

OFFICE OF THE SUPERINTENDENT OF SCHOOLS
106 Hancock Road
Peterborough, New Hampshire
CONTOOCOOK VALLEY SCHOOL BOARD

Policy Committee

Tuesday, September 15, 2020
5:00 p.m.

Physical Location: ConVal High School Library

Virtual Location:

<https://us02web.zoom.us/j/83459542021?pwd=L0QwSVMxV0ZBdzN5SWx2UjhPMmo1QT09>

Meeting ID: **834 5954 2021**

Passcode: **DBhJ5T**

Phone: +1 312 626 6799 US

Meeting ID: **834 5954 2021**

Password: **573292**

Agenda

School Board Committee Members:

- Katherine Heck
- Janine Lesser
- Kevin Pobst
- Tim Theberge
- Stephen Ullman

- 1. Call Meeting to Order**
- 2. Accept Minutes of August 19, 2020 (pg. 1-2)**
- 3. Review of Legal Feedback on Proposed Policies and Policy Changes**
- 4. Plan/Schedule for additional work days**
- 5. Begin Title IX comparison of received legally approved set of policy change from another school district**
 - ConVal Policy AC: Non-Discrimination (pg. 3)
 - NHSBA Policy AC: Non-Discrimination/Equal Opportunity (pg. 4-5)
 - ConVal Policy GBAA: Sexual Harassment-Employees/Staff (pg. 6-9)
 - NHSBA Policy ACAB, ACAB-R: Harassment and Sexual Harassment of School Employees (pg. 10-27)
 - ConVal Policy JBAA: Sexual Harassment – Students (pg. 28-32)
 - NHSBA Policy ACAA, ACAA-R: Harassment and Sexual Harassment of Students (pg. 33-51)
- 6. Other**
- 7. Adjourn**

**OFFICE OF THE SUPERINTENDENT OF SCHOOLS
106 Hancock Road
Peterborough, New Hampshire**

CONTOOCOOK VALLEY SCHOOL BOARD

Policy Committee

**Wednesday, August 19, 2020
5:00 p.m.**

Physical Location: None

Virtual Location:

<https://us02web.zoom.us/j/82636381555?pwd=eDIUMlJlWFJSUzRkWDBEL1BXMUFOZz09>

Meeting ID: **826 3638 1555**

Passcode: **GPXX46**

Phone: +1 312 626 6799 US

Meeting ID: **826 3638 1555**

Password: **458252**

Minutes

School Board Committee Members:

- Katherine Heck
- Janine Lesser
- Kevin Pobst
- Tim Theberge
- Stephen Ullman

Present: Janine Lesser, Katherine Heck, Kevin Pobst, Tim Theberge, Dr. Kimberly Saunders, Lori Schmidt

1. Call Meeting to Order

Janine Lesser called the meeting to order at 5:04 p.m.

2. Accept Minutes of August 11, 2020

Tim Theberge moved to accept the minutes of August 11, 2020. Katherine Heck second. Unanimous.

3. Review Policy:

DFA: Investment

Katherine Heck referenced three RSA's that should be included:

- Legal References: RSA 197:23-a, Treasurer's Duties
- RSA 386:57, Security of Certain Deposits of Public Funds
- RSA 383:22, Public Deposit Investment Pool

4. Develop mask/social distance policy

a. Emergency Policy on Personal Protective Measures: Face Masks and Cloth Face Coverings

Work is underway to develop a face mask policy.

We would have a new policy on Masks and related issues.

The emergency mask policy (red-lined version) has been sent to legal. Tim Theberge said that his intent is to have a stand-alone policy to turn on and off as needed. Call letters will be identified by the NHSBA.

Discussion took place about making this a timeless version i.e. remove references to influenza.

Kimberly Saunders shared that she is more concerned about making existing policies properly put together for the fall rather than policies that do not currently exist. In absence of policy, the Superintendent can make decisions.

There are several policies that need to be made timeless.

Discussion about holding a policy workshop to rework policies in need of it. Often followed the spring and fall updates. Identifying the top policies that need work is a good idea.

Katherine said that she would like staff and nursing to weigh in on what is acceptable in terms of face coverings. As research comes out, our information will change.

Katherine Heck exited the meeting at 5:40 p.m.

5. Review of policy suspension/changes/blanket approach to support school health and safety
EBCE - will go for a first read.

EBCF – Pandemic/Epidemic Emergencies (rather than JHCC)

Kimberly Saunders said that her concern is what we have in place has been worked on by the nurses. If we adopt EBCF, it would be in place of JHCC.

Katherine Heck cautioned to be aware of what is possible when it talks about days, weekends etc.

Tim Theberge said that it is almost too specific.

Kimberly Saunders said that she will go over it and add it to the list for legal review and bring it back to the Policy Committee.

This will return to Policy Committee.

ECA - Can go forward as a first read with changes.

JICD - Incorporating language about wearing a mask in handbooks “when conditions warrant masks will be worn as directed by building administration”. This will go forward for a first read.

Discussion took place about the financial policies. References in DFA need to be in line with our lower limit and federal rules. If our policy states \$15K, we need to treat all money that comes into the district in the same way.

KI - Visitors in Schools – Distinguishing the difference between “visitors” and “families” is a point. The piece that might be added is wording on procedure that is explicit about how a parent would seek permission to pick up their child or meet with someone. That might be put in the handbook for protocols.

Kimberly Saunders said that she struggles with all of it. Distinguishing between the two is important. If parents need a meeting, then they will need to contact the office to set up a remote meeting. In person meetings will only be possible should the Superintendent deem it possible.

Kevin Pobst said that some sort of distinction about how a parent can get a meeting scheduled is needed. Localized outbreaks might require switches to be turned on with regard to policies.

A phrase should be included that allows policies to be activated or deactivated.

6. Other
None

7. Adjourn

Tim Theberge motioned to adjourn at 6:03 p.m. Kevin Pobst second. Unanimous.

Respectfully submitted,

Brenda Marschok

AC – Non-Discrimination

The School Board, in accordance with the requirements of the federal and state laws, and the regulations which implement those laws, hereby declares formally that it is the policy of the Board, in its actions and those of its employees and students, that there shall be no discrimination on the basis of age, sex, gender, race, creed, color, marital status, physical or mental disability, national origin, sexual orientation, or any other categories protected by law for employment in, participation in, admission/access to, or operation and administration of any educational program or activity in the School District. Notwithstanding the language of any other policy adopted by this Board, we will abide by the Department of Education Final Rule 34 CFR Part 106.

Inquiries, complaints, and other communications relative to this policy and to the applicable laws and regulations concerned with non-discrimination shall be received by the Superintendent or designee.

This policy of non-discrimination is applicable to all persons employed or served by the District. Any complaints or alleged infractions of the policy, law or applicable regulations will be processed through the non-discrimination grievance procedure. This policy implements PL 94-142, Section 504 of the Rehabilitation Act of 1973, Title II of the American with Disabilities Act, Title VI or VII of the Civil Rights act of 1964, Title IX of the Education Amendments of 1972, and the laws of New Hampshire pertaining to non-discrimination.

Legal Reference:

RSA 354-A:6, Opportunity for Employment without Discrimination a Civil Right

RSA 354-A:7, Unlawful Discriminatory Practices

The Age Discrimination in Employment Act of 1967

Title I of The Americans with Disabilities Act of 1990

Title VII of The Civil Rights Act of 1964 (15 or more employees)

Appendix: AC-R

1st Read: July 7, 2020

2nd Read: July 28, 2020

Adopted: July 28, 2020

< ABA – Community Involvement In Decision Making

AC-R: Non-Discrimination: Title IX Grievances (<https://schoolboard.convalsd.net/district-policies/ac-r-non-discrimination-title-ix-grievances/>)

Note to Local Boards: This revised sample including language changes, an addition to the legal references and changes in the titles of cross references to comply with the new Title IX regulations, effective August 14, 2020. All notes to the Board in the sample should be removed prior to adoption.

NONDISCRIMINATION/EQUAL OPPORTUNITY

The school district does not discriminate on the basis of sex or other protected categories in its education programs and activities, as required by federal and state laws/regulations.

Discrimination against and harassment of school employees because of age, sex, gender identity, sexual orientation, race, creed, color, ancestry or national origin, marital status, familial status, physical or mental disability, religion, or genetic information are prohibited.

Discrimination against and harassment of students because of age, sex, gender identity, sexual orientation, race, creed, color, ancestry or national origin, marital status, familial status, physical or mental disability, religion or economic status are prohibited.

The Board directs the school administration to create and implement a continuing program designed to prevent, assess the presence of, intervene in, and respond to incidents of discrimination against all applicants, employees, students and other individuals having access rights to school premises and activities.

Note to Local Boards: The requirement that local school units have a Title IX Coordinator is not new, but the new Title IX regulations require that school districts “designate and authorize” Title IX Coordinators to perform their duties. It is still permissible for local boards to combine the roles of Human Rights Officer and Title IX Coordinator, so long as the title of the position includes both roles. There are advantages to combining these roles in one position in terms of efficiency, but given the increased responsibilities of Title IX Officers under the new regulations, school districts should ensure that the individual(s) in these roles are provided enough time to fulfill all the associated duties. We suggest consulting with legal counsel about these issues.

The school district has designated and authorized a Human Rights Officer/Title IX Coordinator who is responsible for ensuring compliance with all federal and state requirements relating to nondiscrimination, including sexual harassment. The Human Rights Officer/Title IX Coordinator is a person with direct access to the Superintendent.

[Note: If the Human Rights Officer and Title IX Coordinator duties are split between two individuals, this paragraph should be revised accordingly.]

The school district has implemented complaint procedures for resolving complaints of discrimination/harassment and sexual harassment under this policy. The school district provides required notices of these complaint procedures and how they can be accessed, as well as the school district's compliance with federal and state civil rights laws and regulations to all applicants for employment, employees, students, parents and other interested parties.

