JBAA

*(Also GBAA)*

SEXUAL HARASSMENT AND SEXUAL VIOLENCE

I. PURPOSE

The purpose of this policy is to maintain a learning environment for a student 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, formal or informal, verbal or written, of sexual harassment and will discipline any student who sexually harasses another student.

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.

Examples of sexual harassment may include, but not be limited to: physical touching or graffiti of a sexual nature; displaying or distributing of sexually explicit drawings; pictures and written materials; sexual gestures 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.

II. REPRISAL

The School District will *discipline and take appropriate action against any student, teacher, administrator,*volunteer, or other employee who retaliates against any person 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.

1.  The consequences and appropriate remedial action for a student, teacher, school administrator or school volunteer who engages in reprisal or retaliation shall be determined by the Principal after consideration of the nature, severity and circumstances of the act, in accordance with law, Board policies and any applicable collective bargaining agreements.

2.  Any student found to have engaged in reprisal or retaliation in violation of this policy shall be subject to measures up to, and including, suspension and expulsion.

3.  Any teacher or school administrator found to have engaged in reprisal or retaliation in violation of this policy shall be subject to discipline up to, and including, termination of employment.

4.  Any school volunteer found to have engaged in reprisal or retaliation in violation of this policy shall be subject to measures up to, and including, exclusion from school grounds.

Process to Protect Pupils from Retaliation

If the alleged victim or any witness expresses to the Principal or other staff member that he/she believes he/she may be retaliated against, the Principal shall develop a process or plan to protect that student from possible retaliation.

Each process or plan may be developed on a case-by-case basis.  Suggestions include, but are not limited to, re-arranging student class schedules to minimize their contact, stern warnings to alleged perpetrators, temporary removal of privileges, or other means necessary to protected against possible retaliation.

III. Protection of all Pupils (RSA 193-F: 4, II(c))

This policy shall apply to all pupils and school-aged persons on school district grounds and participating in school sponsored activity, regardless of whether or not such pupil or school-aged person is a student within the District.

IV. Disciplinary Consequences for Violations of This Policy (RSA 193-F: 4, II (d))

The district reserves the right to impose disciplinary measures against any student who commitsan act ofsexual harassment, falsely accuses another student of sexual harassment, or who retaliates against any student or witness who provides information about an act of sexual harassment.

In addition to imposing discipline under such circumstances, the board encourages the administration and school district staff to seek alternatives to traditional discipline, including but not limited to early intervention measures, alternative dispute resolution, conflict resolution and other similar measures.

V. Distribution and Notice of This Policy (RSA 193-F: 4, II (e))

Staff and Volunteers

All staff will be provided with a copy of this policy annually.  The Superintendent may determine the method of providing the policy (employee handbook, hard copy, etc.)

The Superintendent will ensure that all school employees and volunteers receive annual training on bullying and related district's policies.

Students

All students will be provided with a copy of this policy annually.  The Superintendent may determine the method of providing the policy (student handbook, mailing, hard copy, etc.)

Students will participate in an annual education program which sets out expectations for student behavior and emphasizes an understanding of sexual harassment, the District's prohibition of such conduct and the reasons why the conduct is destructive, unacceptable, and will lead to discipline. Students shall also be informed of the consequences of bullying conduct toward their peers.

The Superintendent, in consultation with staff, may incorporate student sexual harassment training and education into the district's curriculum, but shall not be required to do so.

Parents

All parents will be provided with a copy of this policy annually. The Superintendent may determine the method of providing the policy (parent handbook, mailing, etc.).  Parents will be informed of the program and the means for students to report bullying acts toward them or other students.  They will also be told that to help prevent bullying at school they should encourage their children to:

1.  Report sexual harassment when it occurs;

2.  Take advantage of opportunities to talk to their children about sexual harassment;

3.  Inform the school immediately if they think their child is being sexually harassed or is sexually harassing other students;

4.  Cooperate fully with school personnel in identifying and resolving incidents.

Additional Notice and School District Programs

The Board may, from time to time, host or schedule public forums in which it will address the sexual harassment policy, discuss sexual harassment in the schools, and consult with a variety of individuals including teachers, administrators, guidance counselors, school psychologists and other interested persons.

