent to rape and unnatural and lascivious acts constitute a sexual assault.

Indecent assault and battery includes, but is not limited to, inappropriate and unwanted touching of private body parts. A person under the age of 14 is legally unable to consent to this type of sexual activity.

Sexual assault can occur adult-to-adult, adult-to-student, student-to-adult, student-to-student, male-to-female, female-to-male, female-to-female and male-to-male.

Sexual assault reports may include:

- (1) allegations of a student assaulting a student;
- (2) allegations of a staff member assaulting a student;
- (3) allegations of a student assaulting a staff member;
- (4) allegations of an adult assaulting an adult;
- (5) allegations of assault occurring outside of the school setting;
- (6) Enticement of a child for sexual purposes; and
- (7) Sexting, possession or dissemination or manufacture of child pornography, dissemination of harmful material to a minor.

Question #2:

Does the age of a child matter in terms of criminal responsibility?

Answer:

Yes. Under Massachusetts law, a person 14 years old and above may consent to touching of private body parts; a person 16 years old and above may consent to sexual intercourse; and a person 18 years old and above may consent to the electronic recording of sexual acts or states of nudity.

However, while any acts such as these may be legal, they may be a violation of the Code of Conduct.

Sexual Assault Involving Students

Question #3:

If the sexual assault incident being reported by a student occurred during non-school hours and off school grounds does the building administrator have to follow both the sexual assault policy and child abuse and neglect policy which requires the building administrator to file a 51A report?

Answer:

Yes. The building administrator is required to follow the sexual assault policy even if the sexual assault incident being reported by a student involves an incident that occurred during non-school hours and off school grounds. Similarly, if the incident that is reported leads a mandated reporter at

the school to suspect child abuse and neglect by a person responsible for the child's health or welfare, then the mandated reporter also has an obligation to file a 51A report based upon the reported sexual assault incident.

Question #4:

If the police indicate that they are going to file a 51A report as a result of the incident, is the building administrator still required to file a 51A report?

Answer:

Yes, if the building administrator believes abuse or neglect has occurred. All mandated reporters have an independent obligation under Massachusetts General Laws, Chapter 119 to file a 51A report when he/she suspects child abuse and/or neglect.

Question #5:

Will the Counseling & Intervention Center accept students who are referred to them when the student is being referred in connection with a sexual assault disciplinary action?

Answer:

Yes.

Question #6:

What is the procedure for providing emergency medical treatment to students who are alleged victims of incidents of sexual assault?

Answer:

As with all emergency medical situations, the procedures set forth in the Superintendent's Circular #FSE-5 - Medical Emergency Management should be followed. See also Question and Answer to Number 7 below.

Question #7:

What is the procedure for counseling (other than on an emergency basis) to students who are either alleged perpetrators or alleged victims of incidents of sexual assault?

Answer:

As with any other non-emergency healthcare decision, the decision to provide a student with counseling belongs to the student's parent(s) or legal guardian(s). If the school believes that counseling is appropriate, the school can recommend that the student be referred to the Student Support Team at the school for review and recommendations. The school also may recommend to a student's parent(s) or legal guardian(s) that the student participate in or receive counseling. In instances of serious incidents at school, immediate counseling support may be warranted. In such circumstances, the school should contact the student's parent(s) or legal guardian(s) immediately to fully inform them of the situation. See also Question and Answer to Number 6 above. Then, in such cases, the building administrator should seek immediate service from school-based guidance and nursing staff or, where appropriate, through the Student Support Services Team at 617-635-8030. Specialized resources are also available for alleged victims through the District Attorney's office, 617-619-4000 and Youth Service Provider Network, 617-427-1068. The Children's Advocacy Center (at 617-779-2146) also provides support for alleged victims.

Question #8:

Can students who are being disciplined for incidents of sexual assault receive a disciplinary transfer or home tutoring or do they have to be expelled?

Answer:

In this regard, incidents of sexual assault are not different from any other violations of the Boston Public Schools Code of Conduct (See Sections 7.2, 7.6 and 7.10, for example). Therefore, after a

hearing (utilizing the Confidential Log as the witness statement to be read into testimony), a building administrator may discipline a student for an incident of sexual assault as s/he deems appropriate under the circumstances presented consistent with the Code of Conduct. In the course of a disciplinary hearing, the building administrator should be sensitive to the victim's experience, their needs and the concerns of the parent/guardian.

Complete the Confidential Log Sheet to use as the official discipline tool/witness statement.

Question #9:

Should there be any disciplinary action taken if investigation reveals that the incident giving rise to the complaint of sexual assault was actually a consensual act between students?