Legal Reference:

Equal Employment Opportunities Act of 1972 (P.L. 92-261) amending Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000(e) et seq.)
Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.)
Title VI of the Civil Rights Act of 1964 (P.L. 88-352)
Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.)
Equal Pay Act of 1963 (29 U.S.C. § 206)
Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq.); 34 CFR § 104.7, as amended
Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), as amended
Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. § 2000ff et seq.)
NH RSA 186:11; 193:38; 193:39; 354-A
NH Code Admin. R. Ed. 303.01(i)

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Cross Reference: [Name of School District]

ACAA – Unlawful Harassment and Sexual Harassment of Students
ACAA-R – Student Unlawful Discrimination/Harassment and Title IX Sexual Harassment Complaint Procedures
ACAB – Unlawful Harassment and Sexual Harassment of School Employees
ACAB-R – Employee & Third-Party Unlawful Discrimination/Harassment and Title IX Sexual Harassment Complaint Procedures

GBAA – Sexual Harassment – Employees/Staff

1. PURPOSE

The purpose of this policy is to maintain a working environment that is free from sexual harassment or other improper and inappropriate behavior that may constitute harassment as defined below.

Sexual harassment is against the law and is against school board policy. Any form of sexual harassment is strictly prohibited. It is a violation of this policy for any employee or third party to harass any person through conduct or communication of a sexual nature as defined by this policy.

“Employee” shall include, but not be limited to all school district staff, teachers, non-certified personnel, administrators, volunteers, coaches and/or other such personnel whose employment or position is directed by the school district.

“Third parties” include, but are not limited to parents, school visitors, service contractors or others engaged in district business, such as employees of businesses or organizations participating in cooperative work programs with the district and others not directly subject to district control.

The District will investigate all complaints, either formal or informal, verbal or written, of sexual harassment and will discipline any employee who sexually harasses or is sexually violent toward another person.

1. SEXUAL HARASSMENT DEFINED

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, sexual physical conduct, and /or conduct of a sexual nature when:

1. Submitting to the unwelcome conduct is made a term or condition of an individual's employment, either explicitly or implicitly.
2. Submitting to or rejecting the unwelcome conduct is used as the basis for decisions affecting a person's employment; or
3. The unwelcome conduct has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include, but is not limited to:

1. Verbal harassment and/or abuse of a sexual nature;
2. Subtle pressure for sexual activity;
3. Inappropriate patting, pinching or other touching;

4. Intentional brushing against an employee's body;
5. Demands for sexual favors accompanied by implied or overt threats;
6. Demands for sexual favors accompanied by implied or overt promises of preferential treatment;
7. Any sexually motivated unwelcome touching; or physical contact, including sexual assault;
8. Display or distribution of written or graphic material that is obscene, sexually suggestive or derogatory, or shows hostility towards an individual or group based on sex; or;
9. Jokes, comments, or gestures of a sexual nature that are derogatory or show hostility towards an individual or group based on sex.

III. REPORTING PROCEDURES

1. The Superintendent or his/her written designee is responsible for implementing all procedures of this policy. Additionally, the Superintendent may develop and implement additional administrative regulations in furtherance of this policy.
2. Any employee who believes he or she has been the victim of sexual harassment should report the alleged act(s) to a supervisor or other designated individual. If the alleged perpetrator is the Principal, the alleged victim may report the allegation to any other district employee. That employee shall then report the allegation to the Superintendent. The Board encourages the reporting employee to use the Report Form available from the Human Resources Office.
3. In each building, the Principal is the person responsible for receiving oral or written reports of sexual harassment. Upon receipt of a report, the Principal will notify the Superintendent immediately without screening or investigating the report. If the report was given verbally, the Principal shall reduce it to written form within 24 hours and then forward it to the Superintendent. Failure to forward any sexual harassment report or complaint as provided herein will result in disciplinary action. If the complaint involves the building Principal, the complaint shall be filed directly with the Superintendent.
4. The Board designates the Superintendent as the District Human Rights Officer to receive any report or complaint of sexual harassment. If the complaint involves the Superintendent, the complaint shall be filed directly with the School Board. The District shall post the name of the Human Rights Officer in conspicuous places throughout school buildings, including a telephone number and mailing address.
5. Submission of a complaint or report of sexual harassment will not affect the employee's standing in school, future employment, or work assignments.
6. The use of formal Reporting Forms provided by the District is voluntary. The District will respect the confidentiality of the complainant and the person(s) against whom the complaint is filed as much as possible, consistent with the School District's legal obligations and the necessity to investigate allegations of sexual harassment and take disciplinary action when the conduct has occurred.

1. INVESTIGATION AND RECOMMENDATION

The Human Rights Officer will properly initiate an investigation upon receipt of a report or complaint alleging sexual harassment. This investigation may be conducted by District officials or by an independent investigator designated by the School Board.

If District officials conduct the investigation, the investigation should consider the surrounding circumstances, the nature of the sexual advances, the relationship between the parties and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes sexual harassment requires a determination based on all the facts and surrounding circumstances.

The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator. Students who are interviewed may have a parent or other representative present.

In addition, the District may take immediate steps, at its discretion, to protect the complainant, students and employees pending completion of an investigation of alleged sexual harassment.

If the Board determines that a third-party designee should conduct the investigation, the District agrees to assent to that party's methods of investigation.

Upon completion of an investigation conducted by either District officials or an independent investigator, the Board and the Superintendent will be provided with a written factual report and recommended action.

1. SCHOOL DISTRICT ACTION

If the investigating party determines that the alleged conduct constituted sexual harassment, the Superintendent may discipline the offending employee. Such discipline may include, but is not limited to, a warning, training, temporary suspension or dismissal. If the investigating party determines that the alleged conduct did not constitute sexual harassment, both the complaining party and the accused will be informed of such.

Conduct which does not rise to the level of sexual harassment as defined by the policy, but is nonetheless inappropriate or in violation of other related Board policies, will be addressed on a case-by-case basis by the Superintendent. Any discipline will be in accordance with all laws and collective bargaining agreements, if applicable.

1. REPRISAL

The School District will discipline any employee who retaliates against any other employee who reports alleged sexual harassment or who retaliates against any person who testifies, assists or participates in an investigation, proceeding or hearing relating to a sexual harassment complaint. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

VII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES

These procedures do not deny the right of any individual to pursue other avenues of recourse, which may include filing charges with the New Hampshire Human Rights Commission or the U.S. Equal Employment Opportunity Commission, initiating civil action or seeking redress under state criminal statutes and/or federal law.

VIII. INDIVIDUAL LIABILITY

The District specifically prohibits employees from aiding or abetting others in conduct that is prohibited by this policy, including retaliation against individuals who report alleged harassment or participate in any investigation of alleged harassment. Under New Hampshire law, employees who aid and abet others in the harassment or engage in retaliation, may be held individually liable for violating the New Hampshire laws against discrimination. This may include encouraging others to engage in harassment, interfering with an investigation of alleged harassment, or failing to take steps required under this policy to stop harassment.

Legal References:

Ed 303.01(j), Substantive Duties of School Boards; Sexual Harassment Policy

Ed 306.04(a)(9), Sexual Harassment

RSA 354-A:7, Unlawful Discriminatory Practices

Appendix: GBAA-R, BBA-R

Category: P

See also JBAA

1st Read: April 19, 2016

2nd Read: May 3, 2016

Adopted: May 3, 2016

< GBA - Equal Opportunity Employment

GBAA - Sexual Harassment - Employees/Staff
policies/gbaa-sexual-harassment-employeesstaff/)

(<https://schoolboard.convalsd.net/district->

Note to Local Boards: This policy has been substantially revised to include changes required by the new Title IX regulations that become effective on August 14, 2020. Any proposed changes to this sample should be discussed with legal counsel prior to adoption to ensure that they comply with all applicable federal and state legal requirements.

HARASSMENT AND SEXUAL HARASSMENT OF SCHOOL EMPLOYEES

Harassment of school employees because of sex, gender identity, sexual orientation, race, creed, color, ancestry or national origin, marital status, familial status, physical or mental disability, religion, or genetic information are prohibited. Such conduct is a violation of Board policy and may constitute illegal discrimination under state and federal laws.

Any employee who engages in harassment or sexual harassment shall be subject to disciplinary action, up to and including discharge.

A. Harassment

Harassment includes, but is not limited to, verbal abuse, threats, physical assault and/or battery based on race, color, sex, sexual orientation, gender identity, religion, ancestry or national origin, age, genetic information or disability.

B. Sexual Harassment

Sexual harassment is addressed under federal and state laws and regulations. The scope and definitions of sexual harassment under these laws differ, as described below.

1. Title IX Sexual Harassment

Under the federal Title IX regulations, sexual harassment includes the following conduct on the basis of sex which takes place within the context of the school unit's education programs and activities:

- a. "Quid pro quo" sexual harassment by a school employee: Conditioning a school aid, benefit or service (such as a promotion or favorable evaluation) on an individual's participation in unwelcome sexual conduct;
- b. "Hostile environment" sexual harassment: Unwelcome conduct based on sex that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies an individual's equal access to the school unit's education programs and activities; or

- c. Sexual assault, dating violence, domestic violence and stalking as these terms are defined in federal laws.

Commented [A1]: We have not included the definitions here as they are lengthy. We plan to create additional training materials that include this information.

2. Sexual Harassment Under Title VII and New Hampshire Law

Under another federal law, Title VII, and under New Hampshire law/regulations, sexual harassment is defined differently. The New Hampshire Commission for Human Rights law states that "[u]nwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal or physical conduct of a sexual nature constitutes sexual harassment when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

C. Reports and Complaints of Harassment or Sexual Harassment

Any employee who believes they have been harassed or sexually harassed is encouraged to make a report to the Human Rights Officer/Title IX Coordinator. The Human Rights Officer/Title IX Coordinator is also available to answer questions and provide assistance to any individual who is unsure whether harassment or sexual harassment has occurred.

All reports and complaints regarding harassment or sexual harassment of employees shall be addressed through the Employee & Third-Party Unlawful Discrimination/ Harassment and Title IX Sexual Harassment Complaint Procedures (ACAB-R).

