

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

Policy Committee

**Tuesday, November 3, 2020
5:00 p.m.**

Physical Location: ConVal High School Library

Virtual Location:

<https://us02web.zoom.us/j/89349910422?pwd=bFd4ZEhLU1JBN2s0OTljUDZadlBJQT09>

Meeting ID: **893 4991 0422**

Passcode: **DV4966**

Phone: +1 312 626 6799 US

Meeting ID: **893 4991 0422**

Password: **136567**

Agenda

School Board Committee Members:

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

1. Call Meeting to Order

2. Review of "working" policies:

- a. ACAC
- b. GBAA
- c. JBAA
- d. JICK

3. Review:

- a. EBCG
- b. EHAC

4. Adjourn

TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS*Category: Priority/Required by Law**Related Policies: AC, AC-E, GBEAB, JICK & JLF***ADOPTION NOTES –*****This text box, and all highlights within the policy should be removed prior to adoption.***

- (a) *This policy is intended to replace former samples JBAA and GBAA. This policy is intended to reflect the requirements of new federal regulations pertaining to Title IX of the Education Amendments Act of 1972. In general, the new regulations create a new definition of sexual harassment, require a district to respond promptly, equitably (to complainants and “respondents” (alleged perpetrators)), and in a manner that is not deliberately indifferent, whenever it has actual knowledge of sexual harassment in an educational program or activity of the District.*
- (b) *The new regulations create a complex process for addressing allegations of sexual harassment. Among other things, it makes a firm distinction between “reports” and “formal complaints” of sexual harassment, imposes different responsibilities upon the district and processes for each, changes the definition of sexual harassment, , and creates ancillary obligations relative to such things as training, record keeping, and dissemination. Because the numerous burdens imposed by the regulations (specific to sexual harassment under Title IX), NHSBA has determined not to include other forms of harassment (race, age, bullying, etc.) into this sample policy.*
- (c) *The Grievance Procedure included in this policy is structured according to requirements of the Title IX regulations. Because those requirements are numerous, and largely mandatory, NHSBA has included them as part of the policy. Districts may create additional, or more specific procedures, but any such additions, must apply equally to complainants and respondents. NHSBA strongly encourages Districts seeking to expand procedures or otherwise modify this policy to consult with the District’s attorney(s).*
- (d) ***Short term – Because the effective date of the regulations is August 14, 2020, NHSBA recommends that boards waive any policy requiring a pre-review by a policy committee and/or two readings, and approve on an emergency basis, and then reschedule the policy for a more complete review and approval. Additionally, it is important that districts implement the following as soon as possible:***
 - a. designation and training of a Title IX Coordinator;***
 - b. training of all employees as to reporting requirement;***
 - c. training of all personnel involved in ordinary disciplinary processes as to the prohibition of any disciplinary sanction relative to sexual harassment without a “determination of responsibility” following the Title IX Grievance Process.***
- (e) *This policy includes several footnotes, some with yellow highlight, and some without. Those without indicate footnotes we recommend leaving in the policy, while the highlights, like highlighted in-line text, present options for districts to consider, information for the district to input, or simply, explanatory information, and should be removed. Highlighted footnotes should be removed from the approved policy.*
- (f) *Because of the numerous internal paragraph and section references (highlighted), it is important that districts take care before changing numbering and lettering of sections or paragraphs. The highlights should be removed.*
- (g) *General – As with all sample policies, NHSBA recommends that each district carefully review this sample prior to adoption to assure suitability with the district’s own specific circumstances, internal coding system, current policies, and organizational structures. Highlighted language or blank, underscored spaces indicate areas which Boards must change/complete to reflect local personnel titles, policy references, duty assignments etc.*
- (h) *{**} indicates a reference to another NHSBA sample policy. A district should check its own current policies and codes to assure internal consistency.*

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The definition of “Sexual Harassment” is found in Section II.B of this Policy. Instructions for making a report or complaint of sexual harassment are found in Section II.J.1. The “Title IX Grievance Process” is Section III, and the procedure for filing a formal complaint to initiate the grievance process is found in Section III.A

I. RESTATEMENT OF POLICY PROHIBITING DISCRIMINATION ON THE BASIS OF SEX.

Per Board policy AC, Title IX of the Education Amendments Act of 1972 (“Title IX”), as well as RSA 193:38, among others, the District does not discriminate on the basis of sex in its educational programs and activities, including employment and admissions. All forms of sex-based discrimination, including sexual harassment are prohibited in the District.

II. TITLE IX SEXUAL HARASSMENT POLICY.**A. Application of This Policy.**

While all forms of sex-based discrimination are prohibited in the district, the purpose of this policy is to address, and only to address, *sexual harassment as defined in Title IX and Sec. II.B*, below, that occurs within the educational programs and activities of the district, and to provide a grievance process for investigating and reaching a final determination of responsibility for a formal complaint of sexual harassment. The “Title IX Grievance Process” is set out in Sec. III below. While the District must respond to all “reports” it receives of sexual harassment, the Title IX Grievance Process is initiated only with the filing of a formal complaint.

The purpose of this Policy, however, is to address, and only to address, sexual harassment as defined in Title IX that occurs within the educational programs and activities of the district. For harassing conduct which does not meet the definition of sexual harassment under Title IX and this Policy, the District’s response will be governed under other applicable laws and policies per Board policy [**]/AC, and policies referenced therein.

This Policy shall apply to all students, employees, and any third party who contracts with the District to provide services to District students or employees, upon District property or during any school program or activity.

Nothing in this policy will be construed to confer on any third party a right to due process or other proceedings to which student and employee respondents are entitled under this policy unless such right exists under law.¹ Volunteers and visitors who engage in sexual harassment will be directed to leave school property and/or be reported to law enforcement, the NH Division of Children, Youth and Families (DCYF), as appropriate. A third party under the supervision and control of the school system will be subject to termination of contracts/agreements, restricted from access to school property, and/or subject to other consequences, as appropriate.

¹ [Remove this footnote] The status of respondents who are not students, applicants, or employees is not clear under the Regulations. The District has the right to dismiss a formal complaint at any time during the investigation or adjudication if the respondent is “no longer” employed or enrolled in the school system. However, there is no clear right to act against a third-party respondent for alleged sexual harassment before or after a formal complaint is filed and either adjudicated or dismissed. Consult the District’s attorney if a third party is a respondent in a sexual harassment case.

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The Superintendent shall have overall responsibility for implementing this Policy, and shall annually appoint a District Title IX Coordinator² as that position is described in Section II.C, below. The name and contact information for the Title IX Coordinator is set forth in Board Policy AC-E[**], which policy shall be updated and disseminated annually with the Title IX Coordinator's name as set forth in Board policy AC[**].

B. Definitions.

As used in this Policy and the Title IX Grievance Process, the terms below shall have the meaning ascribed.

“Actual knowledge” occurs when the District's Title IX Coordinator or **ANY** employee of one of the District's schools (other than a “respondent” or alleged harasser) receives a notice, report or information or becomes aware of sexual harassment or allegations of sexual harassment.

“Complainant” is an individual who is alleged to be the victim of conduct that could constitute sexual harassment, whether or not that person files a report or formal complaint.

“Days” shall mean calendar days, but shall exclude non-weekend days on which the SAU office is closed (e.g., holidays, office-wide vacations), or any weekday during the school year on which school is closed (e.g., snow days).

“Decision Maker” means persons tasked with: the responsibility of making initial determinations of responsibility (at times referred to as “initial decision maker”); or the responsibility to decide any appeal (at times “appeals decision maker”) with respect to formal complaints of sexual harassment in accordance with the Title IX Grievance Process.

“Determination of Responsibility” is the formal finding by the decision-maker on each allegation of Sexual Harassment contained in a Formal Complaint that the Respondent did or did not engage in conduct constituting Sexual Harassment Under Title IX.

“Formal Complaint” means a document filed by a complainant, the complainant's parent/guardian, or the Title IX Coordinator, alleging sexual harassment against a respondent, and requesting that the district investigate the allegation of sexual harassment.

“Respondent” is an individual who is reported to be the individual accused of conduct that could constitute sexual harassment.

“Sexual harassment” prohibited under Title IX and by this policy *is conduct on the basis of sex* (including, without limitation, gender, sexual orientation, and/or gender identity), occurring in a school system education program or activity that satisfies one or more of the following:

1. A school district employee conditioning an aid, benefit, or service of an education program or activity on an individual's participation or refusal to participate in sexual conduct irrespective of whether the conduct is welcomed by the student or other employee;

² [REMOVE] A specific position titled “Title IX Coordinator” is now mandated by federal regulations. NHSBA recommends that the person appointed as Title IX Coordinator also be designated as the District's Human Rights or Anti-Discrimination Officer (see sample policy AC). This dual appointment will help assure that a case is processed appropriately as a Title IX or other harassment case as the circumstances require – either from the outset, or as the case progresses (i.e., moving a case to a different track, e.g., bullying, or from another track).

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2. Unwelcome sex-based/related conduct determined by a reasonable person to be so severe, pervasive, **AND** objectively offensive that it effectively denies a person equal access to the education program or activity (this standard requires consideration of all the facts and circumstances, including, but not limited to, the ages and disability statuses of the harasser and victim and the number of individuals involved and their authority; **OR**
3. Sexual assault, dating violence, domestic violence, or stalking as defined in state or federal law.³

Behaviors that constitute sexual harassment may include, but are not limited to:

- i. Sexually suggestive remarks or jokes;
- ii. Verbal harassment or abuse;
- iii. Displaying or distributing sexually suggestive pictures, in whatever form (e.g., drawings, photographs, videos, irrespective of format);
- iv. Sexually suggestive gesturing, including touching oneself in a sexually suggestive manner in front of others;
- v. Harassing or sexually suggestive or offensive messages that are written or electronic;
- vi. Subtle or direct propositions for sexual favors or activities;
- vii. Touching of a sexual nature or groping; and
- viii. Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct.

