ASD File: JBAA/ACAC

AUBURN SCHOOL DISTRICT
SEXUAL HARASSMENT AND SEXUAL VIOLENCE-STUDENTS

SEXUAL DISCRIMINATION, HARASSMENT AND VIOLENCE

I. PURPOSE

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

Sexual discrimination, harassment, and violence are against the law and school board policy. Any form of sexual discrimination, harassment or violence is strictly prohibited.

It is a violation of this policy for any student to harass another student, employee or person within the District through conduct or communication of a sexual nature as defined by this policy. It is a violation of this policy for any student to be sexually violent toward another student, employee, or person within the District.

The District will investigate all formal complaints of sexual harassment, discrimination, or sexual violence in accordance with the grievance procedures in this policy, and will discipline any student who sexually discriminates, harasses or is sexually violent toward another person within the District. For all complaints the District will offer supportive measures to both complainants and respondents

II. TITLE IX COORDINATOR

The District's Title IX Coordinator is: The District's Title IX Coordinator is: Assistant Superintendent, 90 Farmer Rd., Hooksett, NH 03106, hcummings@sau15.net, 603-322-3731 x 4012.

The Title IX Coordinator is responsible for coordinating the District's efforts to comply with Title IX, including coordinating the effective implementation of supportive measures and effective implementation of remedies.

The Title IX Coordinator's responsibilities include establishing a process to notify applicants for employment and admission, students, parents or legal guardians, employees, and all unions of the Title IX Coordinator's name or title, office address, e-mail address and telephone number.

The District shall post the Title IX Coordinator's title or name, office address, e-mail address and telephone number in conspicuous places throughout school buildings, on the District's website, and in each handbook.

III. SEXUAL DISCRIMINATION, HARASSMENT/SEXUAL VIOLENCE DEFINED

Sexual discrimination is discrimination based on sex in the District's education programs or activities and extends to employment and admissions.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature that satisfies one or more of the following:

1. An employee of the District conditions the provision of an aid benefit, or service on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
3. Sexual assault as defined in 20 U.S.C. §1092(f)(6)(A(v) dating violence as defined in 34 U.S.C. §12291(a)(10), domestic violence as defined in 34 U.S.C. §12291(a)(8) or stalking as defined in 34 U.S.C. §12291(a)(30).

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 a person's body;
5. Demanding sexual favors accompanied by implied or overt threats;
6. Demanding sexual favors accompanied by implied or overt promises of preferential treatment;
7. Any sexually motivated unwelcome touching; or
8. Sexual violence that is a physical act of aggression that includes a sexual act or sexual purpose.

Throughout this policy reference to sexual harassment includes sexual discrimination and violence.

IV. REPORTING PROCEDURES

Any student who believes he or she has been the victim of sexual harassment should report the alleged act(s) immediately to a school district employee. That employee shall then report the allegation immediately to an appropriate District official, as designated by this policy. The District encourages the reporting student to use the report form available from the Principal of each building or available from the Superintendent's office.

1. 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 must notify the Title IX Coordinator immediately without screening or investigating the report. If the report was given verbally, the Principal shall reduce it to written form within twenty-four (24) hours and forward it to the Title IX Coordinator. Failure to forward any sexual harassment report or complaint as provided herein will result in disciplinary action. If the complaint involves the building Principal or designee the complaint shall be filed directly with the Title IX Coordinator.
2. The designated person to receive any report or complaint of sexual harassment and sexual violence is the Title IX Coordinator. If the complaint involves the Title IX Coordinator, the complaint shall be filed directly with the Superintendent.
3. Any person may also report sexual harassment in person, by mail, telephone or e-mail to the Title IX Coordinator at any time including non-business hours.
4. Submission of a complaint or report of sexual harassment will not affect the student's standing in school, grades, assignments, or right to attend school and receive and education. The use of formal reporting forms provided by the District is voluntary.

Certain students, especially younger children, may not be able to submit a written complaint. In such cases, the District will make available alternate methods of filing complaints.

V. DISTRICT'S RESPONSE TO ALL COMPLAINTS OF SEXUAL HARASSMENT

The District will respond promptly and in a manner that is reasonable in light of the known circumstances when it has actual knowledge of sexual harassment in its education programs or activities. Actual knowledge means notice to any employee of the District. Education programs or activities are locations, events, or circumstances over which the District exercised substantial control over both the alleged perpetrator of sexual harassment (the respondent) and the context in which the sexual harassment occurs.

The District will treat complainants and respondents equitably by offering supportive measures and following the grievance process before the imposition of any disciplinary sanctions or other non-supportive measures against the respondent. The District may place an employee on administrative leave during the pendency of the grievance process.

The District may remove a respondent from its education programs or activities on an emergency basis based upon an individualized safety and risk analysis that determines that the respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment. The District shall provide the respondent with notice and an opportunity to challenge the decision immediately upon removal.