Legal References: Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.); 34 C.F.R. Part 106
Clery Act (20 U.S.C. §1092(f)(6)(A)(v) - definition of sexual assault)
Violence Against Women Act (34 U.S.C. § 1092(f)(6)(A)(v) – definition of sexual assault; 34 U.S.C. § 12291(a)(10) – dating violence; 34 U.S.C. §12291(a)(3) – definition of stalking; 34 U.S.C. §12291(a)(8) – definition of domestic violence)
Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)
Americans with Disabilities Act (42 U.S.C § 12101 et seq.), as amended
Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq.), as amended

Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et. seq.;
29 C.F.R. § 1604.11)
Age Discrimination in Employment Act (29 U.S.C. § 623 et seq.)
Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. §
2000ff et seq.)
RSA 354-A:7
NH Code Admin. R. Ed. 303.01(i) and (j)

Cross Reference: ACAB-R- Employee & Third-Party Unlawful Discrimination/
Harassment and Title IX Sexual Harassment Complaint Procedure
AC - Nondiscrimination/Equal Opportunity and Affirmative Action
ACAD - Hazing

**EMPLOYEE DISCRIMINATION/HARASSMENT AND TITLE IX SEXUAL
HARASSMENT COMPLAINT PROCEDURES**

[Note to Local Boards: This document has been substantially revised due to the requirements in the new Title IX sexual harassment regulations that become effective on August 14, 2020. The definition of sexual harassment in the Title IX regulations has been narrowed and the regulations require a more formal procedure than local Boards have generally used to address discrimination/harassment complaints. At the same time, local Boards still need to comply with other federal and state laws/regulations governing discrimination and harassment, in addition to Title IX. For these reasons, we have structured this document in three sections:

- **Section 1** provides the definitions used in the complaint procedures;
- **Section 2** sets out the general discrimination/harassment complaint procedure to address complaints of all forms of discrimination/harassment, except for those involving Title IX sexual harassment. This is very similar to the procedure school districts have used in the past; and
- **Section 3** The third section sets out is the new Title IX sexual harassment complaint procedure.

Local school districts have the option of addressing all discrimination/harassment complaints through the Title IX procedure if they wish and deleting Section 2. However, we suggest that local Boards carefully consider this option, as it means that all complaints will need to be addressed through a more formal process than school districts have customarily used.

Please note that in previous versions of this sample, the designation of employees to be notified of discrimination/harassment complaints and who are responsible for various actions, has been left largely to the discretion of the school district. The Title IX regulations require that the individual designated as the Title IX Coordinator be responsible for addressing all Title IX complaints. Because it can be difficult to assess which law and regulations a complaint should be addressed under, we recommend that a combined Human Rights Officer/Title IX Coordinator be the individual to receive all discrimination/harassment complaints and to determine the appropriate procedure to use in specific cases. Assessing complaints, and deciding which policy/procedure is appropriate to address them, is complex and requires comprehensive training for HRO/Title IX Coordinators.

Any proposed changes to these procedures should be reviewed with legal counsel prior to adoption to ensure compliance with legal requirements.]

The Board has adopted these employee procedures in order to provide prompt and equitable resolution of employee complaints of discrimination and harassment, including

sexual harassment, as described in policies AC – Nondiscrimination/Equal Opportunity and ACAB – Harassment and Sexual Harassment of School Employees.

The complaint procedure in Section 2 may also be used, to the extent applicable, by visitors, including parents, volunteers and others having lawful access to the schools who wish to make a complaint of discrimination or harassment.

Complaints alleging harassment or discrimination against students based on a protected category should be addressed through the Board's Student Discrimination/ Harassment and Title IX Sexual Harassment Complaint Procedures (ACAA-R).

[Note: We refer to a combined Human Rights Officer/Title IX Coordinator in this sample.]

Any individual who is unsure about whether discrimination or harassment has occurred and/or or which complaint procedure applies is encouraged to contact the Human Rights Officer (or HRO)/Title IX Coordinator.

**[INSERT FULL HRO/TITLE IX COORDINATOR INFORMATION HERE:
NAME, TITLE
PHYSICAL ADDRESS
TELEPHONE NUMBER
EMAIL ADDRESS]**

Section 1. Definitions

For purposes of these complaint procedures, the following definitions will be used. The Human Rights Officer/Title IX Coordinator shall assess all reports and complaints to ensure that they are addressed under the appropriate policy and complaint procedure.

A. Discrimination/Harassment Complaint Procedure Definitions

1. "Discrimination or harassment": Discrimination or harassment on the basis of an individual's membership in a protected category, which, for employees, includes race, color, sex, sexual orientation, gender identity, age, religion, ancestry, national origin, genetic information or disability.
2. "Discrimination": Treating individuals differently, or interfering with or preventing them from enjoying the advantages or privileges afforded to others because of their membership in a protected category.
3. "Harassment": Oral, written, graphic, electronic or physical conduct relating to an individual's actual or perceived membership in a protected category that is sufficiently severe, pervasive or persistent so as to interfere with or limit that individual's ability to participate in the school district's programs or activities by creating a hostile, intimidating or offensive environment.

4. "Sexual harassment": Under New Hampshire law, this means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature in the following situations:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of a student's educational benefits;
 - b. Submission to or rejection of such conduct by a student is used as the basis for decisions on educational benefits; or
 - c. Such conduct has the purpose and effect of substantially interfering with a student's academic performance or creates an intimidating, hostile or offensive environment.
5. "Sexual orientation": Under New Hampshire law, this means "having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality."
6. "Gender identity": Under New Hampshire law, this means "a person's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth."
7. "Complaint" is defined as an allegation that an employee or other third party has been discriminated against or harassed on the basis of race, color, sex, sexual orientation, gender identity, age, religion, ancestry, national origin, genetic information or disability (and in regard to sex, conduct not otherwise addressed in the Title IX regulations and Section 3 of ACAB-R).
8. "Employee": Whenever the term "employee" is used in Section 2, it includes visitors or others who have a lawful basis to make a complaint of discrimination or harassment.

B. Title IX Sexual Harassment Complaint Procedure Definitions

1. "Title IX sexual harassment": Under the federal Title IX regulations, sexual harassment includes the following conduct on the basis of sex which takes place within the context of the school district's education programs and activities:
 - a. "Quid pro quo" sexual harassment by a school employee: Conditioning a school aid, benefit or service (such as a promotion or favorable evaluation) on an individual's participation in unwelcome sexual conduct;
 - b. "Hostile environment" sexual harassment: Unwelcome conduct based on sex that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies an individual's equal access to the school district's education programs and activities; or
 - c. Sexual assault, dating violence, domestic violence and stalking as these terms are defined in federal laws.

2. "Report": Under the Title IX regulations, any individual may make a report of sexual harassment involving an employee, whether the individual is the alleged victim or not. A report must be made to the Human Rights Officer/Title IX Coordinator. A report triggers certain actions by the HRO/Title IX Coordinator for the alleged victim of sexual harassment, but an investigation is not conducted unless a "Formal Complaint" is filed.
3. "Formal Complaint": Under Title IX, the alleged victim of sexual harassment can file a written complaint that triggers the complaint procedure in Section 3 of ACAB-R. Only a school employee (and in certain circumstances, the HRO/Title IX Coordinator) may file a formal complaint.
4. "Employee": For the purpose of this procedure, "employee" means an applicant for employment or a current employee of the school district.

Section 2. Discrimination/Harassment Complaint Procedure

[Note: This procedure generally tracks the procedure in earlier versions of ACAB-R, with some adjustments in an effort to minimize differences, where possible, between this complaint procedure and the Title IX sexual harassment complaint procedure in Section 3.]

This procedure should be used for any complaint of unlawful harassment or discrimination based on a protected category which does not involve Title IX sexual harassment.

A. How to Make A Complaint

1. An employee who believes they have been unlawfully harassed or discriminated against (as such terms are defined in Section 1.A.1-3) is encouraged to try to resolve the problem by informing the individual(s) that the behavior is unwelcome or offensive, and requesting that the behavior stop. This shall not prevent the employee from making an immediate complaint to the HRO/Title IX Coordinator.
2. Any employee who believes they have been harassed or discriminated against should report their concern promptly to the HRO/Title IX Coordinator. A written complaint must include basic information concerning the allegation of harassment or discrimination (i.e., date, time, location, individual(s) who alleged engaged in harassment or discrimination, description of allegation).
3. Employees who are unsure as to whether unlawful discrimination or harassment has occurred, or who need assistance in preparing a written complaint, are encouraged to discuss the matter with the HRO/Title IX Coordinator.
4. Employees will not be retaliated against for reporting suspected discrimination or harassment, or for participating in an investigation. Retaliation is illegal

under federal and state nondiscrimination laws, and any retaliation will result in disciplinary measures, up to and including discharge.

5. Any employee who believes they have been discriminated against or harassed is encouraged to utilize the school district's complaint procedure. However, employees are hereby notified that they also have the right to report incidents of discrimination or harassment to the New Hampshire Commission for Human Rights [INSERT CONTACT INFO.] and/or to the federal Office for Civil Rights, U.S. Department of Education, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921 (telephone: 617-289-0111).

B. Complaint Handling and Investigation

1. The HRO/Title IX Coordinator will promptly inform the Superintendent and the person who is the subject of the complaint (respondent) that a complaint has been received.
2. The HRO/Title IX Coordinator may pursue an informal resolution of the complaint with the agreement of the parties involved. Any party to the complaint may decide to end the informal resolution process and pursue the formal process at any point. Any informal resolution is subject to the approval of the parties and the Superintendent, who shall consider whether the resolution is in the best interest of the school district and the parties in light of the particular circumstances and applicable policies and laws.
3. The HRO/Title IX Coordinator may implement supportive measures (consistent with any applicable collective bargaining agreement provisions) to reduce the risk of further discrimination or harassment while an investigation is pending. Examples of supportive measures include, but are not limited to, ordering no contact between the individuals involved; changing a work location or changing a work schedule.
4. The complaint will be investigated by a trained internal or external individual designated by the Superintendent and the HRO/Title IX Coordinator. Any complaint about an employee who holds a supervisory position shall be investigated by a person who is not subject to that supervisor's authority. Any complaint about the Superintendent should be submitted to the Chair of the Board, who should consult with legal counsel concerning the handling and investigation of the complaint.
5. The investigator shall consult with the HRO/Title IX Coordinator as agreed during the investigation process.
6. The respondent will be provided with an opportunity to be heard as part of the investigation. The complainant shall not be required to attend meetings with the respondent, but may choose to do so as part of an informal resolution process.

