

STUDENT DISCRIMINATION AND HARASSMENT COMPLAINT PROCEDURE

This procedure has been adopted by the school board (the Board) in order to provide a method of prompt and equitable resolution of complaints against students of discrimination, including discriminatory harassment, and retaliation, in accordance with policies AC - Nondiscrimination/Equal Opportunity and ACAA - Harassment and Sexual Harassment of Students.

Definitions

For purposes of this procedure:

- A. A “Complaint” is defined as an allegation that an individual has been discriminated against or harassed by a student on the basis of age, sex, gender identity, sexual orientation, race, creed, color, ancestry or national origin, marital status, familial status, physical or mental disability, religion, or economic status; a complaint includes an allegation that a student has retaliated against an individual for filing a complaint or participating in an investigation concerning, or for opposing, possible discrimination, including discriminatory harassment, or retaliation.

- B. “Discrimination or harassment” means discrimination, including discriminatory harassment, on the basis of race, color, sex, sexual orientation, age, religion, ancestry, national origin, or disability (each of which constitutes a “protected class”). “Discrimination” may include treating individuals differently, or interfering with or preventing them from enjoying the advantages or privileges afforded to others because of their membership in a protected class. “Harassment” may include oral, written, graphic, electronic or physical conduct relating to an individual’s actual or perceived membership in a protected class that is sufficiently severe, pervasive or persistent so as to interfere with or limit the individual’s ability to participate in the school unit’s programs or activities by creating a hostile, intimidating or offensive educational environment. Harassment on the basis of sex shall include acts of “sexual violence,” which refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent. The term "sexual orientation" under state law means having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality. The term “gender identity” under state law means a person's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.

- C. Complaints of bullying and cyberbullying not based on the characteristics described above are to be pursued under Board Policy JICK – Bullying and Cyberbullying.

How to Make a Complaint

- A. Any individual who believes that an individual has been discriminated against or harassed by a student in the school unit's programs or activities, or subjected to retaliation by a student, should report their concern promptly to the Director of Special Services, SAU #9, 176A Main Street, Conway, NH, 03818 (603-447-8368). The individual also may report the concern to the building Principal where the alleged discrimination, including discriminatory harassment, or retaliation occurred. If the allegation concerns the Director of Special Services or the Principal, the individual should report their concern promptly to the Superintendent. Written reports are preferred, but not required. Individuals who are unsure whether discrimination, including discriminatory harassment, or retaliation has occurred, or who need assistance in preparing a written complaint, are encouraged to discuss the situation with Director of Special Services or the Principal.
- B. School unit staff shall promptly report possible incidents of discrimination, including discriminatory harassment, or retaliation by students to the Director of Special Services or the Principal. Parents/guardians, students, and other adults are also encouraged to report any concerns about possible discrimination, including discriminatory harassment, or retaliation committed by students.
- C. Individuals will not be retaliated against for filing a complaint or for participating in an investigation concerning, or for opposing, possible discrimination, including discriminatory harassment, or retaliation. Retaliation is illegal under the state and federal nondiscrimination laws referenced below, and any retaliation by school unit personnel or students will result in disciplinary measures, up to and including dismissal or expulsion.
- D. Individuals are encouraged to utilize the school unit's Complaint Procedure. However, individuals are hereby notified that they also have the right to bypass school district's Complaint Procedure and report incidents of discrimination, including discriminatory harassment, or retaliation to New Hampshire Commission for Human Rights, 2 Industrial Park Drive, Bldg. One, Concord, NH 03301 (telephone: 603-271-2767), and/or to the Federal Office for Civil Rights, U.S. Department of Education, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921 (telephone: 617-289-0111).

Complaint Handling and Investigation

- A. Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws. School administration shall respect the confidentiality of the complainant and the individual(s) against whom the complaint is filed to the extent possible, consistent with the school unit's legal obligations, including the necessity to investigate allegations of discrimination, including discriminatory harassment, and retaliation, to take appropriate disciplinary action, and to ensure the safety of the school community.