Note: incidents of the above conduct would still need to satisfy one or more of the criteria in paragraphs 1-3 of this definition.

Sexual harassment may be directed against a particular person or persons, or a group, whether of the opposite sex or the same sex.

The context of behavior can make a difference between conduct falling within the technical definition of Sexual Harassment Under Title IX, and conduct of a sexual nature that is offensive or hostile in itself, but which does not arise to the level within that definition. **District policies prohibit both, but for purposes of its Title IX obligations the District must address reports or complaints of conduct which may constitute sexual harassment as defined above, under this specific, limited scope Policy and Title IX Grievance Process.** Except as used in other laws (e.g., Title VII) or policies (e.g., Board policy JICK{**}) pertaining to harassment, including of a sexual nature, other than Title IX sexual harassment, all references to “sexual harassment” in this policy mean sexual harassment that meets the above definition.

Conduct that satisfies this definition is not sexual harassment for purposes of this policy if the conduct occurred (1) outside the United States or (2) under circumstances in which the school

³ [REMOVE] NHSBA has purposefully refrained from including statutory definitions for the terms in section 3 of the definition of sexual assault. If a district WISHES to include definitions, refer to 34 CFR 106.30(a), and the corresponding state statutes.

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system did not have substantial control over both the harasser/respondent and the context in which the harassment occurred.

***NOTE Regarding Concurrent Enrollment and Dual Enrollment, Extended Learning Opportunities, 3rd Party Distance Learning and Other Alternative Instructional Programs:** Under federal regulations, in order for the District to have jurisdiction over conduct that would otherwise meet the definition above of sexual harassment, the District must have substantial control over both the respondent and the context in which the harassment occurred. In general, this will mean that unless such learning program is occurring upon district property, conduct otherwise meeting the definition of sexual harassment within that program, may not be subject to this policy.*

“Supportive Measures” are free, non-disciplinary, non-punitive, individualized services and shall be offered to the complainant, and may be offered to the respondent, as appropriate. These measures may include, but are not limited to, the following:

1. Counseling;
2. Course modifications;
3. Schedule changes; and
4. Increased monitoring or supervision
5. [district may add additional types of supportive services (non-punitive/disciplinary)].

Such measures shall be designed to restore or preserve equal access to the District’s education programs and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District’s educational environment and/or deter sexual harassment. Supportive measures shall remain confidential with exclusive exceptions stated required in Sec. II.E, below.

C. Title IX Coordinator.

The Title IX Coordinator shall respond promptly to all general reports as well as formal complaints of sexual harassment. the Title IX Coordinator shall receive general and specific reports of sexual harassment, and coordinate the District’s responses to both reports and formal complaints of sexual harassment so that the same are prompt and equitable. In addition to any other specific responsibilities assigned under this Policy, or as assigned by the Superintendent, the Title IX Coordinator will be responsible for:

1. meeting with a complainant, and informing the parent/guardian once the Title IX Coordinator becomes aware of allegations of conduct that could constitute sexual harassment as defined in this Policy;
2. identification and implementation of supportive measures;
3. signing or receiving formal complaints of sexual harassment;
4. engaging with the parents/guardians of parties to any formal complaint of sexual harassment;

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5. coordinating with District and school-level personnel to facilitate and assure implementation of investigations, and remedies, and helping to assure that the District otherwise meets its obligations associated with reports and complaints of sexual harassment;
6. coordinating with the Superintendent with respect to assignment of persons to fulfill the District's obligations, both general and case specific, relative to this Policy (e.g., investigator, decision makers, etc.; this may involve the retention of third party personnel.);
7. coordinating with District and school-level personnel to assure appropriate training and professional development of employees and others in accordance with Sec. II.D of this Policy; and
8. helping to assure that appropriate systems are identified and maintained to centralize sexual harassment records and data.

In cases where the Title IX Coordinator is unavailable, including unavailability due to a conflict of interest or other disqualifying reason (see Sec. II.G, below), the Superintendent shall assure that another person with the appropriate training and qualifications is appointed as acting Title IX Coordinator for that case, in such instances "Title IX Coordinator" shall include the acting Title IX Coordinators.

D. Training.

All District employees shall receive regular training relative to mandatory reporting obligations, and any other responsibilities they may have relative to this Policy.

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must receive training on the definition of sexual harassment, this Policy, the scope of the District's education program or activity, and how to conduct an investigation (including the requirements of the reporting and the Title IX Grievance Process, including hearings, appeals, and information resolution processes). The training must also include avoiding prejudgment of the facts, conflicts of interest and bias.

Decision-makers must also receive training on issues of relevance of questions and evidence, including when questions about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes, must promote impartial investigations and adjudications of formal complaints of sexual harassment, and must be made available to the public as provided in Sec. II.H of this Policy.

E. Confidentiality.

The District will respect the confidentiality of the complainant and the respondent as much as possible, however, some information may need to be disclosed to appropriate individuals or authorities. All disclosures shall be consistent with the District's legal obligations and the necessity to investigate allegations of harassment and take disciplinary action. Examples of required disclosure include:

1. information to either party to the extent necessary to provide the parties due process during the Title IX Grievance Process;

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2. information to individuals who are responsible for handling the District's investigation and determination of responsibility to the extent necessary to complete the District's grievance process;
3. mandatory reports of child abuse or neglect to DCYF or local law enforcement (per Board policy JLF{**});
4. information to the complainant's and the respondent's parent/guardian as required under this Policy and or the Family Educational Rights and Privacy Act ("FERPA"); and
5. reports to the New Hampshire Department of Education as required under N.H. Code of Administrative Rules Ed 510 regarding violations of the NH Code of Conduct for Education Professionals.

Additionally, any supportive measures offered to the complainant or the respondent shall remain confidential to the extent that maintaining such confidentiality would not impair the ability of the school district to provide the supportive measures.

Except as specified above, the District shall keep confidential the identity of:

1. Any individual who has made a report or complaint of sex discrimination;
2. Any individual who has made a report or filed a formal complaint of sexual harassment;
3. Any complainant;
4. Any individual who has been reported to be the perpetrator of sex discrimination⁴;
5. Any respondent; and
6. Any witness.

Any supportive measures provided to the complainant or respondent shall be kept confidential to the extent that maintaining such confidentiality does not impair the ability of the District to provide the supportive measures.

F. Retaliation Prohibited.

Retaliation against any person who makes a report or complaint, or against any person who assists, participates, or refuses to participate⁵ in any investigation of an act alleged in this Policy is prohibited. Actions taken in response to **materially** false statements made in bad faith, or to submitting **materially** false information in bad faith, as part of a report or during the Title IX Grievance Process do not constitute retaliation. A finding of responsibility alone is insufficient to conclude that a person made a materially false statement in bad faith. Complaints of retaliation with respect to reports or formal complaints of sexual harassment shall be filed under the District's general grievance process.

G. Conflict of Interest.

No person designated as a Title IX Coordinator, investigator, decision-maker, nor any person designated by the District to facilitate an informal resolution process, may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

⁴ 34 CFR 106.71 (a).

⁵ 34 CFR 106.71 (a).

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The District shall include in all student and employee handbooks, and shall make *[publicly available on the district's website]* **{OR, BUT only if the District does not maintain a website}** *[available to members of the public as government records]* the following information:

1. The District's policy of non-discrimination on the basis of sex (included in Board policy AC{**});
2. the title, name, office address, email address, and telephone number of the Title IX Coordinator (to be provided pursuant to Board policy AC{**} and its addendum, updated annually, ACE{**});
3. the complaint process;
4. how to file a complaint of sex discrimination or sexual harassment;
5. how the District will respond to such a complaint; and
6. a statement that Title IX inquiries may be referred to the Title IX Coordinator or to the Assistant Secretary for Civil Rights.

The same information shall be provided to all persons seeking employment with the District, or seeking to enroll or participate in the District's educational programs or activities.

Additionally, the District will make this Policy, as well as any materials used to train personnel as required under Sec. II.D *[publicly available on the district's website]* **{OR, BUT only if the District does not maintain a website}** *[available to members of the public as government records]*.

I. Records and Record Keeping.

1. For each report or formal complaint of sexual harassment, the District, through the Title IX Coordinator, must create, and maintain for seven (7) years, record of:
 - a. Any actions, including any supportive measures,
 - b. The basis for the District's conclusion that its response was not deliberately indifferent; and
 - c. Documentation which:
 - If supportive measures were provided to the complainant, a description of the supportive measures taken designed to restore or preserve equal access to the District's education program or activity; or
 - If no supportive measures were provided to a complainant, explains the reasons why such a response was not clearly unreasonable in light of the known circumstances.
2. In addition, the District shall maintain the following records for a minimum of seven (7) years:
 - a. Records for each formal complaint of sexual harassment, including:
 - Any determination regarding responsibility, including dismissals;
 - Any disciplinary sanctions imposed on the respondent;

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- Any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution process and the result therefrom;

b. All materials used to train Title IX Coordinators, investigators, and decision-makers.

J. Reports of Sexual Harassment, Formal Complaints and District Responses.**1. Report of Sexual Harassment.**

NOTE: *A report does not initiate the formal Title IX Grievance Process. That process is begun only upon the filing of a formal complaint under the procedures set out in II.J.3, and III.A, below.*

Any person may report sexual harassment whether relating to her/himself or another person.

However, if any District employee – other than the employee harasser, or the Title IX Coordinator – receives information of conduct which may constitute sexual harassment under this Policy, s/he shall, without delay, inform the Title IX Coordinator⁶ of the alleged sexual harassment. Failure to report will subject the employee to discipline up to and including dismissal.

A report of sexual harassment may be made at any time, in person, by mail, by telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Additionally, while the District strongly encourages reports of sexual harassment to be made directly to the Title IX Coordinator, the report may be made to **any** District staff member, including, for instance, a counselor, teacher or principal.

