

Concord School Board Policy #415

Title IX Sexual Harassment Reporting and Grievance Process

The vision of Concord School District (the District) is that all students develop a passion for learning, experience excellence in their lives and believe that they have the ability to shape the future of their lives and communities. Consistent with that vision, all students and employees have the right to learn and work in the safest possible academic environment and workplace free from all forms of sexual misconduct.

Title IX of the Federal Education Amendments Act of 1972, 20 U.S.C. § et. Seg. ("Titles IX"), provides in part that,

"No person in the United States shall, on the basis of sex, be excluded from participation in, or be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Title IX applies to academic, extra-curricular, athletic, and other school-related events, activities, or programs whether at school, on a school bus, on the network, or at sponsored training at another location.

I. Restatement of Policy Prohibiting Discrimination on the Basis of Sex.

Per School Board (Board) Policy #160 Non-Discrimination (also numbered as #412, #571, and #631), Title IX of the Education Amendments Act of 1972 , as well as New Hampshire Revised Statutes Annotated (RSA) 193:38, the District does not discriminate on the basis of sex in its educational programs and activities, including employment and admissions. All forms of sex-based discrimination, including sexual harassment are prohibited.

II. Title IX Sexual Harassment Policy

A. Application of this policy.

While all forms of sex-based discrimination are prohibited in the District, the purpose of this policy is to address sexual harassment as defined in Title IX and **Sec. II.B**, below, which occurs within the educational programs and activities of the District, and to provide a grievance process for investigating and reaching a final determination of responsibility for a formal complaint of sexual harassment. For harassing conduct which does not meet the definition of sexual harassment under Title IX and this policy, the District's response will be governed under other applicable laws and policies per Board policy **[**]AC**, and policies referenced therein.

The "Title IX Grievance Process" is set out in **Sec. III** below. While the District must respond to all "reports" it receives of sexual harassment, the Title IX Grievance Process is initiated only with the filing of a formal complaint.

This policy shall apply to all students, employees, and any third party who contracts with the District to provide services to District students or employees, upon District property, or during any school program or activity.

Any student, employee, or person seeking employment within the District who believes he or she has been subjected to sexual harassment is encouraged to report it. The District is committed to conducting prompt, thorough, and unbiased investigations and addressing any violations in a timely, appropriate manner. All students and employees share responsibility for preventing and reporting sexual harassment and cooperating in any investigations.

Nothing in this policy will be construed to confer on any third party a right to due process or other proceedings to which student and employee respondents are entitled under this policy unless such right exists under law. Volunteers and visitors who engage in sexual harassment will be directed to leave school property and/or be reported to law enforcement and/or the NH Division of Children, Youth and Families (DCYF), as appropriate. A third party under the supervision and control of the District will be subject to termination of contracts/agreements, restricted from access to school property, and/or subject to other consequences, as appropriate.

The Superintendent shall have overall responsibility for implementing this policy, and shall annually appoint a District Title IX Coordinator as that position is described in **Section II.C**, below. The name, contact information, and responsibilities of the Title IX Coordinator are set forth in Board Policy **AC-E[**]**, which policy shall be updated and disseminated annually with the Title IX Coordinator's name as set forth in Board Policy **AC[**]**.

B. Definitions.

As used in this policy and the Title IX Grievance Process, the terms below shall have the meaning ascribed.

“Actual knowledge” occurs when the District's Title IX Coordinator or ANY employee of one of the District's schools (other than a “respondent” or alleged harasser) receives notice, a report or information, or becomes aware of sexual harassment or allegations of sexual harassment.

“Complainant” is an individual who is alleged to be the victim of conduct that could constitute sexual harassment, whether or not that person files a report or formal complaint.

“Consent” is the voluntary, informed, knowing, unambiguous agreement to engage in mutually acceptable sexual activity through clearly communicated actions or words and can be withdrawn any time. Consent cannot be given by someone who is sleeping, unconscious, or mentally or physically incapacitated due to drugs, alcohol, or other contributing factors. Consent also cannot be given under duress, threat, deception, coercion, force, or misuse of authority. Under New Hampshire law, a person under the age of sixteen (16) cannot give legal consent.

“Dating violence” is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based on a reporting party's statement along with factors such as the length of the relationship, type of relationship and the frequency of

interaction between the persons involved in the relationship. Dating violence includes but is not limited to sexual or physical abuse or the threat of such abuse.

“**Days**” shall mean calendar days, but shall exclude non-weekend days on which the SAU office is closed (e.g., holidays, office-wide vacations), or any week day during the school year on which school is closed (e.g., snow days).

