

## DISCRIMINATION AND HARASSMENT GRIEVANCE PROCEDURE

### A. Purpose.

As described in Board policy AC and other policies referenced there, the District is committed to maintaining a workplace and educational environment that is free from discrimination, harassment, and retaliation\* in admission or access to, or treatment or employment in, its programs, services, activities, and facilities.

**\*NOTE:** Definitions for these terms can be found in policy AC.

This policy provides a grievance process for any complaints of illegal discrimination, harassment, or retaliation that are not addressed by other Board policies. For example, while race-based or ethnicity-based harassment or discrimination could be addressed through the grievance process in this policy, sex discrimination or sex-based harassment must be addressed under policy ACAC.

**See policy AC for those types of discrimination, harassment, or retaliation for which grievance and complaint procedures are set forth in a separate policy.**

The District does not assume responsibility or liability for actions that are unrelated to the District's programs or activities. However, the District may investigate any behavior that occurs on or off District property to the extent that such an investigation is necessary for the District to meet its legal obligations to address discrimination, harassment, and retaliation that negatively impact the education or work environment in the District. The District can address such behavior only when and to the extent that the District has the legal authority to do so.

### B. Reports and Complaints of Discrimination or Harassment.

Under this policy, a **report** is nothing more than providing information to the District regarding conduct or statements that might constitute discrimination, harassment, or retaliation ("Discriminatory Conduct") as described below. A **grievance** or **complaint** (referred to in this policy as a "**Complaint**") is a verbal or written report or complaint of Discriminatory Conduct that objectively can be understood as a request for the District to investigate and make a determination about alleged Discriminatory Conduct. A Complaint is required to initiate the formal Grievance Process as described below.

### C. Reports – Informal Process.

Contact information for the District's Human Rights Officer, Title IX Coordinator, and 504/ADA Coordinator can be found in AC-R(2).

**District employees and volunteers are required to report such conduct as soon as possible, but not later than the end of the next school or work day.** This requirement does not apply if the employee or volunteer is the subject of the conduct, unless any student witnessed or was otherwise impacted by the conduct.

Upon receiving a report, the Human Rights Officer may determine that the incident has been appropriately addressed or may recommend additional action.

1. Reports of prohibited or illegal Discriminatory Conduct should be made to the District Human Rights officer under this policy unless:

- a. The report is about the Human Rights Officer, Title IX Coordinator, or 504/ADA Coordinator, in which case the report may be made directly to the Superintendent or Superintendent's designee, who shall then appoint an alternate to act in place of the disqualified officer.
  - b. The report concerns potential **sex discrimination, sex-based harassment, or retaliation**, in which case the report should be made to the **District Title IX Coordinator** under policy **ACAC**.
  - c. The report concerns potential discrimination, harassment, or retaliation related to a real or perceived **disability** in which case the report should be made to the **District's 504/ADA Coordinator** under this policy.
  - d. The report concerns **harassment that does not involve a protected class** (included in AC), in which case the report shall be made to the **Building Principal** under policy **JICK**.
2. Any person who believes they have been subjected to prohibited or illegal Discriminatory Conduct may report the alleged acts to the District Human Rights Officer in accordance with this policy.

If a student is more comfortable reporting to a person other than the Human Rights Officer (e.g., guidance counselor, teacher, Principal), the student may tell any school district employee or volunteer. The employee or volunteer shall then make a report as discussed above and below in this Section C.

3. Any person who witnesses or receives a report of behavior they believe to be Discriminatory Conduct should report the alleged acts immediately to the District Human Rights Officer.

If a student is more comfortable reporting to a person other than the Human Rights Officer (e.g., guidance counselor, teacher, Principal), the student may tell any school district employee or volunteer. The employee or volunteer shall then make a report per the following paragraph.

**District employees and volunteers are required to report such conduct as soon as possible, but not later than the end of the next school or work day.** This requirement does not apply if the employee or volunteer is the subject of the conduct, unless any student witnessed or was otherwise impacted by the conduct.

Upon receiving a report, the Human Rights Officer may determine that the incident has been appropriately addressed or may recommend additional action.