VI. 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 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, work assignments, eligibility for extra-curricular activities or any other aspect of the student’s educational program.

7. 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.

VII. Notifying Parents of Alleged Sexual Harassment (RSA 193-F: 4, II (h))

The Principal shall report to the parents of a student who has been reported as a victim of sexual harassment and/or to the parents of a student who has been reported as a perpetrator of bullying within 48 hours of receiving the report.  Such notification may be made by telephone, writing or personal conference.  The date, time, method, and location (if applicable) of such notification and communication shall be noted in the report.  All notifications shall be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

VIII. Waiver of Notification Requirement (RSA 193-F: 4, II (I))

The Superintendent may, within a 48 hour time period, grant the District Officials a waiver from the requirement that the parents of the alleged victim and the alleged perpetrator be notified of the filing of a report.  A waiver may only be granted if the Superintendent deems such a waiver to be in the best interest of the victim or perpetrator.  Any waiver granted shall be in writing.

**IX**. INVESTIGATION AND RECOMMENDATION

The Superintendent, as the designated Human Rights Officer, will authorize 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.

1.  Upon receipt of a report of sexual harassment, the District Official shall, within 5 school days, initiate an investigation into the alleged act.  If the District Official is directly and personally involved with a complaint or is closely related to a party to the complaint, then the Superintendent shall direct another district employee to conduct the investigation.

2.  The investigation may include documented interviews with the alleged victim, alleged perpetrator and any witnesses.  All interviews shall be conducted privately, separately and shall be confidential.  Each individual will be interviewed separately and at no time will the alleged victim and perpetrator be interviewed together during the investigation.

3.  If the alleged sexual harassment was in whole or in part cyber bullying, the District Official may ask students and/or parents to provide the District with printed copies of e-mails, text messages, website pages, or other similar electronic communications.

4.  A maximum of 10 school days shall be the limit from the initial filing of incidents and completion of the investigative procedural steps.

5.  Factors the District Official or other investigator may consider during the course of the investigation, including but not limited to:

Description of incident, including the nature of the behavior;

  How often the conduct occurred;

  Whether there were past incidents or past continuing patterns of behavior;

  The characteristics of parties involved, (name, grade, age, etc.);

  The identity and number of individuals who participated in bullying behavior;

  Where the alleged incident(s) occurred;

  Whether the conduct adversely affected the student's education or educational environment;

  Whether the alleged victim felt or perceived an imbalance of power as a result of the reported incident; and

  The date, time and method in which parents or legal guardians of all parties involved were contacted.

6.  The District Official shall complete the investigation within 10 school days of receiving the initial report.  If the District Official needs more than 10 school days to complete the investigation, the Superintendent may grant an extension of up to 7 school days.  In the event such extension is granted, the District Official shall notify in writing all parties involved of the granting of the extension.

7.  Whether a particular action or incident constitutes a violation of this policy shall require a determination based on all facts and surrounding circumstances and shall include recommended remedial steps necessary to stop the sexual harassment and a written final report to the Superintendent.

8.  Students who are found to have violated this policy may face discipline in accordance with other applicable board policies, up to and including suspension.  Students facing discipline will be afforded all due process required by law.

9.  Consistent with applicable law, the District will not require or request that a student disclose or provide to the District the student's user name, password or other authenticating information to a student's personal social media account.  However, the District may request to a student or a student's parent/guardian that the student voluntarily share printed copies of specific information from a student's personal social media account if such information is relevant to an ongoing District investigation. Failure to share social media information is not grounds to dismiss case.

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

X. SCHOOL DISTRICT ACTION

Consequences and appropriate remedial actions for a student or staff member who commits one or more acts of sexual harassment or retaliation may range from positive behavioral interventions up to and including suspension or expulsion of students and dismissal from employment for staff members.