“**Decision maker**” means persons tasked with: the responsibility of making initial determinations of responsibility (at times referred to as “initial decision maker”; IDM); or the responsibility to decide any appeal (at times “appeals decision maker”; ADM) with respect to formal complaints of sexual harassment in accordance with the Title IX Grievance Process.

“**Determination of responsibility**” is the formal finding by the decision maker on each allegation of sexual harassment contained in a formal complaint that the respondent did or did not engage in conduct constituting sexual harassment under Title IX.

“**Domestic violence**” is a crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from the person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

“**Educational program or activity**” includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred.

“**Formal complaint**” is a document filed and signed by a complainant, the complainant’s parent/guardian, or the Title IX Coordinator, alleging sexual harassment against a respondent, and requesting that the District investigate the allegation(s) of sexual harassment.

“**Recipient**” is the school or school district that receives notice of conduct that could constitute sexual harassment.

“**Respondent**” is an individual who is reported to be the individual accused of conduct that could constitute sexual harassment.

“**Retaliation**” (as used in this policy) is any adverse action taken against a student or employee for making a good faith report of sexual harassment or for participating in an investigation. Retaliation includes ostracism, threats, intimidation, harassment, coercion or other conduct which would discourage a reasonable person from exercising a right under this policy.

“Sexual assault” is having or attempting to have sexual intercourse or sexual contact with another by force or threat of force; or without consent; or where the person is incapacitated.

“Sexual harassment” prohibited under Title IX and by this policy *is conduct on the basis of sex* (including, without limitation, gender, sexual orientation, and/or gender identity), that denies or limits an individual’s ability to participate in or receive benefits, services, or opportunities from a school’s programs or activities. Sexually harassing behavior includes one or more of the following:

1. A District employee conditioning an aid, benefit, or service of an education program or activity on an individual’s participation or refusal to participate in sexual conduct irrespective of whether the conduct is welcomed by the student or other employee (i.e., quid pro quo);
2. Unwelcome sex-based/related conduct determined by a reasonable person to be so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the education program or activity (i.e., hostile environment).
 - Severe – e.g., physical contact such as non-consensual sexual intercourse where there is no ability to escape and the physical contact was accompanied by threats or violence.
 - Pervasive – e.g., widespread, openly practiced, well-known among students or employees, occurring in public spaces with regularity.
 - Objectively offensive – e.g., based on the totality of the circumstances such as age and relationship of the accuser and accused, number of persons involved, frequency, severity, humiliation, intimidation, ridicule, disability status of the harasser and victim, and the abuse.

2.3. Sexual assault, dating violence, domestic violence, or stalking as defined in state or federal law.

Behaviors that constitute sexual harassment may include, but are not limited to:

- i. Sexually suggestive remarks or jokes;
- ii. Verbal harassment or abuse;
- iii. Displaying or distributing sexually suggestive pictures, in whatever form (e.g., drawings, photographs, videos, irrespective of format);
- iv. Sexually suggestive gesturing, including touching oneself in a sexually suggestive manner in front of others;
- v. Harassing or sexually suggestive or offensive messages that are written or electronic;
- vi. Subtle or direct propositions for sexual favors or activities;

- vii. Touching of a sexual nature or groping; and
- viii. Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct.

Sexual harassment may be directed against a particular person or persons, or a group, whether of the opposite sex or the same sex.

The context of behavior can make a difference between conduct falling within the technical definition of sexual harassment under Title IX, and conduct of a sexual nature that is offensive or hostile in itself, but which does not rise to the level within that definition. District policies prohibit both, but for purposes of its Title IX obligations, the District must address reports or complaints of conduct which may constitute sexual harassment as defined above, under this specific, limited scope Title IX sexual harassment reporting and Grievance Process.

Conduct that satisfies this definition is not sexual harassment for purposes of this policy if the conduct occurred (1) outside the United States or (2) under circumstances where the school system did not have substantial control over both the harasser/respondent and the context in which the harassment occurred.

NOTE regarding concurrent enrollment and dual enrollment, extended learning opportunities (ELOs), 3rd party distance learning and other alternative instructional programs: Under federal regulations, in order for the District to have jurisdiction over conduct that would otherwise meet the definition above of sexual harassment, the District must have substantial control over both the respondent and the context in which the harassment occurred. In general, this will mean that unless such learning program is occurring upon District property, conduct otherwise meeting the definition of sexual harassment within that program may not be subject to this policy.

