

A wooden puzzle with three blue puzzle pieces missing, set against a dark background.


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Today's Presenters


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AGENDA

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- Introduction
- Title IX Background & State Law Implications
- Requirements for Title IX Compliance
- Duty to Respond & Jurisdiction
- Title IX Coordinator
- Title IX Grievance Procedures
- Decisionmaking & Appeals
- Training & Recordkeeping
- Mandated Reporting
- Student Boundaries

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What is Title IX?



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Legal Landscape

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Title IX prohibits discrimination on the basis of sex, including sexual harassment

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Massachusetts State Law Implications

- Schools are prohibited under state law (see G.L. c. 76, §5; c. 151B; and c. 151C) from discriminating on the basis of sex, including on the bases of sexual orientation and gender identity.
- On February 7, 2025, the Acting Commissioner of the Massachusetts Department of Elementary and Secondary Education ("DESE")
 - reiterated that MA state law prohibits discrimination in public schools based on, among other things, sex, gender identity, and sexual orientation; and
 - confirmed the continued application of DESE's guidance on non-discrimination on the basis of gender identity. See: <https://www.doe.mass.edu/sfs/lgbtq/genderidentity.html>
- MA Pregnant Workers Fairness Act (see G.L. c. 151B, §4) prohibits employment discrimination on the basis of pregnancy or related conditions

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Massachusetts State Law Implications

- Massachusetts public schools and private schools that receive federal financial assistance should adopt/implement anti-harassment and anti-discrimination policies that are compliant with state and local laws (i.e., policies that prohibit discrimination and harassment on the bases of sexual orientation and gender identity), while ALSO adopting/implementing Title IX policies and procedures that comply with the 2020 Title IX regulations.
- Again, Massachusetts law and DESE policies have included robust protections against sex-based discrimination for many years, including protections against discrimination/harassment based upon gender identity, sexual orientation, and pregnancy and related conditions.

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Requirements for Title IX Compliance

- Respond promptly** in a manner that is **not deliberately indifferent** when has actual knowledge of sex discrimination
- Designate **Title IX Coordinator**
- Publish a **notice of nondiscrimination** (announcing prohibition against discrimination on the basis of sex)
- Adopt, publish, and implement a **nondiscrimination policy AND grievance procedures**
 - The "SACS Title IX Policy and Grievance Procedures"
- Ensure that relevant people are **trained** on their Title IX duties
- Maintain appropriate **records**

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Duty to Respond

"A recipient with **actual knowledge** of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not **deliberately indifferent**."


34 CFR § 106.44

"**Actual knowledge** means notice of sexual harassment or allegations of sexual harassment... to any employee of an elementary and secondary school."

34 CFR § 106.30

"A recipient is **deliberately indifferent** only if its response to sexual harassment is clearly unreasonable in light of the known circumstances."

34 CFR § 106.30



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Jurisdiction

Title IX grievance procedures apply only to sex discrimination, including sexual harassment, that is alleged to have occurred:

- ❑ "in an education program or activity of [SACS]," including
 - ❑ locations, events, or circumstances over which SACS exercised substantial control over both the respondent and the context in which the sexual harassment occurs; and
 - ❑ any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.
- ❑ AND "against a person in the United States."
 - ❑ Note: No jurisdiction over school programs and activities outside of the U.S. (such as foreign exchange programs).

Further, at the time a formal complaint is filed with SACS, the **Complainant must be participating in or attempting to participate** in SACS's education program or activity.

- ❑ Note: SACS has no jurisdiction over complaints from former students or employees.




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Employee Duties and Responsibilities

Employee Duty to Report: All elementary and secondary school employees must notify a Title IX Coordinator when they have any information about conduct that reasonably may constitute sex discrimination, including sexual harassment, under Title IX.

There may be other reporting obligations in addition to Title IX (e.g., mandated reporting under G.L. c. 119, § 51A). (See Slides 39-40 for additional details.)



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Title IX Coordinator

Designate

- "Each recipient must designate and authorize **at least one employee** to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the "Title IX Coordinator."