#### D. **Definitions.**

For the purposes of this policy and only this policy, terms are defined as follows.

"Complaint" means a document filed by a complainant, alleging discrimination or harassment against a respondent or the District, and requesting that the District investigate the allegation of harassment or discrimination. ("Complaint" is to be distinguished from a "Report" as defined below.)

- Complaints involving sex discrimination, sexual harassment (whether under Title IX or other), or retaliation must be referred to the Title IX Coordinator. See policy ACAC{\*\*} for the Title IX Grievance Procedure.

- Complaints involving discrimination, harassment, or retaliation relative to a real or perceived disability must be referred to the 504/ADA Coordinator. Such complaints will be addressed in accordance with this policy and “Human Rights Officer” below shall refer to the 504/ADA Coordinator.
- Complaints of harassment that do not involve protected classes as identified in policy AC{\*\*} should be processed under policy JICK{\*\*}, the District’s anti-bullying policy and procedures.
- All other Complaints will be managed by the Human Rights Officer.

“Complainant” is the person making a complaint. The Complainant may or may not be the Victim. If the Complainant is under 18 years of age, the Complainant’s parent(s) or legal guardian(s) shall also receive any communication regarding the Complaint or Grievance Process to which the Complainant is entitled.

“Discriminatory Conduct” refers to discrimination, harassment, or retaliation.

“Grievance Process” is the formal investigation and determination of whether prohibited or illegal discrimination, harassment, or retaliation occurred, and may include appeals.

“Human Rights Officer” is the person assigned to that role in the District; contact information for this person can be found in policy AC-R(2). If the Human Rights Officer designates another person to act as the Human Rights Officer, “Human Rights Officer, shall refer to that designee. Similarly, if the Human Rights Officer directs a Complaint to the 504/ADA Coordinator, “Human Rights Officer” as used in this policy refers to the 504/ADA Coordinator. If the report or Complaint of alleged discrimination, harassment, or retaliation involves the Human Rights Officer, “Human Rights Officer” shall refer to a person assigned by the Superintendent or the Superintendent’s designee to handle the report or Complaint.

“Report” is information provided to the District regarding conduct or statements that might constitute discrimination, harassment, or retaliation. A report does NOT prompt the Grievance Process; only a Complaint initiates the formal Grievance Process.

“Respondent” is the person who allegedly engaged in the prohibited or illegal discrimination, harassment, or retaliation. If a District policy, procedure, rule, custom, or practice is the subject of a report or Complaint and not a specific person, the District is considered the Respondent. If a Respondent is under 18 years of age, the Respondent’s parent(s) or legal guardian(s) shall also receive any communication regarding the Complaint or Grievance Process to which the Respondent is entitled.

“Victim” is the person who was allegedly subjected to the prohibited or illegal discrimination, harassment, or retaliation. The Victim may or may not be the Complainant. If a Victim is under 18 years of age, the Victim’s parent(s) or legal guardian(s) shall also receive any communication regarding the Complaint or Grievance Process to which the Victim is entitled.

“Witness” is a person who may have information regarding the alleged discrimination, harassment, or retaliation.

#### E. **Complaints and Initiation of the Formal Grievance Process.**

A person begins the formal grievance process by making a Complaint with the Human Rights Officer. If the Complaint is against the Human Rights Officer, the Title IX Coordinator, or the 504/ADA Coordinator, or if some other conflict of interest exists, the Complaint may be made to the Superintendent or Superintendent’s designee, who shall then appoint an alternate to act in place of the disqualified officer. For Complaints against

the Human Rights Officer, the appointed alternate shall be deemed the “Human Rights Officer” for purposes of all the duties and powers of the Human Rights Officer as described below.

The District’s Complaint form can be obtained from the Human Rights Officer. Written Complaints are strongly encouraged, as a written record provides certainty regarding the nature of the Complaint. If an oral Complaint is made, the Human Rights Officer will offer to assist in the preparation of a written Complaint or, if assistance is refused, to create a recording of the oral Complaint. If both assistance and recording are refused by the Complainant, the District will investigate the expressed oral Complaint but, again, notes that an undocumented or unrecorded Complaint may result in uncertainty regarding the nature of the grievance.