“Stalking” refers to a pattern of behavior directed toward an individual by another that results in the person to whom the behavior is directed fearing for himself/herself or others. Stalking includes cyber-stalking, in which electronic media such as the internet, social media, texts, cell phones, GPS, and other forms of contact are used.

“Supportive measures” are free, non-disciplinary, non-punitive, individualized services and shall be offered to the complainant, and may be offered to the respondent, as appropriate. These measures may include, but are not limited to, the following:

1. Counseling;
2. Course modifications;
3. Schedule changes;
4. Increased monitoring or supervision;

5. Mutual restrictions on contact between the parties;

6. A safety escort;

7. Tutoring; and

4.8. A leave of absence

Such measures shall be designed to restore or preserve equal access to the District's education programs and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment and/or deter sexual harassment. Supportive measures shall remain confidential with the exceptions noted in **Sec. II.E,** below.

C. Title IX Coordinator.

The District Title IX Coordinator and contact information are as follows:

Karen Fischer-Anderson

Email: kfischer-anderson@sau8.org

Cell phone: (603) 406-1307

Office phone: (603) 226-2187 (ext. 7016)

Mailing address: Title IX Coordinator, SAU 8

38 Liberty Street, Concord, NH 03301

Office locations: Room #3003, Concord High School, 170 Warren Street, Concord NH 03301 or Room #9, SAU 8, 38 Liberty Street, Concord, NH 03301

The District Title IX Coordinator shall respond promptly to all general reports as well as formal complaints of sexual harassment and shall coordinate the District's response to complaints of sexual harassment promptly and equitably. In addition to any other specific responsibilities assigned under this policy, or as assigned by the Superintendent, the Title IX Coordinator will be responsible for:

1. contacting and meeting with a complainant, and informing the parent/guardian once the Title IX Coordinator becomes aware of allegations of conduct that could constitute sexual harassment as defined in this policy;
2. identification and implementation of supportive measures;
3. signing or receiving formal complaints of sexual harassment;
4. ensuring the District meets any reporting obligations to law enforcement agencies, DCYF, and the NH Department of Education (NHDOE) regarding reports or complaints of sexual harassment.
5. engaging with the parents/guardians of parties to any formal complaint of sexual harassment;
6. coordinating with the Superintendent with respect to assignment of persons to fulfill the District's obligations, both general and case-specific, relative to this policy (e.g., investigator, decision makers, etc.; this may involve the retention of third-party personnel);

7. coordinating with District and school-level personnel to facilitate and ensure prompt, thorough and equitable investigations and remedies, and helping to ensure that the District otherwise meets its obligations associated with reports and complaints of sexual harassment;
8. engaging with and updating parties, parents/guardians of parties, and advisors to any formal complaint of sexual harassment;
9. coordinating with District and school-level personnel to ensure appropriate training and professional development of employees and others in accordance with **Sec. II.D** of this policy; and
10. helping to ensure that appropriate systems are identified and maintained to centralize sexual harassment records and data.

In cases where the Title IX Coordinator is unavailable, including unavailability due to a conflict of interest or other disqualifying reason (see **Sec. II.G, below**), the Superintendent shall ensure that another person with the appropriate training and qualifications is appointed as acting Title IX Coordinator for that case; in such instances "Title IX Coordinator" shall include the acting Title IX Coordinators.

D. Training.

All District employees shall receive regular training relative to mandatory reporting obligations, and any other responsibilities they may have relative to this policy.

Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, must receive training on the definition of sexual harassment, this policy, the scope of the District's education program or activity, and how to conduct an investigation (including the requirements of the reporting and Title IX Grievance Process, including appeals and informal resolution processes). The training must also include avoiding prejudice of the facts, conflicts of interest, and bias.

Decision makers must also receive training on issues of relevance regarding questions and evidence, including when questions about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators must be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process must not rely on sex stereotypes, must promote impartial investigations and adjudications of formal complaints of sexual harassment, and must be made available to the public as provided in **Sec. II.H** of this policy.