7. The complainant and the respondent may suggest witnesses and/or submit materials they believe are relevant to the complaint.
8. If the complaint is against an employee of the school district, any rights conferred under an applicable collective bargaining agreement shall be applied.
9. Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.
10. The investigation shall be completed within 40 calendar **[or business]** days of receiving the complaint, if practicable. Reasonable extensions of time for good reason shall be allowed.
11. The investigator shall provide a written report and findings to the HRO/Title IX Coordinator.

C. Findings and Subsequent Actions

1. The HRO/Title IX Coordinator shall consult with the Superintendent concerning the investigation and findings.
2. If there is a finding that discrimination or harassment occurred, the HRO/Title IX Coordinator, in consultation with the Superintendent:
 - a. Shall determine what remedial action, if any, is required to end the discrimination or harassment, remedy its effect and prevent recurrence; and
 - b. Determine what disciplinary action should be taken against the individual(s) who engaged in discrimination or harassment, if any.
3. Inform the complainant and the respondent in writing of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).

D. Appeals

1. After the conclusion of the investigation, the complainant or respondent may seek an appeal of the findings solely on the basis of either: (a) prejudicial procedural error or (b) the discovery of previously unavailable relevant evidence that could significantly impact the outcome.
2. Appeals must be submitted in writing to the Superintendent within five calendar **[or business]** days after receiving notice of the resolution.
3. Upon receipt of a valid appeal, the Superintendent shall provide notice to the other party, along with an opportunity to provide a written statement within five calendar **[or business]** days.

4. The Superintendent shall review the available documentation and may conduct further investigation if deemed appropriate.
5. The Superintendent's decision on the appeal shall be provided to the parties within 10 calendar **[or business]** days, if practicable. The Superintendent's decision shall be final.

[Note: The Board should decide whether to allow appeal of the Superintendent's decision to the Board. We recommend discussing this option with legal counsel before drafting such language.]

E. Records

The HRO/Title IX Coordinator shall keep a written record of the complaint process.

Section 3. Title IX Sexual Harassment Complaint Procedure

This section should be used only for complaints of Title IX sexual harassment as defined in Section 1.B.1.

A. How to Make A Report

1. Any individual who believes an employee has been sexually harassed (as this term is defined in Section 1.B.1) may make a report to the HRO/Title IX Coordinator.
2. If the individual making the report is the alleged victim, or if the alleged victim is identified by the individual making the report, the HRO/Title IX Coordinator will meet with the alleged victim to discuss supportive measures that may be appropriate in the particular circumstances and explain the process for filing a formal complaint.
 - a. Supportive measures are individualized measures designed to ensure the employee can continue to access and perform their work (such as requiring no contact between individuals, temporarily moving work locations or changing schedules, etc.).
 - b. Supportive measures may be continued even if the alleged victim chooses not to file a formal complaint, if appropriate under the particular circumstances.
3. The school district cannot provide an informal resolution process for resolving a report until a formal complaint is filed.
4. Employees will not be retaliated against for reporting sexual harassment, or for participating in an investigation. Retaliation is illegal under federal and state nondiscrimination laws, and any retaliation will result in disciplinary actions, up to and including discharge.

5. Any employee who believes they have been the victim of sexual harassment is encouraged to utilize the school district's complaint procedures. However, employees are hereby notified that they also have the right to report sexual harassment to the New Hampshire Commission for Human Rights [INSERT CONTACT INFO.] and/or to the federal Office for Civil Rights, U.S. Department of Education, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921 (telephone: 617-289-0111).
6. The Superintendent shall be informed of all reports and formal complaints of sexual harassment.

B. How to Make A Formal Complaint

1. An alleged victim may file a formal written complaint requesting investigation of alleged Title IX sexual harassment. The written complaint must include basic information concerning the allegation of sexual harassment (i.e., date, time, location, individual(s) who alleged engaged in sexual harassment, description of allegation).

Employees who need assistance in preparing a formal written complaint, are encouraged to consult with the HRO/Title IX Coordinator.

2. In certain circumstances, the HRO/Title IX Coordinator may file a formal complaint even when the alleged victim chooses not to. Examples include if the respondent (person alleged to have engaged in sexual harassment) has been found responsible for previous sexual harassment or there is a safety threat within the school district). In such cases, the alleged victim is not a party to the case, but will receive notices as required by the Title IX regulations at specific points in the complaint process.
3. In accordance with the Title IX regulations, the HRO/Title IX Coordinator must dismiss a formal complaint under this Title IX procedure if: a) the conduct alleged in the formal complaint does not constitute sexual harassment under the Title IX regulations and this policy; b) if the conduct alleged did not occur within the scope of the school district's education programs and activities, or c) did not occur in the United States.
4. In accordance with the Title IX regulations, the HRO/Title IX Coordinator may dismiss a formal complaint under this Title IX procedure if: a) a complainant withdraws the formal complaint, or withdraws particular allegations within the complaint; b) the respondent is no longer employed by the school district; or c) there are specific circumstances that prevent the school district from gathering evidence sufficient to reach a determination regarding the formal complaint.
5. If a formal complaint is dismissed under this Title IX procedure, the HRO/Title IX Coordinator will promptly and simultaneously send written notices to the

parties explaining the reasons. Parties have the opportunity to appeal dismissals in accordance with subsection I below.

6. If the conduct alleged potentially violates other laws, Board policies and/or professional expectations, the school district may address the conduct under Section 2 or another applicable policy/procedure.

C. Administrative Leave

The Superintendent may place a respondent on administrative leave during the complaint procedure:

1. If there is a determination (following an individualized safety and risk analysis) that there is an immediate threat to the physical health or safety of an individual arising from the allegations of sexual harassment. Examples of such circumstances might include, but are not limited to, a continued threat of violence against a complainant by a respondent, or a respondent's threat of self-harm due to the allegations.
2. The respondent will be provided notice of the administrative leave, and will be provided an opportunity to challenge the decision following the removal (this is an opportunity to be heard, not a hearing). The respondent has the burden to demonstrate why the emergency leave was unreasonable.
3. Any such decision to place an employee on administrative leave shall be made in compliance with any applicable disability laws, including Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

D. Notice to Parties of Formal Complaint

1. The Title IX Coordinator will provide to the parties written notice of the formal complaint and allegations of sexual harassment potentially constituting prohibited conduct under the Title IX regulations and this procedure. The notice will include:
 - Notice regarding the complaint procedure and the availability of an informal resolution process;
 - Sufficient details known at the time (including identities of parties, if known; the conduct alleged; and the date and location of the alleged incident, if known), with sufficient time to prepare before any initial interview (not less than five calendar **[or business]** days);
 - As required by the Title IX regulations, a statement that the respondent is presumed not responsible for the alleged conduct and that a determination of responsibility will be made at the conclusion of the complaint); and that the parties may inspect and review evidence;
 - Notice that the parties may each have an advisor of their choice (who may be an attorney), and that the parties may inspect and review evidence;

- Notice that knowingly making false statements or submitting false information during the complaint procedure is prohibited and may result in disciplinary action; and
 - Notice of the name of the investigator, with sufficient time (no less than three calendar **[or business]** days) to raise concerns of conflict of interest or bias.
2. If additional allegations become known at a later time, notice of the additional allegations will be provided to the parties.
 3. The HRO/Title IX Coordinator will discuss supportive measures with each party and implement such measures as appropriate.

E. Informal Resolution Process

After a formal complaint has been filed, and if the HRO/Title IX Coordinator believes the circumstances are appropriate, the HRO/Title IX Coordinator may offer the parties the opportunity to participate in an informal resolution process to resolve the complaint without completing the investigation and determination process. Informal resolutions cannot be used to resolve a formal complaint where a student is the complainant and the respondent is an employee.

Informal resolutions can take many forms, depending on the particular case. Examples include, but are not limited to, facilitated discussions between the parties; restorative justice; acknowledgment of responsibility by a respondent; apologies; disciplinary actions against a respondent or a requirement to engage in specific services; or supportive measures. Both parties must voluntarily agree in writing to participate in an informal resolution process, and either party can withdraw from the process at any time. The Superintendent must agree to the terms of any informal resolution reached between the parties. If an informal resolution agreement is reached, it must be signed by both parties and the school district. Any such signed agreement is final and binding according to its terms.

If an informal resolution process does not resolve the formal complaint, nothing from the informal resolution process may be considered as evidence in the subsequent investigation or determination.

F. Investigation

1. The complaint will be investigated by a trained internal or external individual designated by the Superintendent and HRO/Title IX Coordinator. Any complaint about an employee who holds a supervisory position shall be investigated by a person who is not subject to that supervisor's authority. Any complaint about the Superintendent should be submitted to the Chair of the Board, who should consult with legal counsel concerning the handling and investigation of the complaint.

2. The investigator shall consult with the HRO/Title IX Coordinator as agreed during the investigation process.
3. If the complaint is against an employee of the school district, rights conferred under an applicable collective bargaining agreement shall be applied, to the extent they do not conflict with the Title IX regulatory requirements.
4. Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.
5. The investigator will:
 - a. Meet with each party after they have received appropriate notice of any meeting and its purpose, with sufficient time to prepare.
 - b. Allow parties to have their advisor at all meetings related to the complaint, although advisors may not speak on behalf of a party or interfere with the process.
 - c. Allow parties a reasonable opportunity to identify witnesses and submit favorable and unfavorable evidence.
 - d. Interview witnesses and conduct such other activities that will assist in ascertaining facts (site visits, review of documents, etc.).
 - e. Consider evidence that is relevant and directly related to the allegations in the formal complaint.
 - f. During the course of the investigation, provide both parties with an equal opportunity to inspect and review any evidence that is obtained in the investigation that is directly related to the allegations in the formal complaint (including evidence which the school district does not intend to rely upon in reaching a determination of responsibility), and favorable and unfavorable evidence.
 - g. Prior to completion of the investigation report, provide each party and advisor (if any) the evidence subject to inspection and review, and provide the parties with ten calendar **[or business]** days to submit a written response.
 - h. Consider the parties' written responses to the evidence prior to completing the investigation report.
 - i. Create an investigative report that fairly summarizes relevant evidence and send the report to the parties and advisors (if any), for their review and written responses within ten calendar **[or business]** days of receipt.

- j. After receipt of the parties' written responses (if any), forward the investigation report and party responses to the assigned decision maker.
6. The investigation shall be concluded within 40 calendar **[or business]** days if practicable. Reasonable extension of time for good reason shall be allowed.