The submission of a Complaint initiates Level 1 of the Grievance Process as described below. Upon receiving the Complaint, the Human Rights Officer will review the Complaint to determine whether it concerns allegations more appropriately addressed under a different procedure in accordance with policy AC.

Complaints should be made as soon as possible. Complainants are advised that complaints to the Office for Civil Rights of the United States Department of Education (“OCR”) must be made within 180 days of the last act of alleged discrimination, harassment, or retaliation giving rise to the complaint or from the date the Complainant could reasonably have become aware of such occurrence.

If the person making the Complaint (the “Complainant”) or the person alleged to have committed the discriminatory conduct (the “Respondent”) is under 18 years of age, the Human Rights Officer shall notify their parent(s)/guardian(s) of the Complaint.

In determining whether the alleged actions constitute prohibited or illegal Discriminatory Conduct, the District will consider the surrounding circumstances, the nature of the behavior, the relationships between the parties involved, past incidents, the context in which the alleged incidents occurred, and all other relevant information. If, after investigation, school officials determine that it is more likely than not (the preponderance of the evidence standard) that Discriminatory Conduct or other prohibited behavior has occurred, the District will take prompt and effective corrective action in accordance with law and Board policy.

#### **Level I – Investigation and Initial Determination:**

The Human Rights Officer will initiate an impartial investigation within five days of receiving the Complaint. The Human Rights Officer may appoint another qualified person (e.g. Building Principal, etc.) to undertake the investigation. The Human Rights Officer or the appointed designee shall be known as the Investigator. The Investigator shall coordinate with the Superintendent with respect to assignment of persons or resources to fulfill the District’s obligations, both general and case specific, relative to this policy (e.g., supplemental investigators, specialists); this may involve the retention of third-party personnel or additional expenditure of resources.

The Investigator shall conduct a prompt, impartial, adequate, reliable, and thorough investigation, including the opportunity for the Complainant and other parties involved to identify witnesses and provide information and other evidence. The Investigator will evaluate all relevant information and documentation relating to the Complaint.

Within 30 working days of receiving the Complaint, the Investigator will complete a written report that summarizes the investigation and makes determinations as to whether the facts indicate a violation of this policy based on the appropriate legal standard. If someone other than the Human Rights Officer served as Investigator, the Human Rights Officer will receive the report and either adopt the report as submitted or modify and complete the report upon further investigation and/or review of applicable policy and law. If the

determination is that prohibited or illegal Discriminatory Conduct occurred, the Human Rights Officer will recommend corrective action to the Superintendent to address the discrimination, harassment, or retaliation; prevent recurrence; and remedy its effects.

The Complainant(s), the victim(s) (if someone other than the victim(s) filed the Complaint), and the Respondent(s) will be notified of the determination in writing, within five working days of the completion of the investigatory report.

An extension of the investigation and any other deadlines/periods identified in this Section may be warranted if extenuating circumstances exist as determined by the Investigator. The Complainant(s), the victim(s) (if someone other than the victim(s) filed the Complaint), and the Respondent(s) will be notified when deadlines are extended.

#### **Level II – Appeal:**

Within five working days after receiving the Level I decision, the Complainant(s), the victim(s) (if someone other than the victim(s) filed the Complaint), or any Respondent may appeal the Investigator's decision to the Superintendent by notifying the Superintendent in writing. The Superintendent shall impartially review the matter or may designate another qualified person to conduct a prompt and impartial review.

Within ten working days, the Superintendent or designee will complete a written decision on the appeal, stating whether a violation of District policy is found and, if so, stating what corrective actions will be implemented. If someone other than the Superintendent conducts the appeal, the Superintendent will review and sign the report before it is given to the person appealing. A copy of the appeal and decision will be given to the Level I Investigator. The Complainant(s), the victim(s) (if someone other than the victim(s) filed the Complaint), and any Respondent will be notified in writing, within five working days of the Superintendent's decision, regarding whether the Superintendent or designee upheld, overturned, or modified the Level I decision.