Notify

- Provide **name/title, office address, email address, and telephone number** to:
 - Students
 - Parents/Guardians/Legal Reps
 - Employees
 - Applicants for admission and employment
 - Unions and professional organizations holding collective bargaining or professional agreements with SACS

Publish

- Website
- Handbooks

Relatedly, SACS must notify the same listed individuals that sex discrimination is prohibited by Title IX and that SACS does not discriminate on the basis of sex, including in admissions and employment; and SACS must also publish its own Title IX policy and grievance procedures.

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Basic Requirements for Grievance Procedures

- ❑ **Equitable** treatment of complainants and respondents
- ❑ **Objective evaluation of all relevant evidence**, provided that
 - ❑ information protected under a legally recognized privilege may not be considered unless the privilege is waived, and
 - ❑ credibility determinations may not be based on a person's status as a party or witness
- ❑ **Training** for Title IX Coordinators, Investigators, Decisionmakers, and anyone designated to facilitate an informal resolution process, and **no conflicts of interest or bias** from any of them towards complainants and respondents
- ❑ **Presumption of non-responsibility** during grievance process
- ❑ Reasonably **prompt** timeframes
- ❑ Bases for **appeal**
- ❑ Prohibition against **retaliation**
 - ❑ SACS must prohibit retaliation, including peer retaliation, and respond to allegations of retaliation in accordance with its Title IX policy and grievance procedures.

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Report / Complaint

Notice of Allegations

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Investigation / Inform Res.

Interviews & Evidence

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Grievance Procedures

1. Report vs. Formal Complaint
2. Notice of Allegations
3. Party Responses to Notice of Allegations
4. Interviews and Evidence Collection
5. Distribution of Evidence
6. Party Responses to Evidence
7. Investigative Report
8. Questions and Answers
9. Written Determination
10. Appeal

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Report

- Anyone (i.e., the Complainant or someone other than the Complainant) may report to SACS conduct that may constitute sex discrimination
- Conduct may be reported to a Title IX Coordinator or school employee
- Upon receipt of a report of conduct that may constitute sex discrimination, including sexual harassment, a Title IX Coordinator will promptly contact the Complainant to
 - discuss the availability of supportive measures,
 - inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and
 - explain to the Complainant the process for filing a formal Title IX complaint.

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Supportive Measures

Recipients:

- MUST be provided to Complainant, unless reason not to provide is not clearly unreasonable and is documented
- MAY be provided to Respondent

Characteristics:

- Non-disciplinary, non-punitive, and individualized
- Without fee or charge to a party
- "Designed to restore or preserve equal access to recipient's education program or activity without unreasonably burdening the other party"
- Confidential, to the extent possible

Examples (non-exhaustive):

- counseling
- extensions of deadlines and other course-related adjustments
- campus escort services
- increased security and monitoring of certain areas of the campus
- restrictions on contact applied to one or more parties
- leaves of absence
- changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- training and education programs related to sex-based harassment

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Formal Complaint

- Must be **written and signed**
- Must request that SACS investigate the alleged conduct
- May be filed by
 - Complainant (target/victim of alleged conduct)
 - Student (including parent/guardian)
 - Employee
 - Note: Complainant must be participating or attempting to participate in SACS's education program or activity at the time the complaint is filed
 - Title IX Coordinator
 - May file a formal complaint in lieu of – or potentially over the objections of – a Complainant if it would not be clearly unreasonable to do so in light of the known circumstances and factors including, but not limited to: (i) Complainant's wishes; (ii) whether allegations involve violence, use of weapons, threats, or serial predation; (iii) the age and relationship of the parties; (iv) the availability of relevant evidence; etc.