G. Determination of Responsibility

[Note: The decision maker cannot be the investigator or Title IX Coordinator, and must receive specific training. If appeals are to be heard by the Superintendent, the Board should determine if they wish to use particular upper-level administrators as decision makers.]

1. The decision maker shall provide the parties with the opportunity to submit written, relevant questions that the party wants asked of another party or witness within five calendar **[or business]** days of when the decision maker received the investigation report and party responses.
 - a. The decision maker shall explain to a party proposing questions if the decision maker excludes a question as not relevant.
2. Each party shall be provided the opportunity to review the responses of another party and/or witness, and to ask limited written follow-up questions within five calendar **[or business]** days of receiving the answers.
3. Each party will receive a copy of the responses to any follow-up questions.
4. The decision maker shall review the investigation report, the parties' responses and other relevant materials, applying the preponderance of the evidence standard ("more likely than not"). **[Note to Local Boards: School districts can use the clear and convincing standard, but we recommend retaining the preponderance standard that school districts use in most other cases.]**
5. The decision maker shall issue a written determination, which shall include the following:
 - a. Identification of all the allegations potentially constituting sexual harassment as defined in the Title IX regulations and this policy;
 - b. A description of the procedural steps taken from receipt of the formal complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and meetings held;
 - c. A determination regarding responsibility as to each allegation and findings of fact supporting the determinations;

- d. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the school district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the school district's programs and activities will be provided to the complainant;
 - e. The school district's appeal procedure and permissible bases for the parties to appeal the determination.
6. The written determination shall be provided to the parties simultaneously. The determination concerning responsibility becomes final either on the date that the school district provides the parties with the written determination of the results of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.

H. Remedies, Discipline and Other Actions

[Note: The Title IX regulations require school districts to provide a “range,” not an exhaustive list, of measures that would be used to ensure the complainant's equal access to the school district's programs and activities. Likewise, local Boards must include a “range” of disciplinary sanctions that may be imposed.]

1. Remedies

Remedies are measures used to ensure that the complainant has equal access to the school district's education programs and activities following the decision maker's determination. Such remedies may include supportive measures, and may include other appropriate measures, depending upon the determination and the needs of the complainant. The Title IX Coordinator is responsible for implementing remedies and providing any needed assistance to the Complainant.

2. Discipline and Other Actions

The following are examples of the types of disciplinary actions that may be imposed on an employee when there is a determination that they are responsible for one or more violations involving sexual harassment:

- Written warning.
- Probation.
- Demotion.
- Suspension without pay.
- Discharge.

The following are examples of other types of actions that may be imposed on an employee when there is a determination of responsibility:

- Performance improvement plan.
- Counseling.

- Training.
- Loss of leadership/stipend position.

I. Appeals

The parties have the opportunity to appeal a determination regarding responsibility, and from dismissals of formal complaints. Under the Title IX regulations, appeals are allowed on the following grounds:

1. A procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal of the formal complaint was made, that could affect the outcome of the matter; or
3. The Title IX Coordinator, investigator, or decision maker had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent that affected the outcome of the matter.

An appeal must be filed in writing within five calendar **[or business]** days of receiving the determination, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

1. Appeals must be filed with the Superintendent, who will consider the appeal.
2. The Superintendent shall conduct an impartial review of the appeal, including consideration of the written record of the matter, and may consult with legal counsel or other school district officials in making their decision.
3. The Superintendent shall issue a written decision describing the result of the appeal and rationale for the result, and provide the written decision simultaneously to the parties. The decision will either deny the appeal; grant the appeal and remand to the decision maker for further consideration; or grant the appeal by revising the disciplinary action(s).

J. Records

Records in connection with sexual harassment reports and the complaint process shall be maintained for a minimum of seven years.

Legal References: Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.); 34 C.F.R. Part 106
 Clery Act (20 U.S.C. §1092(f)(6)(A)(v) - definition of sexual assault)
 Violence Against Women Act (34 U.S.C. § 1092(f)(6)(A)(v) – definition of sexual assault; 34 U.S.C. § 12291(a)(10) – dating violence; 34 U.S.C. §12291(a)(3) – definition of stalking; 34 U.S.C. §12291(a)(8) – definition of domestic violence)

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)
Americans with Disabilities Act (42 U.S.C § 12101 et seq.), as
amended
Section 504 of the Rehabilitation Act of 1973 (Section 504) (29
U.S.C. § 794 et seq.), as amended
Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et. seq.,
29 C.F.R. § 1604.11)
Age Discrimination in Employment Act (29 U.S.C. § 623 et seq.)
Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. §
2000ff et seq.)
RSA 186:11; and 354-A
NH Code Admin. R. Ed. 303.01(i) and (j)

Cross Reference: AC – Nondiscrimination/Equal Opportunity
ACAB – Harassment and Sexual Harassment of School
Employees

JBAA – Sexual Harassment – Students

I. PURPOSE

The purpose of this policy is to maintain a learning environment for students that is free from sexual harassment or other improper or inappropriate behavior that may constitute harassment as defined below.

Sexual harassment is against the law and is against school board policy. Any form of sexual harassment is strictly prohibited.

It is a violation of this policy for any student to harass another student through conduct or communication of a sexual nature as defined by this policy.

The District will investigate all complaints, either formal or informal, verbal or written, of sexual harassment and will discipline any student who sexually harasses another student.

II. SEXUAL HARASSMENT/SEXUAL VIOLENCE DEFINED

Sexual harassment of students shall include, but is not limited to, unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature when:

1. The conduct or communication has the purpose or effect of demanding sexual favors in exchange for benefits;
2. Submission to or rejection of the conduct or communication is used as the basis for educational decisions affecting a student;
3. The conduct or communication is so severe, persistent or pervasive that it has the purpose or effect of unreasonably interfering with a student's educational performance or opportunities; or creates an intimidating, offensive or hostile educational environment.

Relevant factors to be considered will include, but not be limited to: did the student view the environment as hostile; was it reasonable to view the environment as hostile; the nature of the conduct; how often the conduct occurred and how long it continued; age and sex of the complainant; whether the alleged harasser was in a position of power over the student subjected to the harassment; number of individuals involved; age of the alleged harasser; where the harassment occurred; and other incidents of sexual harassment at the school involving the same or other students.

Examples of sexual harassment may include, but not be limited to: physical touching of a sexual nature; displaying or distributing of sexually explicit drawings, pictures and written materials; sexual gestures, comments, or obscene jokes; touching oneself sexually or talking about one's sexuality in front of others; or spreading rumors about or rating other students or others as to appearance, sexual activity, or performance.

III. REPORTING PROCEDURES

1. The Superintendent or his/her written designee is responsible for implementing all procedures of this policy. Additionally, the Superintendent may develop and implement additional administrative regulations in furtherance of this policy.
2. Any student who believes he or she has been the victim of sexual harassment should report the alleged act(s) immediately to any District employee or the building Principal. If a student initially reports the alleged act to a District employee, that employee ~~teacher~~ shall immediately notify the building Principal, who shall then immediately notify the Superintendent.
3. The Board encourages all students and staff members to use the Report Form available from the Principal or Superintendent.
4. In each building, the Principal is the person responsible for receiving oral or written reports of sexual harassment. Upon receipt of a report, the Principal will notify the Superintendent immediately without screening or investigating the report. If the report was given verbally, the Principal shall reduce it to written form within 24 hours and then forward it to the Superintendent. Failure to forward any sexual harassment report or complaint as provided herein will result in disciplinary action. If the complaint involves the building Principal, the complaint shall be filed directly with the Superintendent.
5. The Board designates the Superintendent as the District Human Rights Officer to receive any report or complaint of sexual harassment. If the complaint involves the Superintendent, the complaint shall be filed directly with the School Board.
6. Submission of a complaint or report of sexual harassment will not affect the student's standing in school, grades, eligibility for extra-curricular activities or any other aspect of the student's educational program.
7. The use of formal Reporting Forms provided by the District is voluntary. The District will respect the confidentiality of the complainant and the individual(s) against whom the complaint is filed as much as possible, consistent with the School District's legal obligations and the necessity to investigate allegations of sexual harassment and take disciplinary action when the conduct has occurred.

IV. INVESTIGATION AND RECOMMENDATION

The Superintendent, or designated Human Rights Officer, will promptly initiate an investigation upon receipt of a report or complaint alleging sexual harassment. This investigation may be conducted by District officials or by a third-party designated by the School Board.

If District officials conduct the investigation, the investigation should consider the surrounding circumstances, the nature of the sexual advances, the relationship between the parties and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes sexual harassment requires a determination based on all the facts and surrounding circumstances.

The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator. Students who are interviewed may have a parent or other representative present.

In addition, the District may take immediate steps, at its discretion, to protect the complainant, students and employees pending completion of an investigation of alleged sexual harassment.

If the Board determines that a third-party designee should conduct the investigation, the District agrees to assent to that party's methods of investigation.

Upon completion of an investigation conducted by either District officials or a third-party, the Superintendent, and Board if appropriate, will be provided with a written factual report and recommended action.

V. SCHOOL DISTRICT ACTION

If the investigating party determines that the alleged conduct constitutes sexual harassment, the Superintendent or Principal may discipline the offending student. Such discipline may include, but is not limited to, detention, in-school suspension, out-of-school suspension, or expulsion. Discipline will be issued in accord with other applicable Board policies. Due to FERPA and other privacy-related laws, the victim will not be informed of what discipline was imposed.

If the investigating party determines that the alleged conduct did not constitute sexual harassment, both the complaining party and the accused will be informed of such. No disciplinary action will be taken.

Conduct which does not rise to the level of sexual harassment as defined by the policy, but is nonetheless inappropriate or is in violation of other Board policies, will be addressed on a case-by-case basis by the Superintendent or Principal, who may still impose discipline or order the offending student to engage in some remedial action.

VI. REPRISAL

The School District will discipline any student who retaliates against any other student who reports alleged sexual harassment or who retaliates against any person who testifies, assists or participates in an investigation, proceeding or hearing relating to a sexual harassment or sexual violence complaint. Retaliation includes, but is not limited to, any form of intimidation, threats, reprisal or harassment.