If the Title IX Coordinator is the alleged respondent, the report or formal complaint may be made directly to the Superintendent, who shall thereafter fulfill the functions of the Title IX Coordinator regarding that report/complaint, or delegate the function to another person.

NOTE: For any allegation of sexual assault on a student under the age of 18, such conduct shall be reported immediately to the DCYF per Board policy *{**}JLF*. If the alleged respondent (perpetrator) is a person holding a license or credential from the New Hampshire Department of Education (i.e., "credential holder"), then a report shall also be made pursuant to Board policy *{**}GBEAB*.

2. District Response to Report of Sexual Harassment.

The district will promptly respond when there is actual knowledge of sexual harassment, even if a formal complaint has not been filed. The district shall treat complainants and respondents equitably by providing supportive measures to the complainant⁷ and by following the Title IX Grievance Process prior to imposing any disciplinary sanctions or other actions that are not

⁶ [REMOVE] The new regulations charge the District with "actual knowledge" or a report of sexual harassment as soon as any employee of the district (other than a respondent/alleged harasser) receives the information. Accordingly, it is imperative that Districts adequately train all employees of the District about reporting responsibilities beginning with school year 2020-21.

⁷ The Title IX Coordinator may offer supportive measures to a complainant, even if the information from the complainant does not/does not appear to meet the full definition of sexual harassment under this Policy. Districts should consult with counsel before it "imposes" any supportive measures against a respondent.

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supportive measures against a respondent. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

As soon as reasonably possible after receiving a report of alleged sexual harassment from another District employee or after receiving a report directly through any means, the Title IX Coordinator shall contact the complainant to:

- i. discuss the availability of and offer supportive measures;
- ii. consider the complainant's wishes with respect to supportive measures;
- iii. inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- iv. explain to the complainant the process for filing a formal complaint.

3. Formal Complaints.

Pursuant to federal regulations, and this Policy, a formal complaint that contains an allegation of sexual harassment and a request that the District investigate the allegations is required before the District may conduct a formal investigation of sexual harassment or take any action (other than supportive measures) against a person accused of sexual harassment. **Once a formal complaint of sexual harassment is received by the Title IX Coordinator, s/he shall commence the Title IX Grievance Process set out in Sec. III below. The process for filing a formal complaint is set forth in Sec. III.A.**

4. Limitation on Disciplinary Action.

In no case shall the District impose disciplinary consequences or sanctions against a respondent who has been accused of conduct which may constitute sexual harassment, until the Title IX Grievance Process has been completed.

5. Emergency Removal and Administrative Leave.⁸

At any point after receiving a report or formal complaint of sexual harassment, the Title IX Coordinator (or other District official charged with a specific function under this Policy or the Title IX Process: e.g., investigator, decision maker, etc.) may request the Superintendent to direct that an individualized safety and risk analysis be performed to determine whether a respondent student is an immediate threat to the physical health or safety of any person. In the event that the safety and risk analysis determines that the respondent student does present an immediate threat to the physical health and safety of any person, the District may remove that student, provided that such removal is in full compliance with the IDEA, a student's IEP and or 504 plan if applicable. Such emergency removal shall not be disciplinary. However, the District must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal, and shall continue to offer educational programming until a final determination is made pursuant to the Title IX Grievance Process.

⁸ [REMOVE] Emergency removal/administrative removal should not be seen as the equivalent or alternative to a disciplinary short or long-term suspension. The US DOE in the commentary to the regulations cautioned: The threshold for an emergency removal under § 106.44(c) is ... high to prevent recipients from using emergency removal as a pretense for imposing interim suspensions and expulsions. (85 Fed. Reg. Vol. 97, p. 30234). See also Sec. II.J.4.

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The Title IX Coordinator shall keep the Superintendent of Schools informed of any employee respondents so that he/she can make any necessary reports to New Hampshire Department of Education in compliance with applicable administrative rules and the New Hampshire Code of Conduct for Educational Professionals. In appropriate cases, the Superintendent may place an employee respondent on non-disciplinary administrative leave pursuant to RSA 189:31.

III. TITLE IX GRIEVANCE PROCESS.

The Title IX Grievance Process is used only upon the filing of a formal complaint of sexual harassment as described in Sec. III.A, below. The provisions of Section I of the Policy are incorporated as part of the Title IX Grievance Process. Upon receipt of a formal complaint of sexual harassment, the Title IX Coordinator will coordinate the District's efforts to comply with its responsibilities related to the Title IX Grievance Process.

A. Process for Filing a Formal Complaint of Sexual Harassment.

The Title IX Grievance Process is initiated by way of a formal complaint ("complaint" or "formal complaint") filed by the complainant, the complainant's parent/guardian, or the Title IX Coordinator. The complainant may file a complaint or choose not to file a complaint and simply receive the supportive measures. If the Complainant does not file a complaint, the Title IX Coordinator may sign a formal complaint, but only if initiating the grievance process against the respondent is not clearly unreasonable in light of the known circumstances, and in other cases where, in the exercise of good judgment and in consultation with the District's attorney as appropriate, the Title IX Coordinator determines that a grievance process is necessary to comply with the obligation not to be deliberately indifferent to known allegations of sexual harassment (e.g., reports of sexual assault, employee on student harassment, repeat reports, or the conduct in the complainant's report has not been adequately resolved through the provision of supportive measures). If the complaint is filed by the Title IX Coordinator, he/she is not a party to the action, and the District must comply with all of the provisions of the Title IX Grievance Process relative to respondents and complainants.

If no formal complaint is filed by the complainant or the Title IX Coordinator no disciplinary action may be taken against the respondent based upon conduct that would constitute sexual harassment under this policy.

Although there is no time limit per se to filing a formal complaint, for complaints initiated by the complainant or his/her parent/guardian, the complainant must be employed by the District or participating in or attempting to participate in the education program or activities of the District at the time of filing. Additionally, although the District will initiate the Title IX Grievance Process regardless of when the formal complaint is submitted, delays in reporting may significantly impair the ability of school officials to investigate and respond to the allegations.

At a minimum, a formal complaint must:

1. contain the name and address of the complainant and the student's parent or guardian if the complainant is a minor student;
2. describe the alleged sexual harassment,
3. request an investigation of the matter, and

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4. be signed by the complainant or otherwise indicate that the complainant is the person filing the complaint.

The complaint may be filed with the Title IX coordinator in person, by mail, or by email.⁹ Complaint forms may be obtained from the Title IX Coordinator *[or on the District and school websites]*.

B. Initial Steps and Notice of Formal Complaint.

1. The Title IX Coordinator will provide notice to the complainant and the complainant's parent/guardian (if the complainant is a non-eligible student under FERPA), and to the respondent (if known) and the respondent's parent/guardian (if the respondent is a non-eligible student under FERPA), as well as to any other known parties, of the following:
 - a. this Title IX Grievance Process, including any informal resolution process;
 - b. the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview; "sufficient details" shall include to the extent known identities of persons involved, the conduct allegedly constituting sexual harassment, and the date and location of the incident;
 - c. a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
 - d. that each party may have an advisor of their choice, who may be, but is not required to be, an attorney;
 - e. that each party is entitled to inspect and review evidence; and
 - f. a reference to any provision in the District's code of conduct¹⁰ that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
2. The Title IX Coordinator will contact the complainant to discuss and offer supportive measures.
3. The Title IX Coordinator may contact the respondent to discuss, and or impose, non-disciplinary supportive measures.
4. The Title IX Coordinator will examine the allegations in the formal complaint, to determine whether even if assumed true, the allegations are sufficient to sustain a finding of sexual harassment under this Policy. If the Title IX Coordinator was not involved with preparing the formal complaint, the Title IX Coordinator will contact the complainant to discuss the complaint and whether amendment is appropriate, in which case the process of Sec. III.C.4 will apply.

⁹[REMOVE] If the school system has an electronic portal for reporting sexual harassment to the Title IX coordinator, note it in the text.

¹⁰ [REMOVE] NHSBA recommends that districts review their respective codes of conduct for a provision that prohibits making false statements or knowingly submitting false information during any investigation of discrimination, bullying or sexual harassment.

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5. If the formal complaint fails to satisfy the definition of sexual harassment in this Policy, the complaint shall be dismissed as provided in Sec. III.G, below.
6. If the complaint is not dismissed, then Title IX Coordinator will consult with the Superintendent as to whether the Title IX Coordinator should act as the investigator or whether a different District or other employee shall act in that capacity. At the same time, the Title IX Coordinator and the Superintendent shall appoint the person who shall make the initial determination of responsibility (initial decision maker). *[The District's policy contains additional language regarding appointment of decision maker. Can be optional language, e.g., {"Ordinarily the building principal shall serve as the initial decision maker..." or "The Superintendent, in consultation with the Title IX Coordinator, shall appoint an initial decision maker on a case-by-case basis."}¹¹]* In all cases, the investigator and the initial decision maker must be properly trained and otherwise qualified (see Sec. II.D "Training", and Section II.G "Conflict of Interest").
7. If the report alleges sexual harassment by the Superintendent, the Title IX Coordinator will inform the School Board Chair and the [_____ *{state title of alternate}* Assistant Superintendent/BA/BM}, the latter of whom shall have authority to seek guidance from the District's general counsel, but shall not delay the District's response to the report as outlined in this Policy.