#### **Level III – Appeal:**

Within five working days after receiving the Level II decision, the Complainant(s), the victim(s) (if someone other than the victim(s) filed the Complaint), or any Respondent may appeal the Superintendent's decision by notifying the Superintendent and School Board Chair in writing

Level III appeals may only be based upon one or more of the following grounds, which must be stated specifically in the party's written appeal:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; OR,
3. The Investigator, or Superintendent/designee 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.

Appeals for any other reason not included in the written appeal will not be heard.

Appeals that pertain only to 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.

Upon receiving a written appeal, the School Board Chair will promptly confer with the School Board's attorney for guidance as to whether assigning the appeal to an outside hearing officer is in the best interests of the District. This conference may occur with the Board in the context of a consultation with counsel under 91-A:2, II (b) within 21 days, the School Board will determine whether to hear the appeal or submit it to an outside hearing officer.

The Complainant(s), the victim(s) (if someone other than the victim(s) filed the Complaint), and each Respondent will be allowed to address or otherwise submit information to the Board/hearing officer, and the Board/hearing officer may call for the presence of other persons the Board/hearing officer deems necessary. The Board/hearing officer will issue a decision within 30 working days for implementation by the administration. The Complainant(s), the victim(s) (if someone other than the victim(s) filed the grievance), and each Respondent will be notified in writing, within five working days of the Board/hearing officer's decision, subject to such confidentiality as is consistent with applicable policy and law. **The Level III decision is final.**

F. **Confidentiality.**

Information contained in reports or Complaints, or the records relating to a formal grievance process, including, e.g., the identities of the Complainant(s), victim(s), Respondent(s), or witness(es), will only be disclosed as reasonably necessary in connection with the investigation or as required by law or policy. The District will make reports to appropriate authorities as necessary or as required by law.

G. **District Actions in Absence of Formal Complaint.**

Even if the person who is the subject of the alleged discriminatory conduct does not file a Complaint under this policy, if the District otherwise learns about possible discrimination, harassment, or retaliation, including violence, the Human Rights Officer will conduct a prompt, impartial, adequate, reliable, and thorough investigation to determine whether conduct in violation of law, District policy, or District expectations occurred, and will consult with the Building Principal and/or Superintendent regarding recommended supportive measures, remedies, and/or disciplinary consequences as deemed necessary or appropriate.

H. **Interim and/or Supportive Measures.**

When a report or Complaint is made or the District otherwise learns of potential discrimination, harassment, or retaliation, the District will take immediate action to protect the alleged victim(s), including implementing interim and/or supportive measures. Such measures may be provided on a temporary, long-term, or permanent basis and include, but are not limited to, altering a class seating arrangement, providing additional supervision, or suspending an employee pending an investigation. The District will also take immediate steps to prevent retaliation against the alleged victim(s) and/or Complainant(s), any person associated with the alleged victim(s) and/or Complainant(s), or any witness(es) or participant(s) in the investigation. These steps may include, but are not limited to, notifying students, employees and others that they are protected from retaliation, ensuring that they know how to make reports or Complaints, and initiating follow-up contact with the alleged victim(s) and/or Complainant(s) to determine if any additional acts of discrimination, harassment, or retaliation have occurred.

I. **Consequences and Remedies.**

If the District determines that prohibited or illegal Discriminatory Conduct has occurred, the District will take prompt, effective and appropriate action to address the behavior, prevent its recurrence, and remedy its effects.

Employees who violate this policy will be disciplined, up to and including employment termination. Students who violate this policy will be disciplined in accordance with applicable policies, Codes of Conduct, or school/classroom rules and regulations. Patrons, contractors, visitors, or others who violate this policy may be prohibited from District property or otherwise restricted while on District property. The Superintendent, Human Rights Officer, Building Principal, or designees will contact law enforcement or seek a court order to enforce this policy when necessary or when actions may constitute criminal behavior.

**J. Training.**

The District will provide training to employees on identifying and reporting acts that may constitute discrimination, harassment, or retaliation. The District will instruct employees to make all reports to proper personnel, specifically the Building Principal. The Building Principal will refer reports of illegal discrimination, harassment, or retaliation to the proper personnel, as found in policies AC and AC(R2). The District will inform employees of the consequences of violating this policy and the remedies the District may use to rectify policy violations. All employees will have access to the District's current policies, required notices, and complaint forms. The District will provide training to any person responsible for investigating potential discrimination, harassment, or retaliation.