When the complainant and/or respondent are minor students, notices shall be provided to the student's parent or legal guardian.

The Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

These provisions do not modify rights under the IDEA, Section 504, or the ADA.

The District's response shall not restrict rights protected by the United States Constitution including the First, Fifth, and Fourteenth Amendments.

VI. SUPPORTIVE MEASURES

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed which are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, shadowing, mutual restrictions on contact between parties, changes in work or school locations, leaves of absence, increased security and monitoring of certain areas of the school, and other similar measures.

The District will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.

VII. FORMAL COMPLAINTS

A formal complaint is a document filed by a person who is alleged to be the victim of conduct that could constitute sexual harassment (the complainant) or signed by the Title IX Coordinator and requesting that the District investigate the allegation of sexual harassment. The formal complaint may be filed with the Title IX Coordinator in person, by mail, or e-mail and must contain the complainant's physical or digital signature or otherwise indicate that the complainant is the person filing the formal complaint.

Parents or legal guardians may file complaints on behalf of their children.

The complainant's wishes with respect to investigating a complaint should be respected unless the Title IX Coordinator determines that the Title IX Coordinator's signing a formal complaint over the complainant's wishes is not clearly unreasonable in light of the known circumstances.

The Title IX Coordinator may in his/her discretion consolidate formal complaints where the allegations arise out of the same facts.

In response to a formal complaint, the District will follow the grievance procedures in this policy.

VIII. GRIEVANCE PROCEDURE FOR FORMAL COMPLAINTS

A. Notice of Allegations

The Title IX Coordinator upon receipt of a formal complaint shall provide written notice to the complainant and respondent of the following:

1. The allegations including the date and location of the alleged incident, if known;
2. A statement that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the conclusion of the grievance process;
3. The complainant and respondent may have an advisor of their choice who may but is not required to be an attorney and may inspect and review evidence during the investigation;
4. Provisions in the District's code of conduct that prohibit knowingly making false statements or knowingly submitting false information;
5. A copy of this Title IX policy.

B. Grievance Procedure Requirements

1. Both the complainant and respondent shall have an equal opportunity to submit and review evidence throughout the investigation;
2. The District will use trained Title IX personnel to objectively evaluate all relevant evidence without prejudgment of the facts at issue and free from conflicts of interest or bias for or against either party.
3. The District will protect the parties' privacy by requiring a party's written consent before using the party's medical, psychological or similar treatment records during a grievance process.

4. The District will obtain the parties' voluntary written consent before using any kind of informal resolution process, such as mediation or restorative justice, and not use an informal process where an employee allegedly sexually harassed a student.

5. The District will apply a presumption that the respondent is not responsible during the grievance process so that the District bears the burden of proof and the standard of evidence is applied correctly.

6. The District will use the preponderance of the evidence standard for formal complaints against students and employees.

7. The District will ensure the decision-maker for determining responsibility is not the same person as the investigator or the Title IX Coordinator.

8. The District will permit the parties to submit written questions for the other parties and witnesses to answer before determining responsibility.

9. The District will protect all complainants from inappropriately being asked about prior sexual history.

10. The District will not restrict the parties' ability to discuss the allegations under investigation or to gather and produce relevant evidence.

11. The District will send both parties a written determination regarding responsibility explaining how and why the decision-maker reached conclusions.

12. The District will effectively implement remedies for a complainant if a respondent is found responsible for sexual harassment.

13. The District will offer both parties an equal opportunity to appeal.

14. The District will protect all individuals, including complainants, respondents, and witnesses, from retaliation for reporting sexual harassment, or participating or refusing to participate in any Title IX grievance process.

15. The District will make all materials used to train Title IX personnel publicly available on the District's website.

16. The District will document and keep records of all sexual harassment complaints, investigations, and training for seven (7) years.

IX. INVESTIGATION

The Title IX Coordinator (or the Superintendent, if the Title IX Coordinator is the subject of the complaint), upon receipt of a formal complaint alleging sexual harassment shall immediately authorize an investigation. This investigation may be conducted by District officials or by a third party designated by the District. The investigating party shall provide a written report of the status of the investigation within ten (10) working days to the Title IX Coordinator. If the Title IX Coordinator is the subject of the complaint, the report shall be submitted to the Superintendent.

In determining whether alleged conduct constitutes sexual harassment, the District should consider the surrounding circumstances, the nature of the sexual advances, relationships between the parties involved and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes sexual harassment or sexual violence 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 present during the interview.

If during the investigation, the District decides to investigate allegations not in the formal complaint, the Title IX Coordinator shall provide written notice to the parties of the additional allegations.

The District shall provide to a party whose participation is invited or expected written notice of the date, time, location, participants and purposes of all investigative interviews, other meetings, or hearings with sufficient time for the party to prepare to participate.

Prior to the conclusion of the investigation, the investigator shall 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 in the formal complaint including evidence that the investigator does not intend to rely upon. Each party shall have an opportunity to respond to the evidence.