C. General Provisions and Additional Definitions Relative to Title IX Grievance Process.

1. **Copies and Notices.** Except as specifically stated elsewhere in this Policy, for any document, information or material required to be delivered to a party or to a person assigned with responsibility under the Title IX Grievance Process, the manner of transmittal may be by electronic mail, regular mail or such other manner reasonably calculated to assure prompt delivery with evidence thereof (such as a commercial carrier or other receipted delivery). Hand delivery will only be permitted if made to the District official charged with the specific function under this Policy (e.g., Title IX Coordinator, Superintendent, investigator, decision maker(s), etc.). Any document required to be delivered to a minor or other non-eligible student, must also be delivered to the minor's parent/guardian. Copies should also be sent to a party's advisor if the information for the advisor has been previously communicated to the sending party. (Under federal regulations, copies of the investigative evidence, as well as the investigative report, must be forwarded to a party's advisor. See Sections III.E.3, and III.E.4).
2. **Risk Analysis and Emergency Removal.** At any point during the Title IX Grievance Process, the Title IX Coordinator may arrange for an individualized safety and risk analysis as described in Sec. II.J.5, following which a student may be removed.
3. **Administrative Leave.** At any point during the Title IX Grievance Process, the Superintendent, and at his/her own discretion, and with or without consulting the Title IX Coordinator, may place an employee on administrative leave pursuant to RSA 189:31.
4. **Additional Allegations.** If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that were not included in the previous notice, the

¹¹ [REMOVE] A district with enough trained personnel, can designate specific personnel as decision maker(s), or it may be addressed on a case-by-case basis. However, a decision maker must have adequate training as provided in Sec. II.D, and be free from conflict of interest as provided in Sec. II.G. Districts may find it more cost effective to retain an independent "decision maker", and even the investigator, rather than maintain staff trained in accordance with the standards discussed in Sec. II.D.

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District shall simultaneously provide notice of the additional allegations to the parties whose identities are known.

5. No Interference with Legal Privileges. At no point in process will the Title IX Coordinator, the investigator, any decision maker, or any other person participating on behalf of the District, require, allow, rely upon, or otherwise use questions or evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege (e.g., doctor/patient, attorney/client, clergy, etc.), unless the person holding such privilege (parent/guardian for minor student) has waived the privilege in writing to use the information with respect to the Title IX Grievance Process.
6. Consolidation of Complaints. The District may consolidate formal complaints of allegations of sexual harassment where the allegations of sexual harassment arise out of the same facts or circumstances and the formal complaints are against more than one respondent; or by more than one complainant against one or more respondents; or by one party against the other party. When the District has consolidated formal complaints so that the grievance process involves more than one complainant or more than one respondent, references to the singular “party”, “complainant”, or “respondent” include the plural, as applicable.
7. Remedies: Range of Disciplinary Sanctions and Remedial Actions Upon Final Determination of Responsibility.
 - a. “Disciplinary sanctions” are consequences imposed on a respondent when s/he is found responsible for sexual harassment under this Policy. Remedial actions are actions intended to restore or preserve a complainant’s equal access to the educational programs and activities of the District.
 - b. “Disciplinary sanctions” against an employee respondent may include any available sanction available for the discipline of employees, up to and including dismissal or non-renewal for any other violation of Board policy, NH Code of Conduct for Educational Professionals, applicable individual or collective bargaining contract, or state or federal laws or regulations.
 - c. “Disciplinary sanctions” against a student may include any available discipline or sanction, up to and including expulsion, under the policies, rules and procedures that establish the district’s comprehensive student code of conduct.
 - d. “Remedial actions” as to a respondent after a final finding of responsibility, whether employee or student, may include the imposition upon a responsible respondent of any additional non-disciplinary measures appropriate to effecting a remedy for sexual harassment, and may include such measures as no-contact requirements, scheduling adjustments, removal or exclusion from extracurricular activities, class reassignments, limits on future class registrations, restrictions on access to various spaces in the school buildings, reassignment of attendance, and similar measures fine-tuned to respond appropriately to the circumstances surrounding a successful complainant’s right to access the district’s program and activity.

Additional remedial actions may include recommendations that a school-wide or system-wide response is needed in order to respond to the sexual harassment in a way that is not clearly unreasonable under the circumstances. In such cases, the Superintendent shall provide additional staff training, harassment prevention programs,

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or such other measures as determined appropriate to protect the safety of the educational environment and/or to deter sexual harassment.

D. Timeframe of Grievance Process.

The District shall make a good faith effort to conduct a fair, impartial grievance process in a timely manner designed to provide all parties with a prompt and equitable resolution. It is expected that in most cases, the grievance process will be concluded through at least the determination of responsibility decision within 80 days after filing the formal complaint.¹² In more complex cases, the time necessary to complete a fair and thorough investigation or other circumstances mean that a determination of responsibility cannot reasonably be made within that timeframe.

1. Summary of Grievance Process Timeline. *[With the exception of paras b&c, the below are timeframes recommended by NHSBA. Both para. b & c, however, are minimum timeframes mandated under the federal regulations.]*

- a. Investigation 20 +/- days as the complexity of the case demands (Sec. III.E.1)
- b. 10 days for reviewing information prior to conclusion of investigation
- c. 10 days after receiving report to respond to report
- d. 10 days for decision maker to allow initial questions
- e. 10 days for responses to questions
- f. 10 days for questions and responses to follow-up questions.
- g. 10 days for determination of responsibility decision
- h. 10 days for appeal (6 additional days for administrative steps)
- i. 10 days for argument/statement challenging or supporting determination
- j. 10 days for decision on appeal

2. Delays and Extensions of Time. At any stage of the grievance process, the District (through the Superintendent, or if the Superintendent is the respondent, the Title IX Coordinator or designee) may for good cause allow for temporary delays or extensions of time upon request of either party, or on his/her own initiative. Examples of good cause may include such things as availability of parties or witnesses, school or school administrative office holidays or vacations, referral back to an earlier stage of the grievance process, concurrent law enforcement or other agency activity, or need to obtain interpreters or accommodation of disabilities. For any such delay or extension of time, the Superintendent or the Title IX Coordinator will provide written notice to the parties of the delay/extension and the reason(s).

E. Investigation.

The Title IX Coordinator will coordinate the investigation. The investigator shall be as appointed pursuant to Sec. III.B.5.

1. The Title IX Coordinator may conduct the investigation, or, in consultation with the Superintendent, designate another qualified person to investigate. The investigation and investigator must:

¹² [REMOVE] This time frame may be modified. The board should establish a realistic time frame that is achievable and may want to seek a recommendation from the board attorney. The board is required to provide a "prompt" resolution of formal complaints and should strive to balance the need for an expeditious process with the need to provide school officials and parties sufficient time for action at each step in the grievance process. Additional time is provided for the appeals phase of the process.

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- a. Include objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence. (Evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such evidence about the complainant's prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent.)
 - b. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on either of the parties;
 - c. Provide an equal opportunity for the parties to present witnesses, and other inculpatory and exculpatory evidence;
 - d. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
 - e. Provide the parties with the same opportunities to have others present during any interview or other part of the investigation, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. The investigator may restrict any others from participating, as long as the restrictions apply equally to both parties;
 - f. Provide, to a party (e.g., respondent or complainant – and parent/guardian as appropriate) whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate within the timeframes established in Sec. III.D, below.
 - g. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint;
2. Prior to completion of the investigative report, the District, through the Title IX Coordinator, must send to each party and party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report;
 3. The investigator must prepare a written investigative report that fairly summarizes relevant evidence, including, without limitation, witness credibility, discrepancies, inculpatory and exculpatory information, and relevant District policies, rules and regulations, and the manner in which the same were made known to the pertinent school populations or specific parties. The investigative report shall include a description of the procedural steps taken, starting with the receipt of the formal complaint, and continuing through the preparation of the investigative report, including any notifications to the parties, interview with parties and witnesses, site visit, and methods used to gather evidence.
 4. The investigator shall provide the investigative report in hard copy or electronic format to the Title IX Coordinator, to each party and each party's advisor, if any. Each party will have 10 days from receipt to provide the Title IX Coordinator a written response to the investigative report.
 5. It serves all parties when investigations proceed diligently and conclude within a reasonable time, which may vary case by case. In most cases, it is expected that the investigator will conclude the initial investigation, and provide the parties the evidence and other information required under

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Sec. III.E.2. Not more frequently than every other week, any party may request the Title IX Coordinator to obtain and provide the parties with a basic status report on the investigator's progress toward completion. In most cases, the investigator should conclude the investigation within 10-20 days[NHSBA recommends] after receiving a Formal Complaint.

F. Determination of Responsibility and Initial Decision Maker.

The determination of responsibility of the respondent shall be made by the initial decision maker as appointed pursuant to Section III.B.5.

1. Prior to making a determination of responsibility, the initial decision maker will afford each party 10 days [NHSBA recommends] to submit written, relevant questions to the initial decision maker that the party wants asked of any party or witness.
2. The initial decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the question and evidence concern specific incidents of the complainants prior sexual behavior with respect to the respondent and are offered to prove consent¹³.
3. The initial decision maker will provide the questions to the party/witness, with copies to each party, and provide no less than 10 days[NHSBA recommends] for written responses, likewise to be provided to each party.
4. The initial decision maker will provide 5 days[NHSBA recommends] each for supplementary, limited follow-up questions and 5 days[NHSBA recommends] for answers, and may provide for additional rounds of follow-up questions, as long as the provision is extended to both parties equally.
5. The initial decision maker may not make any creditability determinations based on the person's status as a complainant, respondent or witness.
6. The respondent must be deemed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
7. The initial decision maker may impose disciplinary sanctions and remedies as described in Section III.C7, above.
8. The standard to be used for formal complaints in determining whether a violation has occurred and/or that the respondent is responsible is the preponderance of the evidence standard,¹⁴ which is only met when the party with the burden convinces the fact finder (the initial decision maker) that there is a greater than 50% chance that the claim is true (i.e., more likely than not).

¹³ [REMOVE] The Federal regulations neither provide a definition for consent, nor require a District to have a specific definition.

¹⁴ [REMOVE] The regulations allow districts to choose between the "preponderance of the evidence" or "clear and convincing" standard, as long as it applies the same standard to both employee and student cases. NHSBA recommends using the preponderance standard as that is the one used in all other cases heard within the school context. If a district determines to elect the higher evidentiary standard, it should consult with its private attorneys for language and advice.