VII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES

These procedures do not deny the right of any student to pursue other avenues of recourse, which may include filing charges with the Commissioner of Education, or the Office of Civil Rights, initiating civil action or seeking redress under state criminal statutes and/or federal law.

VIII. SEXUAL HARASSMENT OR SEXUAL VIOLENCE AS SEXUAL ABUSE

Under certain circumstances, sexual harassment or sexual violence may constitute sexual abuse under New Hampshire law. In such situations, the District shall comply with all pertinent laws.

Nothing in this policy will prohibit the School District from taking immediate action to protect victims of alleged sexual abuse.

IX. AGE-APPROPRIATE SEXUAL HARASSMENT POLICY

Per the requirements of Ed 303.01(j), the School Board is required to establish a policy on sexual harassment, written in age appropriate language and published and available in written form to all students. This policy is intended to apply to middle-school and high-school aged students.

The Superintendent and building Principal(s) are charged with establishing policies, rules, protocols and other necessary age-appropriate information or materials for the District's elementary schools.

Category: P

See also: GBAA

Legal References:

Ed 303.01(j), Substantive Duties of School Boards; Sexual Harassment Policy

Ed 306.04(a)(9), Sexual Harassment

Appendix: GBAA-R, BBA-R

1st Read: September 6, 2016

2nd Read: September 20, 2016

Adopted: September 20, 2016

JBAA-R Sexual Harassment and Sexual Violence Report Form

(<https://schoolboard.convalsd.net/district-policies/sexual-harassment-and-sexual-violence-report-form/>)

Note to Local Boards: This policy has been substantially revised to include changes required by the new Title IX regulations that become effective on August 14, 2020. Any proposed changes to this sample should be discussed with legal counsel prior to adoption to ensure that they comply with all applicable federal and state legal requirements.

HARASSMENT AND SEXUAL HARASSMENT OF STUDENTS

Harassment of students because of age, sex, gender identity, sexual orientation, race, creed, color, ancestry or national origin, marital status, familial status, physical or mental disability, religion or economic status is prohibited. Such conduct is a violation of Board policy and may constitute illegal discrimination under state and federal laws.

School employees, fellow students, volunteers, visitors to the schools, and other persons with whom students may interact in order to pursue or engage in education programs and activities, are required to refrain from such conduct.

Harassment and sexual harassment of students by school employees is considered grounds for disciplinary action, up to and including discharge. Harassment and sexual harassment of students by other students is considered grounds for disciplinary action, up to and including expulsion. The Superintendent will determine appropriate sanctions for harassment of students by persons other than school employees and students.

A. Harassment

Harassment includes, but is not limited to, verbal abuse and other offensive conduct based on of age, sex, gender identity, sexual orientation, race, creed, color, ancestry or national origin, marital status, familial status, physical or mental disability, religion or economic status. Harassment that rises to the level of physical assault, battery and/or abuse and bullying behavior are also addressed Board Policies JICIA – Weapons, Violence and School Safety and JICK – Bullying.

B. Sexual Harassment

Sexual harassment is addressed under federal and state laws/regulations. The scope and definitions of sexual harassment under these laws differ, as described below.

1. Title IX Sexual Harassment

Under the federal Title IX regulations, sexual harassment includes the following conduct on the basis of sex which takes place within the context of the school district's education programs and activities:

- a. "Quid pro quo" sexual harassment by a school employee: Conditioning a school aid, benefit or service (such as a better grade or a college recommendation) on an individual's participation in unwelcome sexual conduct;
- b. "Hostile environment" sexual harassment: Unwelcome conduct based on sex that a reasonable person would determine is so severe, pervasive *and* objectively offensive that it effectively denies an individual's equal access to the school unit's education programs and activities; or
- c. Sexual assault, dating violence, domestic violence and stalking as these terms are defined in federal laws.

Commented [A1]: We have not included the definitions here as they are lengthy. We plan to create additional training materials that include this information.

2. Other Forms of Sexual Harassment

Some forms of sexual harassment may not meet the definition under Title IX (see paragraph 1, above) but is still prohibited under New Hampshire law.

The District defines other forms of "sexual harassment" as unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal or physical conduct of a sexual nature in the following situations:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of a student's educational benefits;
- b. Submission to or rejection of such conduct by a student is used as the basis for decisions on educational benefits; or
- c. Such conduct has the purpose and effect of substantially interfering with a student's academic performance or creates an intimidating, hostile or offensive environment.

C. Reports and Complaints of Harassment or Sexual Harassment

All school employees are required to report possible incidents of harassment or sexual harassment involving students to the Title IX Coordinator. Failure to report such incidents may result in disciplinary action.

Students, parents/legal guardians and other individuals are strongly encouraged to report possible incidents of harassment or sexual harassment involving students to the Title IX Coordinator. The Title IX Coordinator is also available to answer questions and provide assistance to any individual who is unsure whether harassment or sexual harassment has occurred.

All reports and complaints of harassment or sexual harassment against students shall be addressed through the Student Unlawful Discrimination/Harassment and Title IX Sexual Harassment Procedures (ACAA-R).

Legal Reference: Americans with Disabilities Act (42 U.S.C. §12101 et seq., as amended; 28 C.F.R. § 35.107)
Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 C.F.R. § 104.7)
Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.); 34 C.F.R. Part 106
Clery Act (20 U.S.C. §1092(f)(6)(A)(v) - definition of sexual assault)
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Cross Reference: ACAA-R – Student Unlawful Discrimination/Harassment and Title IX Sexual Harassment Complaint Procedures
AC – Nondiscrimination/Equal Opportunity and Affirmative Action
ACAD – Hazing
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JFCK – Student Use of Cellular Telephones and Other Electronic Devices
JICIA – Weapons, Violence and School Safety
JICK - Bullying

Student Discrimination/Harassment and Title IX Sexual Harassment Complaint Procedures

[Note to Local Boards: This document has been substantially revised due to the requirements in the new Title IX sexual harassment regulations that become effective on August 14, 2020. The definition of sexual harassment in the Title IX regulations has been narrowed and the regulations require a more formal procedure than local Boards have generally used to address discrimination/harassment complaints. At the same time, local Boards still need to comply with other federal and state laws/regulations governing discrimination and harassment, in addition to Title IX. For these reasons, we have structured this document in three sections:

- **Section 1** provides the definitions used in the complaint procedures;
- **Section 2** sets out the general discrimination/harassment complaint procedure to address complaints of all forms of discrimination/harassment, except for those involving Title IX sexual harassment. This is very similar to the procedure school districts have used in the past; and
- **Section 3** The third section sets out is the new Title IX sexual harassment complaint procedure.

Local school districts have the option of addressing all discrimination/harassment complaints through the Title IX procedure if they wish and deleting Section 2. However, we suggest that local Boards carefully consider this option, as it means that all complaints will need to be addressed through a more formal process than school districts have customarily used.

Please note that in previous versions of this sample, the designation of employees to be notified of discrimination/harassment complaints and who are responsible for various actions, has been left largely to the discretion of the school district. The Title IX regulations require that the individual designated as the Title IX Coordinator be responsible for addressing all Title IX complaints. Because it can be difficult to assess which law and regulations a complaint should be addressed under, we recommend that a combined Human Rights Officer/Title IX Coordinator be the individual to receive all discrimination/harassment complaints and to determine the appropriate procedure to use in specific cases. Assessing complaints, and deciding which policy/procedure is appropriate to address them is complex and requires comprehensive training for Human Rights Officers/Title IX Coordinators.

Any proposed changes to these procedures should be reviewed with legal counsel prior to adoption to ensure compliance with legal requirements.]

The Board has adopted these student procedures in order to provide prompt and equitable resolution of reports and complaints of unlawful discrimination and harassment of students, including sexual harassment, as described in policies AC –

Nondiscrimination/Equal Opportunity and Human Rights and ACAA – Harassment and Sexual Harassment of Students.

Complaints alleging harassment or discrimination against employees or third parties based on a protected status should be addressed through the Board's Employee & Third Party Discrimination/Harassment and Title IX Sexual Harassment Complaint Procedures (ACAB-R).

[Note to Local Boards: We refer to a combined Human Rights Officer/Title IX Coordinator in this sample.]

Any individual who is unsure about whether unlawful discrimination or harassment has occurred and/or or which complaint procedure applies is encouraged to contact the Human Rights Officer (or HRO)/Title IX Coordinator.

[INSERT FULL HRO/TITLE IX COORDINATOR INFORMATION HERE:

**NAME, TITLE
PHYSICAL ADDRESS
TELEPHONE NUMBER
EMAIL ADDRESS]**

Section 1. Definitions

For purposes of these complaint procedures, the following definitions will be used. The Human Rights Officer/Title IX Coordinator shall assess all reports and complaints to ensure that they are addressed under the appropriate policy and complaint procedure.

A. Discrimination/Harassment Complaint Procedure Definitions

1. "Discrimination or harassment": Discrimination or harassment on the basis of an individual's membership in a protected category, which, for students, includes age, sex, gender identity, sexual orientation, race, creed, color, ancestry or national origin, marital status, familial status, physical or mental disability, religion or economic status are prohibited.
2. "Discrimination": Treating individuals differently, or interfering with or preventing them from enjoying the advantages or privileges afforded to others because of their membership in a protected category.
3. "Harassment": Oral, written, graphic, electronic or physical conduct relating to an individual's actual or perceived membership in a protected category that is sufficiently severe, pervasive or persistent so as to interfere with or limit that individual's ability to participate in the school district's programs or activities by creating a hostile, intimidating or offensive environment.
4. Other forms of "sexual harassment": this means unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal or physical conduct of a sexual nature in the following situations:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of a student's educational benefits;
 - b. Submission to or rejection of such conduct by a student is used as the basis for decisions on educational benefits; or
 - c. Such conduct has the purpose and effect of substantially interfering with a student's academic performance or creates an intimidating, hostile or offensive environment.
5. "Sexual orientation": Under New Hampshire law, this means "having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality."
 6. "Gender identity": Under New Hampshire law, this means "a person's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth."
 7. "Complaint" is defined as an allegation that a student has been discriminated against or harassed on the basis of race, color, sex, sexual orientation, gender identity, religion, ancestry, national origin or disability (and not otherwise addressed in the Title IX regulations and Section 3 of ACA-A-R).
 8. Complaints of bullying not involving the protected categories or definitions described above may be addressed under Board Policy JICK – Bullying and Cyberbullying of Students.