Consequences for a student who commits an act of sexual harassment or retaliation shall be varied and graded according to the nature of the behavior, the developmental age of the student, and the student's history of problem behaviors and performance.  Remedial measures shall be designed to correct the problem behavior, prevent another occurrence of the problem, protect and provide support for the victim, and take corrective action for documented systematic problems related to sexual harassment.

Examples of consequences may include, but are not limited to:

  Admonishment

  Temporary removal from classroom

  Deprivation of privileges

  Classroom or administrative detention

  Referral to disciplinarian

  In-school suspension

  Out-of-school suspension

  Expulsion

Examples of remedial measures may include, but are not limited to:

Restitution

  Mediation

  Peer support group

  Corrective instruction or other relevant learning experience

  Behavior assessment

  Student counseling

  Parent conferences

In support of this policy, the Board promotes preventative educational measures to create greater awareness of aggressive behavior, including sexual harassment.  The Board encourages the Superintendent to work collaboratively with all staff members to develop responses other than traditional discipline as a way to remediate substantiated instances of sexual harassment.

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.

XI. Communication with Parents upon Completion of Investigation (RSA 193-F: 4, II (m)

1.  Within two school days of completing an investigation, the District Official will notify the students involved in person of his/her findings and the result of the investigation.

2.  The District Official will attempt to notify via telephone the parents of the alleged victim and alleged perpetrator of the results of the investigation.  The District Official will also send a letter to the parents within 2 school days again notifying them of the results of the investigation.

3.  If the parents request, the District Official shall schedule a meeting with them to further explain his/her findings and reasons for his/her actions.

4.  In accordance with the Family Educational Rights and Privacy Act and other law concerning student privacy, the District will not disclose educational records of students including the discipline and remedial action assigned to those students and the parents of other students involved in a bullying incident.

XII. Appeals

A parent or guardian who is aggrieved by the investigative determination letter of the District Official or his/her designee may appeal the determination to the Superintendent for review.  The appeal shall be in writing addressed to the Superintendent, shall state the reason(s) why the appealing party is aggrieved, and the nature of the relief they seek.  The Superintendent shall not be required to re-investigate the matter and shall conduct such review as he/she deems appropriate under the circumstances.

It is in the best interests of students, families and the District that these matters be promptly resolved.  Therefore, any such appeal to the Superintendent shall be made within ten (10) calendar days of the parent/guardian's receipt of the investigative determination letter of the principal or his/her designee.  The Superintendent shall issue his/her decision in writing.

If the parent or guardian is aggrieved by the decision of the Superintendent, they may appeal the decision to the school board within ten (10) calendar days of the date of the parent/guardian's receipt of the Superintendent's decision.  An appeal to the Superintendent shall be a prerequisite to any appeal to the School Board. The appeal to the School Board shall be in writing, addressed to School Board Chair in care of the Superintendent, shall state the reason(s) why the appealing party is aggrieved, and the nature of the relief they seek.

An aggrieved parent/guardian has the right to appeal the final decision of the local School Board to the State Board within thirty (30) calendar days of receipt of the written decision of the local School Board in accordance with RSA 541-A and State of New Hampshire Department of Education Regulations set forth in ED 200.  The State Board may waive the thirty-day requirement for good cause shown, including, but not limited to, illness, accident, or death of a family member.

XIII. 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, initiating civil action or seeking redress under state criminal statutes and/or federal law.

XIV. 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.

XV. 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.

(See JBAA –R2)

XVI. BY-PASS OF POLICY

Any individual with a sexual harassment complaint may choose to bypass this Policy and accompanying regulation and proceed directly to: N.H. Commission on Human Rights, at 2 Chenille Dr., Concord, NH 03301, phone 603-271-2767 or US Department of Health & Human Services, Office for Civil Rights, Region 1, JFK Building, Room 1875, Boston, MA 02203, phone 617-565-1340.

Legal References:

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

Appendix: GBAA-R, BBA-R

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