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9. The initial decision-maker must issue a written determination/decision within 10 days [*NHSBA recommends*] after the close of the period for responses to the last round of follow-up questions. The written "Initial Determination of Responsibility" must include:
 - a. Identification of the allegations potentially constituting sexual harassment;
 - b. A description of the procedural steps taken from the receipt of the formal complaint through the Initial Determination of Responsibility, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of the District's applicable codes of conduct, policies, administrative regulations or rules to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether or not the respondent is responsible for sexual harassment), and any disciplinary sanctions or remedies; and
 - f. The District's procedures and permissible bases for the complainant and respondent to appeal (as set forth in Section III.H, below).
10. The decision maker shall provide the Initial Determination of Responsibility to the Title IX Coordinator, the Superintendent and the parties simultaneously.

G. Dismissal of a Formal Complaint.

1. The District must dismiss a formal complaint with regard to Title IX sexual harassment if the alleged conduct:
 - a. Would not constitute sexual harassment, even if proved;
 - b. Did not occur in the District's education program or activity; or
 - c. Did not occur against a person in the United States.
2. The District may dismiss a formal complaint with regard to Title IX sexual harassment if at any time during the investigation or determination of responsibility stage(s):
 - a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - b. The respondent is no longer enrolled or employed by the District; or
 - c. Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
3. Prior to dismissal of a complaint, the person responsible at that stage shall consult with the Superintendent.
4. Upon dismissal of a formal complaint, the District must promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

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The dismissal of a formal complaint under Title IX does not preclude the District from continuing any investigation or taking action under other District policies, code of conduct or administrative rules/regulations. In some cases, the District may have an obligation to continue an investigation and proceed under a different policy or mandated process.

H. Appeals Process.

1. Either party may appeal the Initial Determination of Responsibility or the dismissal of a formal complaint or any allegation in a formal complaint by notifying the Superintendent in writing (“written appeal”), with a copy to the Title IX Coordinator. If there are multiple determinations of responsibility, the written appeal shall specify which ones are included in the appeal. The written appeal must be received by the Superintendent within 10 days *[NHSBA recommends]* of the Initial Determination of Responsibility or written notice of dismissal being communicated to the parties.
2. An appeal under this Policy may only be based upon one or more of the following bases, which must be stated specifically in the party’s written appeal:
 - i. Procedural irregularity that affected the outcome of the matter;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
 - iii. The Title IX Coordinator, investigator(s), or decision-maker(s) 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.
 - iv. *[Additional bases may be added by a district if made available equally to both parties].*

Appeals for any other reason or upon any determination of responsibility not included in the written appeal will not be heard.

Appeals pertain only to the determination of responsibility and non-disciplinary remedies. Once a determination of responsibility is final per Sec. III.I, below, appeals of disciplinary sanctions may be made pursuant to the District’s ordinary review process for discipline, or, to the extent applicable, any statutory or other processes provided under collective bargaining agreements or individual contracts.

3. Within 3 days *[NHSBA recommends]* of receipt of the written appeal, the Superintendent shall appoint a decision maker for appeal (“appeals decision maker”),¹⁵ who must have adequate training as provided in Section II.D, be free from conflict of interest as provided in Section II.G, and may not be the same person as the initial decision maker, the person who ordered dismissal, the investigator(s), or the Title IX Coordinator. Upon the appointment of the appeals decision maker, the Superintendent shall provide a Notice of Appeal to each party and to the Title IX Coordinator, with a copy of the written appeal. The Notice of Appeal must include information about all deadlines and timeframes in the appeal stage.

¹⁵ Although the school board is not precluded from serving as a decision maker with respect to appeals, before it may do so, each member of the board must meet both the training and conflict of interest requirements described in Sections II.D and II.G. Such training may be provided on an as-needed basis, but because of necessary timelines, the framework will need to be in place long before a case is appealed.

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4. Each party shall have 10 days *[NHSBA recommends]* from the date the Notice of Appeal is delivered to the parties to submit to the appeals decision maker a written statement, with copies to the Superintendent, Title IX Coordinator, and other party a statement (“appeal statement”) in support of, or challenging, the determination of responsibility or dismissal.
5. Each party shall provide copies of the appeal statement to the other party, the Superintendent, and the Title IX Coordinator at the same time the appeal statement is given to the appeals decision maker. If the basis of the appeal is newly available evidence affecting the outcome, the party shall submit such evidence or a summary of such evidence along with the party’s appeal statement.
6. The appeals decision maker may refer an appealed issue back to a prior point in the grievance process, with written notice to the parties, the Superintendent and the Title IX Coordinator.
7. The appeals decision maker shall provide a written appeals decision after considering the record and the parties’ appeal statements. The appeals decision maker will only overturn the Initial Determination of Responsibility upon a conclusion that it was clearly erroneous (i.e., either made on unreasonable grounds, or without any proper consideration of the circumstances). If the basis or one of the bases for the appeal was new evidence, the appeals decision maker may either make a determination of responsibility regarding that evidence, or refer it back to the appropriate stage of the Title IX Grievance Process. The written appeals decision will describe the result(s) of the appeal and the rationale, with copies provided to the parties, Superintendent and Title IX Coordinator, no more than 10 days *[NHSBA recommends]* after receiving the last of the parties’ written statements per Section III.H.5.

- I. Finality of Determination of Responsibility.** The determination regarding responsibility becomes final either on the date that the recipient, through the Superintendent, provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal of the Initial Determination of Responsibility would no longer be considered timely. The final determination shall be identified as the Title IX Decision.

Once the Title IX Decision is final, the District may implement remedies and disciplinary sanctions. The Title IX Coordinator is responsible for effective implementation of any non-disciplinary remedies, with the assistance of building and District administrative personnel, while disciplinary sanctions will be imposed by persons charged with such responsibilities under other Board policies, regulations or administrative procedures. The District may also proceed against the respondent or complainant pursuant to the District’s applicable code of conduct or other Board policies, collective bargaining agreement, individual contract or administrative rules/regulations/procedures. The issue of responsibility for the conduct at issue shall not be subject to further review or appeal within the District.

J. Informal Resolution.

At any time prior to reaching a determination regarding responsibility (but only after the filing of a formal complaint), the District may offer an optional informal resolution process¹⁶ (e.g., mediation, arbitration), provided that the District:

1. Provides written notice to the parties disclosing:
 - a. The allegations of the formal complaint;

¹⁶ [REMOVE] The regulations do not require districts to offer an information resolution process. When it does offer the process, it must adhere to the provisions included in this Sec. III.J.

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- b. The requirements of the information resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to an informal final resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
 - c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. Obtains the parties' voluntary written consent to the informal resolution process; and

In no event may the District offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

District Policy History:

NHSBA recommends that all districts adopt this sample policy as quickly as possible. Accordingly, we are recommending that districts waive any requirement of "2 readings" before adopting this policy. The board could also at the same time require that the policy be scheduled for review and revision over the succeeding months after the initial adoption.

Legal References:

Title IX of the Education Amendments of 1972, 20 U.S.C 1681, et seq 20 U.S.C. §1232g, Family Educational Rights and Privacy Act
34 CFR. Part 99, Family Educational Rights and Privacy Act Regulations
34 CFR 106.8, Designation of responsible employee and adoption of grievance procedures.
34 CFR 106.30, Definitions
34 CFR 106.44, Recipient's response to sexual harassment
34 CFR 106.4, Grievance process for formal complaints of sexual harassment
34 CFR 106.71, Retaliation
RSA 193:38, Discrimination in Public Schools
NH Dept of Ed. Rules Ed 303.01 (i), School Board Substantive Duties
Ed 303.01(j), Substantive Duties of School Boards; Sexual Harassment Policy

Legal References Disclaimer: These references are not intended to be considered part of this policy, nor should they be taken as a comprehensive statement of the legal basis for the Board to enact this policy, nor as a complete recitation of related legal authority. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

When adopting this sample or variation of the same, a district should not include the NHSBA history or NHSBA policy notes appearing below. The district should, to the extent possible, include its own adoption/revision history, as well as the legal references and disclaimer as indicated above.

NHSBA history: New policy – June 2020.

NHSBA revision notes, June 2020, this new policy is intended to replace former samples JBAA and GBAA. This policy is intended to reflect the requirements of new federal regulations pertaining to Title IX of the Education Amendments Act of 1972. In general, the new regulations impose several procedural steps in responding to sexual

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harassment, create a new definition of sexual harassment, and require a district to respond promptly, equitably (to complainants and “respondents” (alleged perpetrators)), and in a manner that is not deliberately indifferent whenever it has actual knowledge of sexual harassment in an educational program or activity of the District.

w/p-update/2020/spring/ACAC Sexual Harassment (f) 2020-U2

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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 (<https://schoolboard.convalsd.net/district-policies/gbaa-sexual-harassment-employeesstaff/>)

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

< IMGA - Service Animals

JBAA-R Sexual Harassment and Sexual Violence Report Form

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

JICK – Pupil Safety And Violence Prevention

I. General Statement of Policy and Prohibition Against Bullying and Cyberbullying

The Contoocook Valley School District is committed to providing all pupils a safe school environment. Conduct constituting bullying or cyberbullying will not be tolerated, and is prohibited by this policy in accordance with RSA 193-F. This policy applies to all pupils and school-aged persons on school property and participating in school functions, regardless of their status under the law.

The Superintendent is responsible for ensuring that this policy is implemented.

II. Definitions

The following definitions apply to this policy:

A. Bullying: a single significant incident or pattern of incidents involving a written, verbal, or electronic communication, or a physical act or gesture, or any combination thereof, directed at another pupil which:

1. Physically harms a pupil or damages the pupil's property;
2. Causes emotional distress to a pupil;
3. Interferes with a pupil's educational opportunities;
4. Creates a hostile educational environment;
5. Substantially disrupts the orderly operation of the school.