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Notice of Allegations

The Notice of Allegations informs the parties of the conduct alleged and the initiation of SACS's Title IX grievance procedures (i.e., an investigation). It must include:

- Notice of **Title IX grievance procedures** and **informal resolution process**
- Sufficient **information about the allegation(s)** available at the time to allow the parties to respond (including conduct alleged to constitute sex discrimination, identities of the parties involved, and dates/locations)
- Statement that respondent is presumed not responsible** for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process
- Notice that each party has a **right to an advisor** of their choice, who may be an attorney
- Statement that the parties may **inspect and review evidence** obtained in investigation that is directly related to allegations in the formal complaint, including evidence that school does not intend to rely on
- Notice of provision in Title IX policy and Code of Conduct, as applicable, **prohibiting false statements or submitting false information**
- Statement that **retaliation is prohibited**

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Party Responses to Notice of Allegations

- Following issuance of the Notice of Allegations, parties should be granted sufficient time (e.g., five (5) calendar days, until the "Notice Response Deadline") to prepare a response to the Notice of Allegations prior to any interview conducted.

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Investigation

- Relevant Persons in an Investigation:

Role	SACS Personnel
Parties: Complainant(s) and Respondent(s)	-
Title IX Coordinator	(1) Krissy Sgambellone, Managing Director of Operations and HR (employees) (2) Mark Hodgkins, Managing Director of Student Services (students)
Investigator	Anyone designated by SACS, provided the person is not the Decisionmaker or Appeals Arbitrator for the same matter
Decisionmaker	Andrea Jacobs, Senior Director of Academics
Appeals Decisionmaker ("Appeals Arbitrator")	Stephanie Callahan, Executive Director
Facilitator of Informal Resolution process	Anyone designated by SACS, provided the person is not the Investigator or Decisionmaker for the same matter
- A formal complaint must be investigated if not dismissed or resolved via informal resolution (see upcoming slides)

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Dismissal

A complaint or any allegation(s) therein may be dismissed for the following reasons:

Mandatory

- The conduct did not occur in SACS's education program or activity
- The conduct did not occur against a person in the U.S.
- The alleged sexual harassment would not constitute sexual harassment (as defined in 2020 regulations) even if true

Optional

- Complainant notifies Title IX Coordinator in writing, of wish to withdraw complaint*
- Respondent no longer enrolled at or employed by school
- Specific circumstances prevent gathering sufficient evidence

*Complainant's wishes regarding withdrawal should be respected unless withdrawal would be clearly unreasonable. See relevant considerations on Slide 19.

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Informal Resolution

- At any time prior to determining whether sex discrimination occurred, SACS may offer to the parties an informal resolution process, *unless*
 - the complaint includes an allegation that an employee sexually harassed a student
- Informal resolution is **at all times voluntary** (written consent required to participate), and a party may decline to participate or withdraw from participation at any time.
- Written **notice** must be given to parties
- If SACS permits an informal resolution process for a particular matter, a Title IX Coordinator should still take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within SACS's education program or activity.

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Interviews and Evidence Collection

- Burden is on SACS – not the parties – to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred
- Equal opportunity for the parties to **present witnesses**, including fact and expert witnesses, and **other inculpatory and exculpatory evidence**
- Interviews may be conducted with parties, witnesses to the alleged conduct, and persons with information relevant to the allegation(s)
- Parties should NOT be restricted from discussing the allegation(s) under investigation or gathering and presenting relevant evidence
- Parties have **right to advisor**, who may be an attorney, in interviews

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Distribution of Evidence

- Equal opportunity for parties to **inspect and review** any **evidence** obtained as part of the investigation that is **directly related** to the allegations raised in a formal complaint and not otherwise impermissible, including information upon which SACS does not intend to rely.
 - Said evidence must be sent to each party and the party's advisor prior to completion of an investigative report.
- Evidence that is **impermissible**, i.e., not to be used or considered regardless of relevance, includes:
 - Evidence that is protected under a legally-recognized privilege, unless voluntarily waived
 - Evidence that relates to the Complainant's sexual predisposition or prior sexual behavior, unless
 - offered to prove that someone other than the Respondent committed the alleged conduct or
 - evidence about specific incidents of the Complainant's prior sexual behavior with the Respondent that is offered to prove consent to the alleged sex-based harassment.

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Party Responses to Evidence

- Consistent with the SACS Title IX Policy and Grievance Procedures, parties have up to 10 days to submit an optional written response to the evidence.
- The Investigator shall consider any written responses from the parties prior to completing the Investigative Report.