- B. School administration shall promptly inform the Superintendent and the person(s) who is the subject of the complaint that a complaint has been received, the conduct allegedly constituting a potential disciplinary violation, and the date and location of the alleged incident(s).
- C. School administration may pursue a prompt and equitable informal resolution of the complaint with the agreement of the parties involved. Any party to the complaint may decide to end an informal resolution process and pursue the formal process described in Section D below, at any point. The informal resolution is subject to the approval of the Superintendent, who shall consider whether the informal resolution is in the best interest of the parties and the school unit in light of the particular circumstances and applicable policies and laws. Mediation shall not be used when a complaint includes allegations of sexual violence.
- D. The Complaint will be investigated by the Director of Special Services, Principal, or other individual designated by the Superintendent. Any Complaint about an employee who holds a supervisory position shall be investigated by a person who is not subject to that supervisor's authority. Any Complaint about the Superintendent should be submitted to the Chair of the School Board, who should consult with legal counsel concerning the handling and investigation of the Complaint.
1. The Complainant and the person who is the subject of the complaint will be provided with an opportunity to be heard and to present witnesses and other evidence as part of the investigation. A student Complainant shall not be required to attend meetings with the subject of the complaint, but may choose to do so as part of the resolution process.
 2. The individual designated to investigate the complaint shall keep a written record of the investigation.
 3. School administration may take interim remedial measures to reduce the risk of further discrimination or harassment while the investigation is pending. Examples of interim measures include, but are not limited to, ordering no contact between individuals, changing schedules or classes, etc.
 4. The individual designated to investigate the complaint shall use a preponderance of the evidence standard (i.e. more likely than not) when evaluating the evidence and shall consult with the Superintendent concerning the investigation, conclusions, and any remedial and/or disciplinary actions.
 5. The investigation shall be completed within 21 business days of receiving the complaint, if practicable.
- E. If the individual designated to investigate the complaint determines that discrimination, including discriminatory harassment, or retaliation occurred, they, in consultation with the Superintendent, will:

1. Determine and take whatever remedial action, if any, is needed to end the discrimination or harassment, remedy its effects and prevent recurrence; and
 2. Determine what disciplinary action should be taken against the person(s) who engaged in discrimination or harassment. Students who engage in discrimination or harassment are subject to disciplinary action up to and including expulsion. School employees who engage in discrimination or harassment are subject to disciplinary employment action up to and including termination.
- F. The individual designated to investigate the complaint shall inform the parties and the parent(s)/guardian(s) of any student party, in writing, of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).
- G. After the conclusion of the investigation, the Complainant or the subject of the complaint may seek an appeal of the findings solely on the basis of either (a) prejudicial procedural error or (b) the discovery of previously unavailable relevant evidence that could significantly impact the outcome. Appeals must be submitted in writing to the Superintendent within 14 calendar days of receiving notice of the outcome of the investigation. Upon receipt of a valid appeal, the Superintendent shall review the written record of the investigation and may conduct further investigation if deemed appropriate. The Superintendent's decision on the appeal shall be provided in writing to the parties within 21 business days, if practicable. The Superintendent's decision shall be final.

Legal Reference:

Americans with Disabilities Act (42 U.S.C. §12101 et seq., as amended; 28 C.F.R. § 35.107(b))
Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 C.F.R. § 104.7(b))
Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681, et seq.; 34 C.F.R. §106.8(b))
Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.; 34 C.F.R. § 110.25(c))
Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d; 34 C.F.R. Part 100)
Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 C.F.R. Part 99)
NH RSA 186:11; 193:38; 193:39; 354-A
NH Code Admin. R. Ed. 303.01(i) and (j)

Cross Reference:

AC - Nondiscrimination/Equal Opportunity
ACAA/JBAA - Harassment and Sexual Harassment of Students

Adopted by the Eaton School Board – May 4, 2020