Bullying also includes actions motivated by an imbalance of power based on a pupil's actual or perceived personal characteristics, behaviors, or beliefs, or motivated by the pupil's association with another person and based on the other person's characteristics, behaviors, or beliefs.

B. Cyberbullying: bullying (as defined above) undertaken through the use of electronic devices.

C. Electronic devices: include, but are not limited to, telephones, cellular phones, computers, pagers, electronic mail, instant messaging, text messaging, and websites.

D. Perpetrator: a pupil who engages in bullying or cyberbullying.

E. School property: all real property and all physical plant and equipment used for school purposes, including public or private school buses or vans.

F. Victim: a pupil against whom bullying or cyberbullying has been perpetrated.

G. Educational opportunities: the curricular and extra-curricular programs and activities offered by the District.

H. Interference with educational opportunities: a single significant incident or pattern of incidents involving a written, verbal, or electronic communication, or a physical act or gesture, or any combination thereof which impedes a pupil's ability to participate in, or access, the educational opportunities offered by the District. The determination as to whether an incident or a pattern of incidents interferes with a pupil's educational opportunities shall be made by the person investigating the reported incident(s).

I. Hostile educational environment: a single significant incident or pattern of incidents that is so severe and pervasive that it effectively denies a student equal access to the District's educational opportunities. The determination as to whether an incident or pattern of incidents has created a hostile educational environment shall be made by the person investigating the reported incident(s).

J. The determination as to whether a single significant incident or a pattern of incidents causes a "substantial disruption to the orderly operation of the school" shall be made by the person investigating the reported incident(s), and shall be based on the totality of the circumstances, and may include disruptions to curricular or extra-curricular programs and activities offered by the District.

In accordance with RSA 193-F:4, the Contoocook Valley School District reserves the right to impose discipline for bullying and/or cyberbullying that:

Occurs on, or is delivered to, school property or a school-sponsored activity or event on or off school property; or

Occurs off of school property or outside of a school-sponsored activity or event, if the conduct interferes with a pupil's educational opportunities or substantially disrupts the orderly operations of the school or school--sponsored activity or event.

III. Reporting Procedure

The Principal of each school is responsible for receiving oral or written reports of bullying or cyberbullying. The Principal may designate, in writing, an additional person to receive such reports.

Student or Parent Reports

1. Any student who believes that he or she has been the victim of bullying or cyberbullying, as defined in Section II, above, should immediately report the alleged act(s) to the Principal; however, if the student prefers, he/she may inform any school employee or volunteer.
2. Students or parents who have witnessed or who have reliable information that a pupil has been subjected to bullying or cyberbullying should immediately report the same to the Principal, or, if the student or parent prefers, he/she may inform any school employee or volunteer about the alleged bullying or cyberbullying.

3. Forms to report incidents of alleged bullying or cyberbullying shall be available at the Principal's office. Use of the form is encouraged, but not required. If the Principal or his/her designee receives the report verbally, he/she shall reduce the report received to writing within twenty-four hours of receiving the information.

Reports by Staff, Volunteer, or Employees of a Company Under Contract with the School District, or with any school in the Contoocook Valley School District

1. Any school employee, volunteer, or employee of a company under contract with the Contoocook Valley School District, who has witnessed or has reliable information that a pupil has been subjected to bullying, or cyberbullying as defined in Section II above, shall report such incident to the Principal or his/her designee as soon as reasonably possible.

IV. Notice to Parents/Guardians

Within 48 hours of receiving a report of alleged bullying or cyberbullying, the Principal, or his/her designee, shall give notice of the report of the alleged incident to the parent(s) or guardian(s) of the victim and the perpetrator. The report shall be made by telephone or in writing; if made by telephone, a record of the report shall be made. The record should include, at a minimum, the date and time of the call. Any such notification under this policy must comply with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g. At a minimum, the notice shall advise the individuals involved of the nature of the incident, the date and time the report was received, and the procedures described in this policy. In accord with FERPA, the notice shall not contain any personally identifiable information obtained from student education records.

V. Waiver of Notification Requirement

The Superintendent may, within the 48 hour time period referenced in Section IV of this policy, grant the Principal or his/her designee a written waiver from the notification requirement in Section IV of this policy, if the Superintendent or his/her designee deems such waiver to be in the best interest of either the victim or the perpetrator. The granting of a waiver does not negate the responsibility to follow the other procedures set forth in this policy.

1. The Principal or his/her designee is responsible for investigating reports of bullying or cyberbullying. The superintendent reserves the right to appoint another individual to conduct the investigation.

2. Investigations shall be initiated within five (5) school days of the date that the incident is reported to the Principal or his/her designee, and shall be completed within 10 school days.

3. If the Principal or his/her designee requires additional time to complete the investigation, the Superintendent or his/her designee may extend the time period for the investigation by up to seven (7) school days. Any such extension shall be in writing, and the Superintendent or his/her designee shall provide all parties involved with written notice of the granting of the extension.

4. Upon completion of the investigation, the Principal or his/her designee shall draft a written investigation report. The report must include, at a minimum, a description of the scope of the investigation, the findings, and the actions taken (i.e., the response to remediate, discipline, non-disciplinary interventions, etc).

5. Upon completion of the investigation, the Principal or his/her designee shall report all substantiated incidents of bullying or cyberbullying to the Superintendent or his/her designee.

6. Within ten (10) school days of the completion of the investigation, the Principal or his/her designee shall provide the parents of the alleged victim and the alleged perpetrator with written notice of the results of the investigation (i.e., substantiated or unsubstantiated) and the available remedies and assistance. The notice shall comply with FERPA, and other State and Federal laws concerning student privacy.

VI. Response to Remediate Substantiated Incidents of Bullying or Cyberbullying

The Principal or his/her designee shall develop a response to remediate any substantiated incident of bullying or cyberbullying. The response should be designed to reduce the risk of future incidents, and where appropriate, to offer assistance to the victim or perpetrator.

In those cases where a perpetrator or victim is identified as a student with an educational disability, the Principal's response to remediate any substantiated incident of bullying or cyberbullying shall be presented to the IEP Team. The IEP Team is permitted to amend or augment the response in a manner necessary to ensure that the perpetrator and/or victim receives a free, appropriate public education, while still taking appropriate measures to remediate bullying.

VII. Discipline and/or Interventions

If, after investigating pursuant to Section VI of this policy, the Principal or his/her designee concludes that a pupil engaged in bullying or cyberbullying, that student may be subject to appropriate disciplinary action, which may include, but is not limited to, suspension and expulsion. Any such disciplinary action shall be taken in accordance to applicable board policy and legal requirements.

VIII. Prohibition Against Retaliation and False Accusations

All individuals are prohibited from retaliating or making false accusations against a victim, witness, or anyone else who in good faith provides information about an act of bullying or cyberbullying. The Principal or his/her designee shall investigate claims of retaliation or false accusations, and if substantiated, the retaliator and/or the false accuser may be subject to discipline, including but not limited to, suspension or expulsion.

Students who falsely accuse other students of bullying or cyberbullying may also be subject to disciplinary action, which may include, but is not limited to, suspension and expulsion. Any such disciplinary action shall be taken in accordance to applicable board policy and legal

requirements.

At the discretion of the Principal or his/her designee, students who commit an act of bullying or cyberbullying or falsely accuse another of the same as a means of retaliation or reprisal may, either in addition to discipline or in lieu of discipline, receive non-disciplinary interventions. Interventions are not considered disciplinary in nature.

Nothing in this policy shall supersede the disciplinary procedures of the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act, including the protections offered through the manifestation determination process.

IX. Training

The Superintendent shall ensure that school employees, regular school volunteers, and employees of a company under contract with the Contoocook Valley School District, and/or any of the schools within the Contoocook Valley School District, who have significant contact with pupils annually receive training on this policy for the purpose of preventing, identifying, responding to, and reporting incidents of bullying or cyberbullying.

The School District shall provide age-appropriate educational programs for pupils and parents in preventing, identifying, responding to, and reporting incidents of bullying or cyberbullying.

X. Notice of Policy

The Superintendent or his/her designee shall provide written notice of this policy to students, parents, legal guardians, school employees, school volunteers, and employees of companies under contract with the Contoocook Valley School District, or any school within the Contoocook Valley School District, through appropriate references in the student and employee handbooks, by publishing a copy of this policy on the District/SAU website, by providing companies under contract with the Contoocook Valley School District, with a copy of the policy, by providing training on the policy in accord with RSA 193-F, or through other reasonable means.

At the commencement of each school year, this policy shall be provided to all students. All students who enroll during the course of the school year shall receive a copy of this policy at the time they enroll.

XI. Capture of Audio and Video Recordings on School Buses

Pursuant to RSA 570-A:2, notice is hereby given that the ConVal School Board authorizes audio recordings to be made in conjunction with video recordings of the interior of school buses while students are being transported to and from school or school activities.

XII. Report to the Department of Education

The Principal or his/her designee is responsible for reporting substantiated incidents of bullying to the Superintendent or his/her designee.

The Superintendent or his/her designee shall, on an annual basis, or as requested, report substantiated incidents of bullying and cyberbullying to the School Board and/or Department of Education. The reports shall not contain any personally identifiable information pertaining to any pupil.

Legal Reference:

RSA 193-F, Pupil Safety and Violence Prevention Act of 2000

RSA 570-A, Wiretapping and Eavesdropping (if applicable – see Note and Section XIII, above)

NH Ed R. 306.04(a)(8), Student Harassment

Category: P

See also, JBAA, JIC, JICD, IHBA

1st Read: November 16, 2010

2nd Read: December 7, 2010

Adoption: December 7, 2010

Amended: April 3, 2012

< JICJ - Authorized Use Of Personal Electronic Devices

JICL - Internet Safety and Responsible Use - for Students

(<https://schoolboard.convalsd.net/district-policies/jicl-internet-safety-and-responsible-use-for-students/>)

COMMUNICABLE & INFECTIOUS DISEASES*Category: Recommended**Related Policies: EBCF, GBGA, IHAM, JLCA, JLCB & JLCG***ADOPTION NOTES –**

This text box, and all highlights within the policy should be removed prior to adoption.