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Investigative Report

- Prepared by Investigator
- Must fairly summarize relevant (and not otherwise impermissible) evidence
- Does not include a decision about responsibility** (i.e., whether Respondent's conduct violated Title IX)
- Must be sent to parties and advisors, if any, at least 10 days before adjudication (i.e., issuance of a written determination)
 - Note: This timing (like all timing requirements from the 2020 Title IX regulations), has been incorporated into the SACS Title IX Policy and Grievance Procedures.

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Party Questions and Answers

After the Investigative Report has been issued and before the Decisionmaker reaches a determination regarding responsibility, the Decisionmaker must do the following:

- afford each party the opportunity to submit written, relevant **questions** that a party wants asked of any party or witness,
- provide each party with the **answers** to those questions, and
- allow for additional, limited **follow-up questions** from each party (answers to those questions to be distributed).

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Written Determination

- Following an investigation, a written determination prepared by the Decisionmaker will be issued to the parties simultaneously indicating whether, based on an evaluation of the relevant information collected, Respondent's conduct violated Title IX.
- Standard of Evidence:
 - "Preponderance of the evidence"** standard (determination that something is "more likely than not" to be true, i.e., 50% plus a feather)

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Written Determination

Considerations* re "Sexual Harassment" Analysis:

Severe	Pervasive	Offensive
<input type="checkbox"/> Whether conduct alleged was physical or verbal/written <ul style="list-style-type: none"> Physical conduct more likely to be severe, but not always <input type="checkbox"/> Whether conduct was accompanied by threats or violence <input type="checkbox"/> Relationship between parties	<input type="checkbox"/> Frequency/repetition <input type="checkbox"/> Scope, how widespread <input type="checkbox"/> Whether openly practiced <input type="checkbox"/> Whether there were multiple targets or perpetrators	<input type="checkbox"/> Objective perspective (would a reasonable person in Complainant's position find the conduct offensive?) <input type="checkbox"/> Nature of conduct <input type="checkbox"/> Age and relationship of parties

*This is not an exhaustive list of considerations.

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Written Determination

- The written determination must include:
 - identification of the **allegation(s)** open for investigation under the Policy;
 - a description of the **procedural steps** taken during the Title IX grievance process;
 - findings of fact** supporting the Decisionmaker's determination;
 - conclusions regarding SACS's **Code of Conduct** to the facts, as applicable;
 - a **statement of, and rationale for, the result as to each allegation**, including a **determination regarding Respondent's responsibility**;
 - identification of any **disciplinary sanctions** the School imposes on the Respondent (if Respondent's conduct was found to have violated Title IX), and whether **remedies** designed to restore or preserve equal access to SACS's education program or activity will be provided by SACS to Complainant; and
 - SACS's procedures and permissible bases for **appeal**.

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Decisionmaking – Relationship to Student Discipline

- Disciplinary sanctions under Title IX are not permitted *prior* to conclusion of grievance process.
- Removal of Respondent Prior to Determination:** Title IX provides that nothing precludes SACS from removing a Respondent from SACS's education program or activity on an emergency basis in accordance with SACS's Code of Conduct, provided that SACS undertakes an individualized safety and risk analysis and determines that an imminent and serious threat to the safety of person(s) or property at SACS or a material and substantial disruption to the order of the school justifies removal of the student.
 - Follow due process procedure under 603 CMR 53.07 ([L&A](#), notice and opportunity to challenge decision)
 - Consider other due process requirements under IDEA ([L&A](#), manifestation determination review, if applicable)

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Appeals – Bases for Appeal

Either party may appeal:

- Dismissal** of a complaint or any allegation(s) therein; or
- A **determination** of whether sex discrimination occurred in violation of Title IX, on the following bases:
 - Procedural irregularity** that affected the outcome of the determination or dismissal;
 - New evidence** that was not reasonably available at the time the determination regarding responsibility or dismissal was made, and that could affect the outcome of the matter; and/or
 - Conflict of interest or bias** on part of Title IX Coordinator, Investigator, or Decisionmaker – either against complainants or respondents generally or against a specific party – that affected the outcome of the matter.