Prior to the completion of the investigation report, the investigator must send to each party and the party's advisor, if any, either in electronic format or hard copy the evidence subject to inspection and review. The parties shall have at least ten (10) days to submit a written response.

The investigator shall create an investigation report fairly summarizing the relevant evidence. The investigator shall send each party and the party's advisor, if any, a copy of the investigation report either in electronic format or hard copy. The parties have ten (10) days to review the investigation report and file a written response.

X. DETERMINING RESPONSIBILITY

A decision-maker who is not the Title IX Coordinator or investigator must issue a written determination regarding responsibility based on a preponderance of evidence.

Before reaching a determination, the decision-maker must provide each party the opportunity to submit written, relevant questions of any party or witness provide both parties with the answers, and allow for additional, limited follow-up questions. If the decision-maker determines a question is not relevant, the decision-maker must provide a written explanation to the party proposing the question.

XI. WRITTEN DETERMINATION OF RESPONSIBILITY

The decision-maker's written determination must include:

1. An identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken by the District from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the District's code of conduct to the facts;

5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant; and
6. The District's procedures and permissible bases for the complainant and respondent to appeal.

The District must provide the written determination to the parties simultaneously.

The responsibility determination becomes final either on the date that the District 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 would no longer be considered timely.

XII. DISMISSAL OF FORMAL COMPLAINT

A. Mandatory Dismissal

If the allegations in the formal complaint are not sexual harassment even if proved; or did not occur in the District's education program or activity; or did not occur against a person in the United States, the District will dismiss the formal complaint.

B. Permissive Dismissal

The District may dismiss the formal complaint, or any allegations, if at any time during the investigation a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint, or any allegations therein; or the respondent is no longer enrolled or employed by the District; or specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

The District shall promptly send to the parties simultaneously written notice of the dismissal and reasons.

XIII. APPEALS

Within ten (10) days of the receipt of the written determination, the complainant and respondent may appeal to the Superintendent the dismissal of a formal complaint or any allegations; or the determination of responsibility for the following reasons:

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 Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The Superintendent shall notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.

In the appeal, both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome. The Superintendent shall issue a written decision describing the result of the appeal, the rationale for the result, and provide the written decision simultaneously to both parties within ten (10) days of receiving all information submitted

by the parties.

XIV. REPRISAL/RETALIATION

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The District will keep confidential the identity of any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA, or as required by law, or to carry out Title IX, including the conduct of any investigation, hearing of judicial proceeding arising thereunder.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination.

The exercise of rights protected under the First Amendment does not constitute retaliation.

XV. ALLEGED CONDUCT NOT PROHIBITED UNDER TITLE IX

Allegations of conduct that are not prohibited by Title IX may be investigated under the District's other policies and rules of conduct.

XVI. SEXUAL HARASSMENT OR SEXUAL VIOLENCE AS CHILD ABUSE OR SEXUAL ABUSE

Under certain circumstances, sexual harassment or sexual violence may constitute child abuse or sexual abuse under New Hampshire law. In such situations, the District shall comply with said laws including any reporting obligations.

XVII. DISCIPLINE

The School District will take such disciplinary action it deems necessary and appropriate, including warning, suspension or immediate discharge to end sexual harassment and sexual violence and prevent its recurrence.

XVIII. ALTERNATIVE COMPLAINT PROCEDURES, LEGAL REMEDIES, AND INQUIRIES ABOUT TITLE IX

At any times, whether or not an individual files a complaint or report under this policy, an individual may file a complaint with the Office for Civil Rights ("OCR"), of the United States Department of Education, or with the New Hampshire Commission for Human Rights.

1. Office for Civil Rights, U.S. Department of Education, 5 Post Office3 Square, 8th Floor, Boston, MA 02019-3921; Telephone number (617) 289-0111; Fax number (617) 289-0150; E-mail OCR.Boston@ed.gov.

2. New Hampshire Commission for Human Rights, 2 Industrial Park Drive, Concord, NH 03301; Telephone number (603) 271-2767; E-mail humanrights@nh.gov.

Notwithstanding any other remedy, any person may contact the police or pursue a criminal prosecution under state or federal criminal law.

Inquiries about the application of Title IX may be referred to the Title IX Coordinator, the Assistant Secretary of the United States Department of Education, or both.

XIX. AGE-APPROPRIATE SEXUAL HARASSMENT POLICY

Ed 303.01(j) requires the school board 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.

XX. RECORD KEEPING

The District must maintain all records relating to a sexual harassment complaint, investigation, and training for seven (7) years.

Legal Reference:
Title IX
NH Code of Administrative Rules, Section Ed. 303.01(j), Substantive Duties of School Boards; Sexual Harassment Policy
NH Code of Administrative Rules, Section 306.04(a)(8), Student Harassment
NH Code of Administrative Rules, Section 306.04(a)(9), Sexual Harassment

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