

## **JBAA – SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY**

### **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. It shall also be a violation of this policy for any student or employee to be sexually violent to a student or employee. This includes, but is not limited to all students and employees, including contract service providers.

Concerns of this nature should be immediately brought to the attention of the Principal or a district level staff member such as the Title IX coordinator. The District has jurisdiction over Title IX complaints and Title IX prohibits retaliation in any form. 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 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.

### **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 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 or a hostile work environment. 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 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.
8. It is important to note that simultaneous complaints are permitted. In addition, the complainant has the right to file a criminal complaint.

#### **IV. 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.

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, outcome and recommended action. The written notification may differ as appropriate between the complainant and the alleged perpetrator to ensure confidentiality. It is important to note that both the complainant and the respondent will receive notice that the evidentiary standard will be used in resolving the complaint. This standard will be based upon a preponderance of evidence.

Both the complainant and the perpetrator may appeal the outcome of the findings. This appeal would be through the superintendent.

#### **V. SCHOOL DISTRICT ACTION**

If the investigating party determines that the alleged conduct constituted 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.

When appropriate, the District will provide information to the complainant related to counseling, advocacy and support.

## **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. The District will take steps needed to prevent recurrence. In addition, the District will take steps to remedy discriminatory effects on complainants and others.

## **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, 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.

## **X. BY-PASS OF POLICY/SIMULTANEOUS COMPLAINTS**

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

Chenelle 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.

Statutory/Regulatory/Policy/Handbook Cross References

Policy JBAA – Form (Sexual Harassment Report by Student)

NH Administrative Rules Section ED 303.01(j) & (k) (Substantive Duties of School Boards, Sexual Harassment Policy)

NH Administrative Rules Section ED 306.04(a)(9) (Sexual Harassment Handbook (Referenced in Handbooks))

APPROVED/REVISED: September 22, 2005, August 20, 2009, November 16, 2017

PREVIOUS POLICY: April 13, 1989 - Sexual Harassment – policy has been completely revised in a recent release by the NHSBA in May 2014 – no changes have been made to policy recommended by NHSBA