The District will provide information to parents/guardians and students regarding this policy and will provide age-appropriate instruction to students.

***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.*

<b>NH Statutes</b>	<b>Description</b>
RSA 141-C:20-d	<u>Exclusion During Outbreak of Disease</u>
RSA 189:1-b	<u>Freedom of Assembly, Freedom of Religion</u>
RSA 193-F	<u>Student Safety and Violence Protection Act</u>
RSA 193:38	<u>Discrimination in Public Schools</u>
RSA 200:39	<u>Exclusion from School</u>
RSA 275:78-83	<u>Policies Relating to Nursing Mothers (Scroll down to sections 275:78-83)</u>
<b>NH Dept of Ed Regulation</b>	<b>Description</b>
N.H. Code of Admin. Rules, Sect. 306.04(a)(2022)	<u>Meeting the Special Physical Health Needs of Students</u>
N.H. Code of Admin. Rules, Sect. Ed 306.04(a)(8)	<u>Student Harassment</u>
N.H. Code of Admin. Rules, Sect. Ed. 1100	<u>Standards for the Education of Students With Disabilities</u>
N.H. Dept. of Ed. Admin. Rule Ed 1107.02(b)	<u>Evaluation Requirements for Children With Specific Learning Disabilities</u>
NH Dept of Ed Rules Ed 303.01 (j)	<u>Substantive Duties of School Boards; Sexual Harassment Policy</u>

**Federal Regulations**

28 CFR Part 35

28 CFR 35 - Temporary - 89 FR 31320

34 C.F.R. § 104

34 C.F.R. § 104.7(b)

34 C.F.R. §§ 110.25

34 C.F.R. §§ 300.307-.309

34 CFR 106.30

34 CFR 106.44

34 CFR 106.45

34 CFR 106.71

7 CFR Part 15, Subpart A

89 FR 29182

**Federal Statutes**

20 U.S.C 1681, et seq

20 U.S.C. § 1400-1417

20 U.S.C. §§1400 et seq.

20 U.S.C. §1232g

20 U.S.C. 1401(3)(B)

20 U.S.C. 1701-1758

29 U.S.C. 621, et seq.

29 U.S.C. 705

29 U.S.C. 794

42 U.S.C. 12101, et seq.

42 U.S.C. 1751 et seq.

42 U.S.C. 2000c

42 U.S.C. 2000d et seq.

**Description**

Nondiscrimination on the Basis of Disability in State and Local Government Services

Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities

Nondiscrimination on the Basis of Handicap

Adoption of Grievance Procedures

Designation of responsible employee, notice, and grievance procedures

Additional Procedures for Identifying Children With Specific Learning Disabilities

Definitions

Recipient's response to sexual harassment

Grievance process for formal complaints of sexual harassment

Retaliation

Nondiscrimination

Pregnant Workers Fairness Act ("PWFA")

**Description**

Title IX of the Education Amendments of 1972

Individuals with Disabilities Education Act (IDEA)

Individuals with Disabilities Education Law

Family Educational Rights and Privacy Act (FERPA)

Child with a Disability, Child Aged 3 through 9

Equal Educational Opportunities Act of 1974 – "EEOA"

The Age Discrimination in Employment Act of 1967

The Rehabilitation Act of 1973 - Definitions

Rehabilitation Act of 1973 (Section 504)

Title II of The Americans with Disabilities Act of 1990

National School Lunch Act

Title IV of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964



42 U.S.C. 2000e et seq.	<u>Title VII of the Civil Rights Act of 1964</u>
42 U.S.C. 2000gg	<u>Pregnant Worker Fairness Act ("PWFA")</u>
42 U.S.C. 218d	<u>Pump for Nursing Mothers Act ("PUMP Act")</u>
42 USC 1751 – 66	<u>National School Lunch Act</u>
P.L. 110-233	<u>Genetic Information Nondiscrimination Act of 2008</u>

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