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Appeals – Due Process

If a party appeals a written determination regarding responsibility or the dismissal of a complaint, SACS will:

1. **Notify** the parties in writing of any appeal that is filed;
2. Ensure that appeal procedures are **implemented equally** for the parties;
3. Ensure that the Appeals Arbiter **did not take part** in an investigation of the allegation(s) or dismissal of the complaint or any allegation(s) therein;
4. Ensure that the Appeals Arbiter has been **trained** consistent with the Title IX regulations;
5. Communicate in writing that SACS will provide the parties a **reasonable and equal opportunity to make a statement** in support of, or challenging, the outcome; and
6. Notify the parties in writing of the **result** of the appeal and the **rationale** for the result within a reasonable timeframe.

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Training

- All Title IX training materials must be posted to SACS's **website**.
- All SACS **employees*** must be trained on:
 - SACS's obligation to address sex discrimination in its education program or activity;
 - the scope of conduct that constitutes sex discrimination under Title IX, including the definition of sexual harassment; and
 - all applicable notification and information requirements required by the Title IX regulations.

*The term "employees" includes individuals employed directly by SACS as well as independent contractors, volunteers, advisors, and third-party agents who are performing roles that are directly involved in carrying out SACS's Title IX duties, i.e., roles involving the responsibilities of Title IX Coordinators, Investigators, Decisionmakers, facilitators of an informal resolution process, and Appeals Arbiters.

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Training

- In addition to the training requirements for employees, all **Title IX Coordinators, Investigators, Decisionmakers, Appeals Arbiters**, and other persons who are responsible for implementing SACS's grievance procedures or who have the authority to modify or terminate supportive measures must be trained on the following topics to the extent related to their responsibilities:
 - SACS's obligations to respond promptly and effectively upon receipt of information regarding conduct that may reasonably constitute sex discrimination in SACS's education program or activity;
 - SACS's grievance procedures and how to conduct a grievance process;
 - how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
 - the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance.
- **Title IX Coordinators** and their designees must also be trained on their specific responsibilities, including with regard to SACS's recordkeeping system.
- **Facilitators of an informal resolution process** must also be trained on the informal resolution process.

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Recordkeeping

SACS must maintain for a period of at least seven (7) years:

- For all reports or complaints submitted under Title IX, records documenting the grievance procedures or informal resolution process applied, including:
 - Investigation materials
 - Determination regarding responsibility
 - Any disciplinary sanctions imposed on respondent and/or remedies provided to complainant
 - Appeals and results of appeals
 - If no supportive measures provided to complainant, documentation about why that was not clearly unreasonable in light of the known circumstances
 - Records of other actions taken in response to a report or formal complaint
 - Documentation supporting conclusion that SACS's response was not deliberately indifferent
- Training materials (must also be publicly available on website)

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Mandated Reporting

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Mandated Reporting (G.L. c. 119, § 51A)

School personnel, including teachers, nurses, educational administrators, guidance counselors, psychologists, and school attendance officers, are **"mandated reporters"** with a **duty to report** certain information if, in their professional capacity, they have **reasonable cause** to believe that a child under the age of 18 is suffering physical or emotional injury resulting from:

- abuse**, which causes harm or substantial risk of harm to the child's health or welfare, including **sexual abuse**;
- neglect**, including malnutrition;
- physical dependence upon an addictive drug at birth;
- being a **sexually exploited** child; or
- being a **human trafficking** victim.

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Mandated Reporting (G.L. c. 119, § 51A)

- All SACS employees are considered mandated reporters.
- Upon reasonable cause (see previous slide), a SACS employee must **notify a member of the Student Services Team**, who shall become responsible for notifying the Department of Children and Families ("DCF").
- If the Student Services Team decides not to file a complaint with DCF regarding the reporter's concerns (e.g., because it does not agree there is reasonable cause), the reporter may file a report with DCF and/or law enforcement directly.
- A school employee **may not face retaliation** in their employment for complying in **good faith** with the mandated reporter statute and is **not subject to civil or criminal liability** for filing a report with DCF.
- Mandated reporters who are professionally licensed by the Commonwealth must complete training to recognize and report suspected child abuse or neglect.
 - The state offers **mandated reporter training**. (See <https://mandatedreportertraining.com/massachusetts/>)
- Failure to make a report when there is reasonable cause for concern can result in a fine of up to \$1000;
- Knowingly/willfully filing a frivolous report can result in a fine of up to \$2000 and/or imprisonment; and
- Willingly failing to report known harm can result in a fine of up to \$5000 and/or imprisonment.