- (a) *Sample policy ALA is a new policy intended to address responses to a broad class of communicable diseases, and replaces former identical sample policies JLCA/GBGA/IHAMC, which addressed only HIV/AIDS. This policy will overlap but extend further than current sample EBCF which is more specific to larger scale pandemic/epidemic emergencies.*
- (b) *General – As with all sample policies, NHSBA recommends that each district carefully review this sample prior to adoption to assure suitability with the district's own specific circumstances, internal coding system, current policies, and organizational structures. Highlighted language or blank, underscored spaces indicate areas which Boards must change/complete to reflect local personnel titles, policy references, duty assignments etc.*
- (c) *{**} indicates a reference to another NHSBA sample policy. A district should check its own current policies and codes to assure internal consistency.*

A. POLICY:

Students and employees of the District are expected to attend the schools of the district without being infected with serious communicable diseases. Nonetheless, the Board recognizes that staff, students, volunteers and others may come in contact with bloodborne pathogens, viruses and other communicable diseases during the school day or school sponsored activities, or may carry those pathogens, viruses and diseases unknowingly into the school community. The Board adopts this policy as a means to minimize risk and respond to these health concerns while respecting the rights of all students and employees, including those who are so infected.

As described in Board policy {**}JLCG, RSA 200:39 permits the exclusion from school of students who exhibit symptoms of contagion, or are a hazard to him/herself or others. As provided in this policy, determinations as to inclusion or exclusion of students or employees with communicable diseases from school will take into account the educational implications for the student and others with whom he or she comes into contact, recommendations from the New Hampshire Department of Health and Human Services ("NHDHHS"), the New Hampshire Department of Education, and the United States Public Health Services Centers for Disease Control ("CDC"). Diseases which will implicate this policy, include, but are not necessarily limited to, HSV related diseases such as Chickenpox, Shingles, Hepatitis B, and Infectious Mononucleosis, Acquired Immune Deficiency Syndrome (AIDS), Cytomegalovirus (CMV), or Herpes Simplex Virus (HSV), and other diseases which are from time-to-time identified by public health agencies such as the CDC and NHDHHS.

1. Students.

It is the policy of the District that students with communicable diseases should not be excluded from attending school in their regular classrooms so long as their attendance

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results in a situation where the risk of transmission of illness to students or employees of the School District, or hazard to themselves, is negligible. All decisions regarding inclusion or exclusion shall be made consistent with this section and the procedures set forth in section B of this policy.

2. Employees.

It is the policy of the School Board that employees (which for the purposes of this policy will include individual consultants/contractors, and volunteers) with communicable diseases not be excluded from attending to their customary employment and duties so long as they are physically able to perform tasks assigned to them and so long as their employment results in a situation where the risk of transmission of illness to students or other employees of the District, or hazard to themselves, is negligible.

3. Special Circumstances and Conditions.

The School Board recognizes that some students or employees, because of age, disability or other special conditions, may pose greater risks for the transmission of communicable diseases than other persons infected with the same illness. Examples include children who display biting behavior and students and employees who are unable to control their body fluids or have uncovered wounds. These conditions need to be taken into account and considered in assessing the risk of transmission of the disease and the resulting effect upon the educational program of the student or employment of the employee.

In the instance of diseases causing suppressed immunity, attendance may be denied to a child with suppressed immunity in order to protect the welfare of the child with suppressed immunity when others in the school have an infectious disease which, although not normally life threatening, could be life threatening to the child with suppressed immunity.

B. PROCEDURES WHEN COMMUNICABLE DISEASE IS SUSPECTED:

1. **Reporting.** School District employees, including contracted individuals and/or agencies who are performing contracted responsibilities for the School District, and who become aware of a communicable disease or other potentially serious health problem regarding themselves, or of students or other employees, unless prohibited by statutory confidentiality, they will report it to the school nurse, or building Principal/designee.
2. **Response.** The health risk to others in the school district environment from the presence of a student or employee with a communicable disease shall be determined on a case-by-case basis. In all cases in which the school nurse, or other person designated by the Superintendent, becomes aware that a student or employee of the School District has contracted a communicable disease of the kind in section A of this policy, s/he will take the following steps:
 - a. The parent/guardian(s) of a student will be contacted in order to discuss the situation and determine whatever facts are available; the same information will be communicated promptly among the Superintendent/designee, school nurse and Principal/designee.

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- b. Upon receiving written consent from the parent(s) or guardian of a student or, in the case of an employee, the employee or his/her health care agent (i.e., adult to whom authority to make health care decisions is delegated under an advance directive meeting the requirements of RSA 137-J:20), the school nurse/Superintendent's designee will attempt to confer with the treating physician, if any, in order to determine any significant medical facts concerning the diagnosis of the disease or factors affecting the possible transmission of the disease.
- c. Notify and consult with the health care professionals knowledgeable about the particular disease. Following such consultation, the school nurse, Superintendent or his/her designee, shall determine the immediate, short-term action to be taken relative to educational placement of the student or work assignment for the employee.
- d. When a communicable disease of the kind identified in section A of this policy is suspected or confirmed in an individual, the school nurse shall consult with the Superintendent or designee and appropriate public health officials, to determine whether a student or employee shall be excluded from school or from attending to their customary employment, and whether additional measures are required to protect other members of the school population. Factors specific to individuals, such as biting behaviors, lack of control of body fluids, existence of uncovered wounds or other medically identifiable conditions may also be considered. Recommendations regarding the least restrictive educational placement for a student or continued attendance at work for an employee may be sought on a case by case basis.

In addition to the information obtained in steps a-c, decisions to exclude shall consider criteria from NHDHHS Bureau of Infectious Disease included in its publication *"When Children Should be Excluded or Dismissed from a Childcare Setting"*, or the American Academy of Pediatrics' *"Red Book: Report of the Committee on Infectious Diseases"*, or other general or specific guidance from the NHDHHS or the United States Centers for Disease Control.

- i. Decisions regarding students. Unless the school nurse is unavailable, the ultimate decision to exclude a child from school under this Policy due to a contagious or communicable illness shall be made by the school nurse after consulting with the Superintendent/designee and Principal/designee.

If the school nurse is unavailable, a decision to exclude shall be made by the Superintendent/designee.

If the student is a student with an IEP, 504 plan, or other such individualized learning plan, then decisions regarding alternative settings shall be made according to the applicable laws, regulations and policies.

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Students who are aggrieved by the education plan determinations may appeal said determinations pursuant to state and federal special education law if the infected student is eligible for or claims that s/he is eligible for special education or special education and related services. Excluded students who do not claim that they are eligible for special education or special education and related services, but who are aggrieved by the Superintendent's determinations, may appeal said determinations to the Board.

- ii. Decisions regarding employees. Determinations regarding exclusion or reassignment of employees shall be made by the Superintendent/designee. Absent significant risk to the employee or risk of transmission to students or other employees, the Superintendent shall not alter the job assignment of the infected person. Volunteers are subject to any directives issued by the administration, as are contractors and consultants, subject to the terms of their respective agreements.

If the Superintendent/designee, after taking the steps above, determines that there is a medically recognized risk of transmission of disease in the School setting or that a significant health problem restricts the infected person's ability to work, or presents a substantial hazard to the employee, the Superintendent/designee shall, if necessary, develop an individually tailored plan to accommodate the staff member if possible. Additional persons may be consulted if necessary for gaining additional information, but the infected person must approve of the notification of any additional persons who are informed of the infected person's identity. The Superintendent/designee may consult with legal counsel to ensure that any official action is consistent with state and federal law. If an individually tailored plan is necessary, said plan should be medically, legally, educationally and ethically sound.

- iii. Testing, Social Distancing and Other Extraordinary Measures. Some infectious diseases, viruses, etc., may be so dangerous and or the risk of casual transmission so great, that effective response will require broader measures. Based upon specific recommendations of local, state and/or federal health authorities, the Superintendent is authorized to implement such additional, extraordinary emergency measures as may be necessary and appropriate to address the health risk: e.g., school closure, population exclusion (stay-at-home type instructions), mandatory screenings, mandatory use of personal protective equipment (PPE's), social distancing orders, administrative leaves or temporary adjustments in duties. These provisions are intended to complement, not replace any provisions of Board policy{**}*Pandemic/Epidemic Emergencies*. Such measures should be taken with prior notice to the Board, if practicable, or as soon as possible thereafter. The Board Chair may determine that the

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circumstances, or the measures implemented by the Superintendent, warrant a special or an emergency meeting of the School Board.

3. Practices to Minimize Contamination in Schools.

Good hygiene practices as recommended by local, county and state health authorities are to be followed at all times when handling blood or other body fluids of any student or employee. Parents and employees are not generally required to advise the school if their child has a communicable disease. (Some exception may exist under specific legislation or Executive/emergency orders, in which, such legislation or Executive orders shall supersede this policy to the extent necessary to remove any conflict.) Because the District may not rely on self-reporting, it is appropriate to adopt procedures for the handling of body fluids from any child or employee. This also eliminates the need to notify all maintenance, transportation and building personnel if the District becomes aware of a student or employee with communicable diseases. It is recommended the following procedures be used on a routine basis when blood or any other body fluids including vomitus and fecal or urinary incontinence are involved.

- a. Gloves should be worn when cleaning up any body fluids.
- b. Spills should be cleaned up, the affected area washed with soap and water and disinfected with bleach (one part bleach to ten parts water), or another disinfectant.
- c. All disposable materials, including gloves and diapers, should be discarded into a plastic bag before discarding in a conventional trash system. The mop should also be disinfected with the bleach solution described in B above.
- d. Toys and other personal non-disposable items should be cleaned with soap and water followed by disinfection with the bleach solution before passing to another person. A normal laundry cycle is adequate for other non-disposable items.
- e. Persons involved in the clean-up should wash their hands afterward.