Answer:

It depends. Under certain circumstances, even a consensual act between students may be treated as violation of the Boston Public Schools Code of Conduct (Compare Section 7.2 and 7.6, Code of Conduct). Any person under the age of 14 years is legally unable to consent to inappropriate sexual touching (See Section 20.40, Definition of Sexual Assault, Code of Conduct). See also Question and Answer to Number 2 above.

Question #10:

What does a building administrator do if s/he becomes aware of a sexual assault incident because a conversation between two students is overheard or a note is intercepted?

Answer:

As with any infraction of the Boston Public Schools Code of Conduct or alleged criminal conduct on school property that you may become aware of due to a conversation between students overheard or a note being intercepted, you are required to investigate the report. If after investigating the report, you in your professional capacity have reasonable cause to believe that further action is warranted, then you should take such further action.

Question #11:

What is the process for reporting a sexual assault?

Answer:

Refer to pages 2 -3, of this circular.

Question #12:

Is it appropriate or necessary to remove or separate students following an incident of sexual assault (i.e., on bus, in classroom or elsewhere)? If so, what are the procedures for removal or separation of students under these circumstances?

Answer:

As with the decision to remove or separate students following any other incident or infraction of the Boston Public Schools Code of Conduct, you are required to use your professional judgment in determining whether any removal or separation of the students is warranted. In making this determination, you should consider, among other things, the nature and severity of the incident and the views of the student victim and his/her parents. If in your judgment removal of the perpetrator from school, classroom activities, school transportation or other school-related activities is warranted, you must follow the procedures set forth in the Boston Public Schools Code of Conduct for excluding students. You also may refer to the Boston Public Schools' policies on Disciplinary Transfers, assignment to alternative programs and Safety Transfers, where appropriate. In the event you believe that it is appropriate to separate students who ride the school bus together, you may contact the Boston Public Schools' Office of Transportation directly at 617-635-9520 to discuss the feasibility of a new bus assignment.

Question #13:

Will the Crimes Against Children Unit of the Boston Police Department investigate an incident of sexual assault between children under age seven (7)?

Answer:

Under Massachusetts law, a child must be 7 years old or older to be charged with a crime. In those cases where such a request is made, after the incident has been documented and School Safety Services and the Boston School Police Unit have been notified, the Boston Police and its Crimes Against Children Unit will work with the District Attorney's Office, and the parents of both the victim and the alleged perpetrator, if appropriate, regarding counseling and the involvement of other social service agencies, such as the Department of Children and Families (DCF).

Question #14:

Will the Crimes Against Children Unit of the Boston Police Department investigate an incident of sexual assault between children age seven (7) and older?

Answer:

Yes. The Crimes Against Children Unit of the Boston Police Department will investigate any incident, which it may determine constitutes a sexual assault, between children age seven (7) and older and will work with the Child Abuse Unit of the District Attorney's Office regarding the matter.

Question #15:

Are there any particular procedures or considerations to take into account if the alleged perpetrator or victim is a student with a disability?

Answer:

As with any exclusion or discipline of a student with a disability, federal and state law requirements and the provisions of Section 14 of the Boston Public Schools Code of Conduct, must be followed. Also, in certain circumstances, where an allegation of sexual assault involves a student with a disability, either as a victim or perpetrator, the building administrator may wish to consult the Senior Director of Student Support Services or her designee at 617-635-9234 or 617-635-8599.

Sexual Assault Involving Employees

Question #16:

Should there be any disciplinary action taken if investigation reveals that the incident giving rise to the complaint of sexual assault was actually a consensual act between employees?

Answer:

It depends. Under certain circumstances, even a consensual act between employees may be treated as inappropriate conduct, and discipline, up to and including termination, of the employee may result.

Question #17:

Should there be any disciplinary action taken if investigation reveals that the incident giving rise to the complaint of sexual assault was actually a consensual act between an employee and a student?

Answer:

Yes. Even if the incident involves a consensual act, such conduct will still be treated as inappropriate and discipline, up to and including termination of the employee, may result. See Question and Answers to Number 9 and 16 above. Criminal investigation may result from such conduct.

Question #18:

Is there a specific person in the central office who will be taking reports of incidents of sexual assault when the victim is an employee?

Answer:

Yes. Until further notice, the Chief Operating Officer will be taking reports of incidents of sexual assault when the victim is an employee.

Question #19:

Is there a specific person in the Office of Safety Services who will be taking reports of incidents of sexual assault when the victim is an employee?