B. Title IX Sexual Harassment Complaint Procedure Definitions

1. "Sexual Harassment": Under the federal Title IX regulations, sexual harassment includes the following conduct on the basis of sex which takes place within the context of the school district's education programs and activities:
 - a. "Quid pro quo" sexual harassment by a school employee: Conditioning a school aid, benefit or service (such as a better grade or a college recommendation) on an individual's participation in unwelcome sexual conduct;
 - b. "Hostile environment" sexual harassment: Unwelcome conduct based on sex that a reasonable person would determine is so severe, pervasive *and* objectively offensive that it effectively denies an individual's equal access to the school district's education programs and activities; or
 - c. Sexual assault, dating violence, domestic violence and stalking as these terms are defined in federal laws.
2. "Report": Under the Title IX regulations, any individual may make a report of sexual harassment involving a student, whether the individual is the alleged victim or not. School employees are required to report possible incidents of sexual harassment involving a student. A report must be made to the Human

Commented [A1]: We have not included the definitions here as they are lengthy. We plan to create additional training materials that include this information.

Rights Officer/Title IX Coordinator. A report triggers certain actions by the HRO/Title IX Coordinator for the alleged victim of sexual harassment, but an investigation is not conducted unless a "Formal Complaint" (as defined below) is filed.

3. "Formal Complaint": Under the Title IX regulations, the alleged victim of sexual harassment can file a written complaint that triggers the complaint procedure in Section 3 of ACAA-R. Only a student and/or their parent/legal guardian (and in certain circumstances, the HRO/Title IX Coordinator) may file a formal complaint.
4. "Student": For the purposes of this procedure, a student an individual who is enrolled or participating in the school district's education programs and activities, or is attempting to enroll or participate.

Section 2. Unlawful Discrimination/Harassment Complaint Procedure

[Note to Local Boards: This procedure generally tracks the procedure in earlier versions of ACAA-R, with some adjustments in an effort to minimize differences, where possible, between this complaint procedure and the Title IX sexual harassment complaint procedure in Section 3.]

This procedure should be used for any complaint of unlawful harassment or discrimination complaint based on a protected category which does not involve Title IX sexual harassment.

A. How to Make A Complaint

1. School employees are required to promptly make a report to the HRO/Title IX Coordinator if they have reason to believe that a student has been discriminated against or harassed.
2. Students (and others) who believe that they, or another student has been harassed or discriminated against should report their concern promptly to the HRO/Title IX Coordinator, or to the building principal (who will report the matter to the HRO/Title IX Coordinator).
3. The individual making the report must provide basic information in writing concerning the allegation of harassment or discrimination (i.e., date, time, location, individual(s) who alleged engaged in harassment or discrimination, description of allegation) to the HRO/Title IX Coordinator.
4. If an individual is unsure as to whether unlawful discrimination or harassment has occurred, or who need assistance in preparing a written complaint, they are encouraged to discuss the matter with the HRO/Title IX Coordinator.
5. Individuals will not be retaliated against for reporting suspected discrimination or harassment, or for participating in an investigation. Retaliation is illegal under federal and state nondiscrimination laws, and any retaliation will result

in disciplinary action, up to and including discharge for employees, and expulsion for students.

6. Individuals are encouraged to utilize the school district's complaint procedure. However, individuals are hereby notified that they also have the right to report incidents of discrimination or harassment to the New Hampshire Commission for Human Rights, 2 Industrial Park Drive, Concord, NH 03301, , and/or to the federal Office for Civil Rights, U.S. Department of Education, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921 (telephone: 617-289-0111).

B. Complaint Handling and Investigation

1. The HRO/Title IX Coordinator will promptly inform the Superintendent and the person who is the subject of the complaint (respondent) that a complaint has been received.
2. The HRO/Title IX Coordinator may pursue an informal resolution of the complaint with the agreement of the parties involved. Any party to the complaint may decide to end the informal resolution process and pursue the formal process at any point. Any informal resolution is subject to the approval of the parties and the Superintendent, who shall consider whether the resolution is in the best interest of the school district and the parties in light of the particular circumstances and applicable policies and laws.
3. The HRO/Title IX Coordinator may implement supportive measures to a student to reduce the risk of further discrimination or harassment to a student while an investigation is pending. Examples of supportive measures include, but are not limited to ordering no contact between the individuals involved or changing classes.
4. The complaint will be investigated by a trained internal or external individual designated by the Superintendent and the HRO/Title IX Coordinator. Any complaint about an employee who holds a supervisory position shall be investigated by a person who is not subject to that supervisor's authority. Any complaint about the Superintendent should be submitted to the Chair of the Board, who should consult with legal counsel concerning the handling and investigation of the complaint.
5. The investigator shall consult with the HRO/Title IX Coordinator as agreed during the investigation process.
6. The respondent will be provided with an opportunity to be heard as part of the investigation. The complainant shall not be required to attend meetings with the respondent, but may choose to do so as part of an informal resolution process.
7. The complainant and the respondent may suggest witnesses to be interviewed and/or submit materials they believe are relevant to the complaint.

8. If the complaint is against an employee of the school district, any rights conferred under an applicable collective bargaining agreement shall be applied.
9. Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.
10. The investigation shall be completed within 40 calendar **[or business]** days of receiving the complaint, if practicable. Reasonable extensions of time for good reason shall be allowed.
11. The investigator shall provide a written report and findings to the HRO/Title IX Coordinator.

C. Findings and Subsequent Actions

1. The HRO/Title IX Coordinator shall consult with the Superintendent concerning the investigation and findings.
2. If there is a finding that discrimination or harassment occurred, the HRO/Title IX Coordinator, in consultation with the Superintendent shall:
 - i. Determine what remedial action, if any, is required to end the discrimination or harassment, remedy its effect and prevent recurrence; and
 - ii. Determine what disciplinary action should be taken against the individual(s) who engaged in discrimination or harassment, if any.
3. Inform the complainant and the respondent in writing of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).

D. Appeals

1. After the conclusion of the investigation, the complainant or respondent may seek an appeal of the findings solely on the basis of either: (a) prejudicial procedural error or (b) the discovery of previously unavailable relevant evidence that could significantly impact the outcome.
2. Appeals must be submitted in writing to the Superintendent within five calendar **[or business]** days after receiving notice of the resolution.
3. Upon receipt of a valid appeal, the Superintendent shall provide notice to the other party, along with an opportunity to provide a written statement within five calendar **[business]** days.

4. The Superintendent shall review the available documentation and may conduct further investigation if deemed appropriate.
5. The Superintendent's decision on the appeal shall be provided to the parties within 10 calendar **[or business]** days, if practicable. The Superintendent's decision shall be final.

[The Board should decide whether to allow appeals of the Superintendent's decisions to the Board. We recommend discussing this option with legal counsel before drafting such language.]

E. Records

The HRO/Title IX Coordinator shall keep a written record of the complaint process.

Section 3. Title IX Sexual Harassment Complaint Procedure

This section should be used for complaints of as defined in Section 1.B.1.

A. How to Make A Report

1. School employees who have reason to believe that a student has been subjected to sexual harassment is required to promptly make a report to the HRO/Title IX Coordinator.
2. Students, parents/legal guardians or other individuals who believe a student has been sexually harassed are encouraged to make a report to the HRO/Title IX Coordinator.
3. If the individual making the report is the alleged victim, or if the alleged victim is identified by the individual making the report, the HRO/Title IX Coordinator will meet with the alleged victim to discuss supportive measures that may be appropriate in the particular circumstances and explain the process for filing a formal complaint.
 - a. Supportive measures are individualized measures designed to ensure the student can continue to access educational programs and activities (such as requiring no contact between individuals or changing classes).
 - b. Supportive measures may be continued even if the alleged victim chooses not to file a formal complaint, if appropriate under the particular circumstances.
4. The school district cannot provide an informal resolution process for resolving a report unless a formal complaint is filed.
5. Individuals will not be retaliated against for reporting sexual harassment, or for participating in an investigation. Retaliation is illegal under federal and

state nondiscrimination laws, and any retaliation will result in disciplinary actions, up to and including discharge for employees, or expulsion for students.

6. Any student (or their parent/legal guardian) who believes they have been the victim of sexual harassment is encouraged to utilize the school district's complaint procedure. However, students (and their parents/legal guardians) are hereby notified that they also have the right to report sexual harassment to the New Hampshire Commission for Human Rights, 2 Industrial Park Drive, Concord, NH 03301 and/or to the federal Office for Civil Rights, U.S. Department of Education, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921 (telephone: 617-289-0111).
7. The Superintendent shall be informed of all reports and formal complaints of sexual harassment.

B. How to Make A Formal Complaint

1. An alleged student victim and/or their parent/legal guardian may file a formal written complaint requesting investigation of alleged Title IX sexual harassment. The written complaint must include basic information concerning the allegation of sexual harassment (i.e., date, time, location, individual(s) who allegedly engaged in sexual harassment, description of allegation, etc.).

Students who need assistance in preparing a formal written complaint are encouraged to consult with the HRO/Title IX Coordinator.

2. In certain circumstances, the HRO/Title IX Coordinator may file a formal complaint even when the alleged victim chooses not to. Examples include if the respondent (person alleged to have engaged in sexual harassment) has been found responsible for previous sexual harassment or there is a safety threat within the school district. In such cases, the alleged victim is not a party to the case, but will receive notices as required by the Title IX regulations at specific points in the complaint process.
3. In accordance with the Title IX regulations, the HRO/Title IX Coordinator must dismiss a formal complaint if: a) the conduct alleged in the formal complaint does not constitute sexual harassment under the Title IX regulations and this policy; or b) if the conduct alleged did not occur within the scope of the school district's education programs and activities, or c) did not occur in the United States.
4. In accordance with the Title IX regulations, the HRO/Title IX Coordinator may dismiss a formal complaint if: a) a complainant withdraws the formal complaint, or withdraws particular allegations within the complaint; b) the respondent is no longer employed by or enrolled in the school district; or c) there are specific circumstances that prevent the school district from

gathering evidence sufficient to reach a determination regarding the formal complaint.