Additional precautions may be recommended or required in certain instances (e.g., social distancing, masks, etc.).

4. Confidentiality and Data Privacy.

Public concern regarding communicable diseases is neither an excuse nor defense for the violation of data privacy rights of students or employees who have or are rumored to have such illnesses.

- A. Personally identifiable health information regarding students is private data and is not to be disseminated to the public or to staff without the strict observance of student privacy rights.

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- B. Personally identifiable health data and information regarding employees is private data and may not be released to the public nor to fellow employees without strict observance of privacy rights of public employees.
- C. Parents of other children attending the school, or other school employees, may only be notified of a possible exposure to a communicable disease to the extent permitted, or required, under applicable law, regulations or Executive order. In general, such information will not identify the particular student or employee who has the disease.
- D. Any District employee who violates the confidentiality provisions of this policy shall be subject to discipline. A confidentiality breached by an independent contractor/consultant, could result in termination of the contract for cause.

5. Staff and Student Education.

The School Board recognizes that the education of its residents, staff, and students regarding the risks involved in the spread of infectious diseases in the school setting will help to minimize the risk of transmission to other students and employees while protecting the rights of infected students and employees.

- A. All school district employees should receive instruction regarding appropriate hygienic practices for use in school settings, precautions to be employed where contagious diseases may be encountered and community resources for referral and information.
- B. Any information provided as part of a student's instruction pertaining to sexually transmitted diseases shall comply with Board policy {**}IHAM.

6. Implementation.

The Superintendent is authorized to implement this policy through and procedures, or administrative directives which s/he deems necessary or appropriate.

District Policy History:

First reading: _____

Second reading/adopted: _____

District revision history:

Legal References:

RSA 189:1-a, Duty to Provide Education

RSA 189:31, Removal of Teacher

RSA 186-C, Special Education

RSA 193:1, Duty of Parent; Compulsory Attendance by Pupil

RSA 193:3, Change of School or Assignment, Manifest Educational Hardship or Best Interest, Excusing Attendance

RSA 200:32, Physical Examination of Student

RSA 200:36, Medical Examination of School Personnel

RSA 200:39, Exclusion from School

COMMUNICABLE & INFECTIOUS DISEASES

NHDHHS Bureau of Infectious Disease's: "*When Children Should be Excluded or Dismissed from a Childcare Setting*," may be found at:

<https://www.dhhs.nh.gov/dphs/cdcs/documents/childrendismissed.pdf>

Legal References Disclaimer: These references are not intended to be considered part of this policy, nor should they be taken as a comprehensive statement of the legal basis for the Board to enact this policy, nor as a complete recitation of related legal authority. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

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NHSBA history: New policy – July 2020

NHSBA revision notes, July 2020, Sample policy EBCG replaces former identical sample policies JLCAA/GBGAA/IHAMC, which addressed only HIV/AIDS. The new policy is intended to apply to communicable diseases generally. This policy will overlap but extend further than current sample EBCF which is more specific to larger scale pandemic/epidemic emergencies.

w/p-update/2020/spring//JLCA Communicable & Infectious Diseases (d1) 2020-U1

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ELECTRONIC/DIGITAL RECORDS & SIGNATURES*Category: Recommended**Related Policies: DGA, EHAA, EHAB & EHB***ADOPTION NOTES –*****This text box, and all highlights within the policy should be removed prior to adoption.***

- (a) *General – As with all sample policies, NHSBA recommends that each district carefully review this sample prior to adoption to assure suitability with the district's own specific circumstances, internal coding system, current policies, and organizational structures. Highlighted language or blank, underscored spaces indicate areas which Boards must change/complete to reflect local personnel titles, policy references, duty assignments etc.*
- (b) *{**} indicates a reference to another NHSBA sample policy. A district should check its own current policies and codes to assure internal consistency.*
- (c) *Withdrawn and earlier versions of revised policies should be maintained separately as part of the permanent records of the District.*

A. Statement of Policy.

Electronic or digital signatures can take many forms and can be created using many different types of technology. The authenticity and reliability of electronic signatures relating to transactions are dependent on the accompanying processes, supplemental records and the overall context in which records are created, transferred, and signed. The School Board adopts the following policy with respect to the use of electronic records and signatures in connection with its communications with parents, guardians, or other persons having control over a child enrolled in the District.

B. Definitions.

"Attribution" or "Attributable to" – An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable. The effect of an electronic record or electronic signature attributed to a person under paragraph I is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

"Digital" – As used in the title or otherwise in this policy is intended to have the same meaning as or as a sub-category of "Electronic".

"Electronic record" – Means a record created, generated, sent, communicated, received, or stored by electronic means.

ELECTRONIC/DIGITAL RECORDS & SIGNATURES

"Electronic signature"– Means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Record"– Means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

C. Applicability.

This policy applies to parents, guardians, and other persons having control or charge of a child enrolled or formerly enrolled in the District, eligible students as used in the Family Educational Rights and Privacy Act; and also to individuals affiliated with the District, whether employees or not, paid or unpaid, including but not limited to teachers, administrators, staff, students, affiliates, and volunteers.

D. Acceptance, Use and Issuance of Electronic Records and Signatures.

1. The District may receive and accept as original, electronic records and signatures so long as the communication, on its face, appears to be authentic and is not otherwise precluded by law.
2. The District, through the Superintendent, shall maintain an electronic recordkeeping system that can receive, store, and reproduce electronic records and signatures relating to communications and transactions in their original form. Such system should include security procedures whereby the District can:
 - a) assure signature intent,
 - b) verify the attribution of a signature to a specific individual,
 - c) allow for reliable access and use to those who would have access to the record if in hard copy form for the period required under the District's Data/Records Retention Policy (EHB{**}) and Schedule (EHB-R{**}),
 - d) detect changes or errors in the information contained in a record submitted electronically,
 - e) protect and prevent access, alteration, manipulation or use by an unauthorized person, and
 - f) provide for nonrepudiation through strong and substantial evidence that will make it difficult for the signer to claim that the electronic representation is not valid.

ELECTRONIC/DIGITAL RECORDS & SIGNATURES

3. ***[optional – this provision is a recommended best practice, but in many respects is difficult to implement. Before including this provision, the IT Director and Superintendent should explore feasibility and report to the Board/Policy Committee. Adjustments could be made to limit the log requirement to certain authorized uses of e-signatures, such as expenditures, contracts, etc..]*** To the extent practicable, the Superintendent will implement and maintain a system to require a secure hard copy log of the PIN/password or actual signature of any individual authorized to provide an electronic signature on behalf of the District, or on behalf of the School Board specifically.
4. The Superintendent shall ensure that all electronic records and signatures are capable of being accurately reproduced for later reference, and are retained until such time as all legally mandated retention requirements are satisfied.
5. Any electronic records or electronic signatures technology shall comply with the District's Data Governance and Security Plan.

E. Electronic Records.

Electronic records created or received by the District shall be appropriately attributed to the individual(s) responsible for their creation and/or authorization or approval. The District shall utilize available technology to implement reliable methods for generating and managing electronic records. Any electronic record filed with or issued by the District may be given full force and effect of a paper communication if the following conditions are satisfied:

1. The communication is an electronic filing or recording and the District, through the School Board Chair, or the Superintendent or his/her delegate, agrees to accept or send such communication electronically; and
2. If a signature is required on the record or communication by any statute, rule or other applicable law or School Board policy, the electronic signature must conform to the requirements set forth in this policy governing the use of electronic signature, and any other standards required by applicable law or regulation.

F. Electronic Signatures.

An electronic signature may be used whenever a signature is required, unless there is a specific statute, regulation, or policy that requires records to be signed in non- electronic form. The issuance and/or acceptance of an electronic signature by the District may be permitted in accordance with the provisions of this policy and all applicable state and federal law. If permitted, such electronic signature shall have the full force and effect of a manual signature only if the electronic signature satisfies all of the following requirements:

ELECTRONIC/DIGITAL RECORDS & SIGNATURES

1. The electronic signature identifies the individual signing the document by his/her name and title;
2. The electronic signature is unique to the signer;
3. The District and the other party have agreed to the use of electronic signatures (need not be a formal agreement);
4. The identity of the individual signing with an electronic signature is capable of being validated through the use of an audit trail;
5. The electronic signature and the document to which it is affixed cannot be altered once the electronic signature has been affixed;
6. The electronic signature conforms to all other provisions of this policy and applicable law;

G. Procedures and Practices.

The Superintendent may adopt procedures and/or practices to implement this policy, including for such things as format requirements, regulations with respect to use of email signatures, saving and retention of electronic records, or records transmitted via email.

District Policy History:

First reading: _____

Second reading/adopted: _____

District revision history:**Legal References:**

20 U.S.C. 1232g, Family Educational Rights and Privacy Act (FERPA)

RSA Chapter 294-E, Uniform Electronic Transactions Act

"Electronic Signatures Analysis and Implementation Guide", N.H. Dept. of Information, N.H. Dept. of Administrative Services Technology, N.H. Secretary of State, October 12, 2012

Legal References Disclaimer: *These references are not intended to be considered part of this policy, nor should they be taken as a comprehensive statement of the legal basis for the Board to enact this policy, nor as a complete recitation of related legal authority. Instead, they are provided as additional resources for those interested in the subject matter of the policy.*

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ELECTRONIC/DIGITAL RECORDS & SIGNATURES

NHSBA history: New policy – June 2020.

NHSBA revision notes, June 2020, NHSBA adopted this policy to clarify whether and when electronic signatures or records may be used, and the applicable standards. Corresponding changes have been made to NHSBA samples DIH and DGA.

w/p-update/2020/spring//EHAC Elec (Dig) Records & Signatures (d1)

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