Answer:

No. All Boston Police and School Police Officers in the Office of Safety Services will be able to take reports of serious incidents of sexual assault. Boston Police staff are the only law enforcement personnel allowed to write BPD sexual assault reports.

General Information Regarding Sexual Assault Investigations

Question #20:

Can a building administrator proceed with a disciplinary action against the alleged perpetrator of the sexual assault while the criminal investigation and prosecution is still pending?

Answer:

Yes. For further discussions of issues related to proceeding with a disciplinary action while the criminal investigation and prosecution are pending, see Questions and Answers to Number 8, 9, 16, and 17 above and Questions and Answers to Number 21-23 and 26-30 below.

Question #21:

Are building administrators investigating an allegation of sexual assault prohibited from taking either written or oral statements from either the victim, the alleged perpetrator, or any witnesses to the incident while the criminal investigation and prosecution is still pending?

Answer:

Although, Building Administrators may gather minimal information in order to complete the information contained in the attached confidential log sheet(s), no written statement from alleged victims, witnesses or perpetrators should be taken. You should be aware of the fact that all such statements may well become evidence in the criminal investigation and prosecution of the matter. For this reason, the Sexual Assault Unit and the Crimes Against Children Unit of the Boston Police Department and the Office of the District Attorney for Suffolk County recommend against soliciting written statements from the victim or witnesses to the alleged sexual assault incident.

Accordingly, it is good practice to ensure that any statements that you take do not exceed the level of an inquiry needed for disciplinary purposes under the Boston Public Schools Code of Conduct (just enough facts to understand what happened - who, what, when and where, nothing else). A bullet list of the elements of such an inquiry and a sample form of a written statement based on such an inquiry are attached to this Q & A for your reference. Again, it is important to stress the need for sensitivity when dealing with the victim.

Question #22:

Should there be any disciplinary action taken if an investigation reveals that it is unclear who was the victim and who was the aggressor?

Answer:

As with any violation of the Boston Public Schools Code of Conduct or any inappropriate conduct by an employee, you are required to investigate allegations and to use your own best judgment in determining whether any disciplinary action should be taken.

Question #23:

If the building administrator contacts the Boston Police Department Crimes Against Children Unit, will the Boston Police Department Crimes Against Children Unit tell him/her the status of the criminal investigation of the sexual assault incident?

Answer:

Yes. You can contact the Supervisor in the BPD Crimes Against Children Unit of the Boston Police Department (617-343-6183) or the Child Abuse Unit of the District Attorney's Office (617-619-4300).

Please be aware, however, that it sometimes takes several months for a matter to progress through the investigation process, and that after an investigation is completed it may also take several additional months before any decision is made by the District Attorney as to whether to proceed with a prosecution.

Question #24:

What does a building administrator do if a report of a sexual assault is made by someone other than the victim?

Answer:

As with any other report of an infraction of the Boston Public Schools Code of Conduct or report of alleged criminal conduct on school property that you may receive, you are required to follow the Sexual Assault Policy as outlined here in Circular LGL -13.

Question #25:

If the Boston Police Department Crimes Against Children Unit decides not to bring criminal charges will they formally notify the school?

Answer:

It is the District Attorney's Office, and not the Boston Police Department Crimes Against Children Unit, that makes the final decision whether to bring criminal charges. However, upon receipt of an inquiry from the Building Administrator of the school, the Crimes Against Children Unit of the Boston Police Department or the District Attorney's Office will provide the school with the outcome of its investigation. See Question and Answer to Number 23 above.

General Information Regarding Student Disciplinary Actions

Question #26:

Should there be any disciplinary action taken if the police investigation does not lead to a criminal prosecution?

Answer:

The decision to take disciplinary action against a student or an employee is separate from and independent of the police investigation and decision regarding criminal prosecution of an individual. Accordingly, even if the police investigation does not lead to a criminal prosecution, you may take disciplinary action for the conduct if such disciplinary action is inappropriate in the school or employment context.

Appropriate disciplinary action may alleviate many concerns experienced by parents and students. As such, the BPD and DA's Office should be made aware of the actions taken.

Question #27:

Is the victim of an alleged incident of sexual assault prohibited from appearing and testifying at either a suspension, expulsion or other disciplinary hearing?

Answer:

Pursuant to Section 9.5.4 of the Boston Public Schools Code of Conduct, a student victim does not need to testify or appear at a hearing.

Building Administrators are encouraged to use the Confidential Log Sheet as the witness statement in a disciplinary hearing. Building Administrators may ask the first person who received the initial report, or a designee, to read their completed Confidential Log Sheet into testimony.