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Student Boundaries

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Student Boundaries

- ❑ The SACS **Student Boundaries Policy** intended to guide all faculty and staff ("SACS Adults") in how to best conduct themselves in a way that reflects the high standards of behavior and professionalism required of SACS employees and to specify the appropriate boundaries between SACS Adults and students and recent alumni ("SACS Students").
- ❑ Trespassing the boundaries of a student/employee relationship and violation of the policy may lead to disciplinary consequences up to and including termination of employment. In addition, criminal penalties and sanctions against an educator's licensure may result for certain conduct with students.
- ❑ It is each staff member's obligation to avoid situations that could prompt suspicion by parents/guardians, students, colleagues, or school leaders.
 - ❑ When you are unsure if certain conduct is acceptable, ask yourself, "Would I engage in this conduct if my family or colleagues were standing next to me?"

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Student Boundaries

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Consult the SACS Student Boundaries Policy for an extensive list of boundaries to be respected by SACS Adults towards SACS Students. Examples excerpted below:

General Boundaries	<ul style="list-style-type: none">In general, SACS Adults should not "hang out" with SACS Students outside of school or spend an inordinate amount of time "hanging out" with students even inside the school for any non-school sanctioned purpose in order to ensure healthy boundaries are being kept.
	<ul style="list-style-type: none">SACS Adults may not disparage a SACS Student's family members or their religious practices or political beliefs.
	<ul style="list-style-type: none">SACS Adults may not be alone 1:1 with a SACS Student in a non-public space or a room with a closed or locked door.<ul style="list-style-type: none">SACS Adults and Students must always interact in a manner where they are both observable and interruptible.
	<ul style="list-style-type: none">If a situation arises that requires a 1:1 meeting and there is a concern about the need for more privacy, the meeting must both be school-sanctioned and logged, and a supervisor must be notified.

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Student Boundaries

Conversation Boundaries	<ul style="list-style-type: none">SACS Adults may not reveal intimate details of their own sexual or romantic lives, past or present, or mental or physical health to SACS Students.SACS Adults must require that Students call them by the appropriate title (Mr., Mrs., Ms., Mx. Coach, etc.) followed by their last name or by their nickname preceded by the appropriate title.
Home Visits	<ul style="list-style-type: none">SACS Adults may not visit a SACS Student's home without the presence of the Student's parent or guardian, and without permission from a SACS school leader or supervisor.
Transportation	<ul style="list-style-type: none">SACS Adults may not allow SACS Students to ride in the SACS Adults' personal cars, absent exceptions (i.e., SACS Adult is the parent of the student or has parent permission).SACS Adults may not ride in Students' cars.

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Student Boundaries

Social Media and Electronic Comms.	<ul style="list-style-type: none">SACS Adults may only email Students from their SACS email address and not from any personal email address they might also maintain.SACS Adults may not interact or connect with Students on any personal social media accounts or any social media platforms, including but not limited to TikTok, Discord, Facebook, Twitter, Instagram and Snapchat. In addition, SACS Adults may not engage in digital gaming activities with SACS Students, including but not limited to Roblox, Minecraft and Fortnite.SACS Adults may not post images, video or any information about SACS Students on their personal social media accounts, unless they are re-sharing an official SACS released social media post.
Physical Boundaries	<ul style="list-style-type: none">SACS Adults may not have extended physical contact with a Student. Any contact should be limited to a supportive or congratulatory quick hug, arm squeeze, or pat on the back and should be Student-initiated.SACS Adults may not discipline students in any physical manner. However, trained staff may engage in physical contact to protect a Student from harming himself/herself/ themselves or another. (See SACS Restraint Prevention and Behavioral Support Policy.)

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Questions?



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