5. If a formal complaint is dismissed under this procedure, the HRO/Title IX Coordinator will promptly and simultaneously send written notices to the parties explaining the reasons. Parties have the opportunity to appeal dismissals in accordance with subsection I below.
6. If the conduct alleged in a formal complaint potentially violates other laws, Board policies and/or professional expectations, the school district may address the conduct under the applicable policy/procedure.

C. Emergency Removal or Administrative Leave

The Superintendent may remove a student from education programs and activities on an emergency basis, or place an employee on administrative leave during the complaint procedure:

1. If there is a determination (following an individualized safety and risk analysis) that there is an immediate threat to the physical health or safety of an individual arising from the allegations of sexual harassment. Examples of such circumstances might include, but are not limited to, a continued threat of violence against a complainant by a respondent, or a respondent's threat of self-harm due to the allegations.
2. The respondent (and in the case of a student, their parent/legal guardian) will be provided notice of the emergency removal or administrative leave, and will be provided an opportunity to challenge the decision following the removal (this is an opportunity to be heard, not a hearing). The respondent has the burden to demonstrate why the emergency removal or administrative leave was unreasonable.
3. Any such decision shall be made in compliance with any applicable disability laws, including the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

D. Notice to Parties of Formal Complaint

1. The Title IX Coordinator will provide to the parties written notice of the formal complaint and allegations of sexual harassment potentially constituting prohibited conduct under the Title IX regulations and this procedure. The notice shall include:
 - Notice regarding the complaint procedure and the availability of an informal resolution process;
 - Sufficient details known at the time (including identities of parties, if known; the conduct alleged; and the date and location of the alleged

incident, if known), with sufficient time to prepare before any initial interview (not less than five calendar **[or business]** days).

- As required by the Title IX regulations, a statement that the respondent is presumed not responsible for the alleged conduct and that a determination of responsibility will be made at the conclusion of the complaint); and that the parties may inspect and review evidence;
 - Notice that the parties may each have an advisor of their choice (who may be an attorney), and that the parties may inspect and review evidence;
 - Notice that knowingly making false statements or submitting false information during the complaint process is prohibited and may result in disciplinary action;
 - Notice of the name of the investigator, with sufficient time (no less than three calendar **[or business]** days) to raise concerns of conflict of interest or bias.
2. If additional allegations become known at a later time, notice of the additional allegations will be provided to the parties.
 3. The HRO/Title IX Coordinator will discuss supportive measures with each party and implement such measures as appropriate.

E. Informal Resolution Process

After a formal complaint has been filed, and if the HRO/Title IX Coordinator believes the circumstances are appropriate, the HRO/Title IX Coordinator may offer the parties the opportunity to participate in an informal resolution process to resolve the complaint without completing the investigation and determination process. Informal resolutions cannot be used to resolve a formal complaint where a student is the complainant and the respondent is an employee.

Informal resolutions can take many forms, depending on the particular case. Examples include, but are not limited to, facilitated discussions between the parties; restorative justice; acknowledgment of responsibility by a respondent; apologies; disciplinary actions against a respondent or a requirement to engage in specific services; or supportive measures. Both parties must voluntarily agree in writing to participate in an informal resolution process, and either party can withdraw from the process at any time. The Superintendent must agree to the terms of any informal resolution reached between the parties. If an informal resolution agreement is reached, it must be signed by both parties and the school district. Any such signed agreement is final and binding according to its terms.

If an informal resolution process does not resolve the formal complaint, nothing from the informal resolution process may be considered as evidence in the subsequent investigation or determination.

F. Investigation

1. The complaint will be investigated by a trained internal or external individual designated by the Superintendent and HRO/Title IX Coordinator. Any complaint about an employee who holds a supervisory position shall be investigated by a person who is not subject to that supervisor's authority. Any complaint about the Superintendent should be submitted to the Chair of the Board, who should consult with legal counsel concerning the handling and investigation of the complaint.
2. The investigator shall consult with the HRO/Title IX Coordinator as agreed during the investigation process.
3. If the complaint is against an employee of the school district, rights conferred under an applicable collective bargaining agreement shall be applied, to the extent they do not conflict with the Title IX regulatory requirements.
4. Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.
5. The investigator will:
 - a. Meet with each party after they have received appropriate notice of any meeting and its purpose, with sufficient time to prepare.
 - b. Allow parties to have their advisor at all meetings related to the complaint, although advisors may not speak on behalf of a party or interfere with the process.
 - c. Allow parties a reasonable opportunity to identify witnesses and submit favorable and unfavorable evidence.
 - d. Interview witnesses and conduct such other activities that will assist in ascertaining facts (site visits, review of documents, etc.).
 - e. Consider evidence that is relevant and directly related to the allegations in the formal complaint.
 - f. During the course of the investigation, provide both parties with an equal opportunity to inspect and review any evidence that is obtained in the investigation that is directly related to the allegations in the formal complaint (including evidence which the school district does not intend to rely upon in reaching a determination of responsibility), and favorable and unfavorable evidence.
 - g. Prior to completion of the investigation report, provide each party and advisor (if any) the evidence subject to inspection and review, and provide the parties with ten calendar **[or business]** days to submit a written response.

- h. Consider the parties' written responses to the evidence prior to completing the investigation report.
 - i. Create an investigative report that fairly summarizes relevant evidence and send the report to the parties and advisors (if any), for their review. The Parties may submit written responses to the report within ten calendar **[or business]** days of receipt.
 - j. After receipt of the parties' written responses (if any), forward the investigation report and party responses to the assigned decision maker.
6. The investigation shall be concluded within 40 calendar **[or business]** days if practicable. Reasonable extension of time for good reason shall be allowed.

G. Determination of Responsibility

[Note to Local Boards: The decision maker cannot be the investigator or Title IX Coordinator, and must receive specific training. If appeals are to be heard by the Superintendent, the Board should determine if they wish to use particular upper-level administrators as decision makers.]

- 1. The decision maker shall provide the parties with the opportunity to submit written, relevant questions that the party wants asked of another party or witness within five calendar **[or business]** days of when the decision maker received the investigation report and party responses.
 - a. The decision maker shall explain to a party proposing questions if the decision maker excludes a question as not relevant.
- 2. Each party shall be provided the opportunity to review the responses of another party and/or witness, and to ask limited written follow-up questions within five calendar **[or business]** days of receiving the answers.
- 3. Each party will receive a copy of the responses to any follow-up questions.
- 4. The decision maker shall review the investigation report, the parties' responses and other relevant materials, applying the preponderance of the evidence standard ("more likely than not"). **[Note to Local Boards: School districts can use the clear and convincing standard, but we recommend retaining the preponderance standard that school districts use in most other cases.]**
- 5. The decision maker shall issue a written determination, which shall include the following:
 - a. Identification of all the allegations potentially constituting sexual harassment as defined in the Title IX regulations and this policy;

- b. A description of the procedural steps taken from receipt of the formal complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and meetings held;
 - c. A determination regarding responsibility as to each allegation and findings of fact supporting the determinations;
 - d. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the school district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the school district's programs and activities will be provided to the complainant;
 - e. The school district's appeal procedure and permissible bases for the parties to appeal the determination.
6. The written determination shall be provided to the parties simultaneously. The determination concerning responsibility becomes final either on the date that the school district provides the parties with the written determination of the results of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.

H. Remedies, Discipline and Other Actions

[Note to Local School Boards: The Title IX regulations require school districts to provide a "range," not an exhaustive list, of measures that would be used to ensure the complainant's equal access to the school district's programs and activities. Likewise, local Boards must include a "range" of disciplinary sanctions that may be imposed. The examples below can be revised to meet local needs.]

1. Remedies

Remedies are measures used to ensure that the complainant has equal access to the school district's education programs and activities following the decision maker's determination. Such remedies may include supportive measures, and may include other appropriate measures, depending upon the determination and the needs of the complainant. The Title IX Coordinator is responsible for implementing remedies and providing any needed assistance to the Complainant.

2. Discipline and Other Actions - Students

The following are of the types of discipline and other actions that may be imposed on a student when there is a determination that they are responsible for one or more violations involving sexual harassment:

- In or out of school suspension.

- Expulsion.
- Restorative justice.
- Requirement to engage in education or counseling program.

3. Discipline and Other Actions – Employees

The following are examples of the types of disciplinary actions that may be imposed on an employee when there is a determination that they are responsible for one or more violations involving sexual harassment:

- Written warning.
- Probation.
- Demotion.
- Suspension without pay.
- Discharge.

The following are examples of other types of actions that may be imposed on an employee when there is a determination of responsibility:

- Performance improvement plan.
- Counseling.
- Training.
- Loss of leadership/stipend position.

I. Appeals

[Note to Local Boards: The person hearing an appeal cannot be the decision maker, investigator or HRO/Title IX Coordinator. Generally, we recommend that the Superintendent be the one to consider appeals, so another individual will need to be the decision maker in that case.]

The parties have the opportunity to appeal a determination regarding responsibility, and from dismissals of formal complaints. Under the Title IX regulations, appeals are allowed on the following grounds:

1. A procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal of the formal complaint was made, that could affect the outcome of the matter; or
3. The Title IX Coordinator, investigator, or decision maker had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent that affected the outcome of the matter.

An appeal must be filed in writing within five calendar **[or business]** days of receiving the determination, stating the grounds for the appeal and including any relevant

documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

1. Appeals must be filed with the Superintendent, who will consider the appeal.
2. The Superintendent shall notify the other party in writing of the appeal and will allow both parties to submit a written statement in support of, or challenging, the determination of the decision maker.
3. The Superintendent shall conduct an impartial review of the appeal, including consideration of the written record of the matter, and may consult with legal counsel or other school district officials in making their decision.
4. The Superintendent shall issue a written decision describing the result of the appeal and rationale for the result, and provide the written decision simultaneously to the parties. The decision will either deny the appeal; grant the appeal and remand to the decision maker for further consideration; or grant the appeal by revising the disciplinary or other action(s).

J. Records

Records in connection with sexual harassment reports and the complaint process shall be maintained for a minimum of seven years.

Legal Reference: Americans with Disabilities Act (42 U.S.C. §12101 et seq., as amended; 28 C.F.R. § 35.107)
Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 C.F.R. § 104.7)
Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.); 34 C.F.R. Part 106
Clery Act (20 U.S.C. §1092(f)(6)(A)(v) - definition of sexual assault)
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