Question #28:

Who makes the determination as to whether a victim can appear and testify at either a suspension, expulsion or other disciplinary hearing?

Answer:

In accordance with the provision of Section 9.5.4, a student victim does not need to testify or appear at a hearing. The Building Administrator may rule, orally or in writing, that identification and/or participation of the victim at the hearing, would endanger his or her physical safety or cause intimidation.

Again, building Administrators are encouraged to use the Confidential Log Sheet as the witness statement in a disciplinary hearing. Building Administrators may ask the first person who received the initial report, or a designee, to read their completed Confidential Log Sheet into testimony.

If a criminal case is **pending**, the District Attorney's Office may request that the victim not testify at the disciplinary hearing involving both students and/or staff. Prior to requesting that a victim appear and testify at a suspension, expulsion or other disciplinary hearing, the Building Administrator should consider the status of the criminal case and whether the presence of the student and/or identification of the student would endanger his or her physical safety. See Boston Public Schools Code of Conduct Section 9.5.4. See also Question and Answer Number 27 above.

Question #29:

If a victim does not appear and testify at either a suspension, expulsion or other disciplinary hearing, what evidence can be presented at that hearing?

Answer:

As with any other disciplinary hearing, the evidence that may be presented at the hearing includes: Confidential Log Sheet (in cases of sexual assault and/or sexual harassment); school incident reports; written statements from adult witnesses; summaries of oral statements from the victim or witnesses; eyewitness testimony and/or any other relevant documents or testimony, however, the Code of Conduct may require the presence of such persons at the hearing. See §9.5.4 and §13.6.3 of the Code of Conduct.

If you have any questions, you may call the Boston Public Schools Office of Legal Advisor at 617-635-9320.

Question #30:

Will the Police Officer from the Boston Police School Unit or a Detective from the Boston Police Department Crimes Against Children Unit provide me with a written police report or any other type of written document to use as evidence at a suspension, expulsion or other disciplinary hearing regarding a sexual assault incident?

Answer:

As a general rule, police reports are public records and may be used in a disciplinary hearing at school. However, sexual assault police reports are not public records and may not be used in a disciplinary hearing. Accordingly, the Boston Police Department will not release copies of sexual assault incident reports pursuant to Massachusetts General Law chapter 41, section 97D and

Massachusetts General Law chapter 264, section 24C. Additionally, no incident report may be used in such a hearing unless the persons making the statement in that report are present. See Sections 9.5.4 and 13.6.3 of the Code of Conduct.

Building Administrators are encouraged to use the Confidential Log Sheet as the witness statement in a disciplinary hearing. Building Administrators may ask the first person who received the initial report, or a designee, to read their completed Confidential Log Sheet into testimony.

Confidential Log Sheet To Sexual Assault Circular

SAMPLE INQUIRY FOR SEXUAL ASSAULT INCIDENT

- Name(s) of alleged victim(s), with contact information.
- Name(s) or description(s) of alleged perpetrator(s), with contact information, if known
- Name(s) or description(s) of alleged perpetrator(s), with contact information, if known
- Name(s) of any potential witness(es) to alleged incident
- Date of alleged incident
- Location of alleged incident
- Summary of alleged incident using victim's/discloser's exact words and phrases

EXAMPLES OF SUMMARIES

1. Victim (Student A) stated that on INSERT DATE OF INCIDENT, s/he was INSERT BRIEF DESCRIPTION INCIDENT by INSERT NAME OR DESCRIPTION OF ALLEGED PERPETRATOR(S). This incident occurred INSERT LOCATION OF ALLEGED INCIDENT. IF APPLICABLE INSERT NAMES OF POTENTIAL WITNESS were witnesses to this incident.
2. Witness (Student B) stated that on INSERT DATE OF INCIDENT, s/he witnesses INSERT BRIEF DESCRIPTION INCIDENT INCLUDING NAME(S) OR DESCRIPTIONS OF ALLEGED PERPETRATOR(S) and ALLEGED VICTIM(S). This incident occurred INSERT LOCATION OF ALLEGED INCIDENT. IF APPLICABLE INSERT NAMES OF OTHER POTENTIAL WITNESS also were witnesses to this incident.
3. Alleged perpetrator (Student C) stated that on INSERT DATE OF INCIDENT, s/he was INSERT BRIEF DESCRIPTION INCIDENT involving INSERT NAME(S) OF ANY OTHER INDIVIDUALS INVOLVED IN INCIDENT. This incident occurred INSERT LOCATION OF ALLEGED INCIDENT. IF APPLICABLE, INSERT NAMES OF POTENTIAL WITNESSES were witnesses to this incident.