E. Confidentiality.

The District will respect the confidentiality of the complainant and the respondent as much as possible. However, some information may need to be disclosed to appropriate individuals or authorities. All disclosures shall be consistent with the District's legal

obligations and the necessity to investigate allegations of harassment and take disciplinary action. Examples of required disclosure include:

1. information to either party to the extent necessary to provide the parties due process during the Title IX Grievance Process;
2. information to individuals who are responsible for handling the District's investigation and determination of responsibility to the extent necessary to complete the District's grievance process;
3. mandatory reports of child abuse or neglect to DCYF or local law enforcement (per Board Policy [#432 Reporting Child Abuse and Neglect](#));
4. information to the complainant's and the respondent's parent/guardian as required under this policy and or the Family Educational Rights and Privacy Act (FERPA); and
5. reports to NHDOE as required under NH Code of Administrative Rules Ed 510 regarding violations of the NH Code of Conduct for Education Professionals.

Any supportive measures offered to the complainant or the respondent shall remain confidential to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.

Except as specified above, the District shall keep confidential the identity of:

1. Any individual who has made a report or complaint of sex discrimination;
2. Any individual who has made a report or filed a formal complaint of sexual harassment;
3. Any complainant;
4. Any individual who has been reported to be the perpetrator of sex discrimination;
5. Any respondent; and
6. Any witness.

F. Retaliation prohibited.

Retaliation against any person who makes a report or complaint, or against any person who assists, participates, or refuses to participate in any investigation of an act alleged in this policy is prohibited. Actions taken in response to *materially* false statements made in bad faith, or to submitting *materially* false information in bad faith, as part of a report or during the Title IX Grievance Process, do not constitute retaliation.

G. Conflict of interest.

No person designated as a Title IX Coordinator, investigator, decision maker, nor any person designated by the District to facilitate an informal resolution process, may have a

conflict of interest or bias for or against any complainants, witnesses, or respondents generally or an individual complainant or respondent.

H. Dissemination and notice.

The District shall include in all student and employee handbooks, and shall make publicly available on the District's website the following information:

1. The District's policy of non-discrimination on the basis of sex (included in Board policy **AC{**}** #160 Non-Discrimination (also numbered as #412, #571, and #631)).
2. the title, name, office address, email address, and telephone number of the Title IX Coordinator (to be provided pursuant to Board policy **AC{**}** and its addendum, updated annually, **ACE{**}**);
3. the complaint process;
4. how to file a complaint of sex discrimination or sexual harassment;
5. how the District will respond to such a complaint; and
6. a statement that Title IX inquiries may be referred to the Title IX Coordinator or to the Assistant Secretary for Civil Rights.

The same information shall be provided to all persons seeking employment with the District, or seeking to enroll or participate in the District's educational programs or activities.

The District will make this policy, as well as any materials used to train Title IX Coordinators, investigators, and decision makers, as required under **Sec. II.D**, publicly available on the District's website.

I. Records and record keeping.

1. For each report or formal complaint of sexual harassment, the District, through the Title IX Coordinator, must create, and maintain for seven (7) years, record of:
 - a. Any actions, including any supportive measures,
 - a. If supportive measures were provided to the complainant, a description of the supportive measures taken designed to restore or preserve equal access to the District's education program or activity; or
 - b. If no supportive measures were provided to a complainant, the reasons why such a response was not clearly unreasonable in light of the known circumstances.
 - b. The basis for the District's conclusion that its response was not deliberately indifferent.
2. In addition, the District shall maintain the following records for a minimum of seven (7) years:

- a. Records for each formal complaint of sexual harassment, including:
 - Any determination regarding responsibility, including dismissals;
 - Any disciplinary sanctions imposed on the respondent;
 - Any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity;
 - Any appeal and the result therefrom;
 - Any informal resolution process and the result therefrom;

J. Reports of sexual harassment, formal complaints and District responses.

1. Report of sexual harassment.

NOTE: A report does not initiate the formal Title IX Grievance Process. That process is begun only upon the filing of a formal complaint under the procedures set out in II.J.3, and III.A, below.

Any person may report sexual harassment whether relating to herself, himself or another person. *If any District employee – other than the employee harasser, or the Title IX Coordinator – receives information of conduct which may constitute sexual harassment under this policy, that person shall, without delay, inform the Title IX Coordinator of the alleged sexual harassment.* **Failure to report will subject the employee to discipline up to and including dismissal.**

A report of sexual harassment may be made at any time, in person, by mail, by telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Anonymous complaints may also be made. However, without adequate information it may not be possible to conduct a thorough investigation. Additionally, while the District strongly encourages reports of sexual harassment to be made directly to the Title IX Coordinator, the report may be made to *any* District employee including, for instance, a counselor, teacher or Principal. Actual notice of sexual harassment, including allegations of sexual harassment, trigger the District's response obligations.

If the Title IX Coordinator is the alleged respondent, the report or formal complaint may be made directly to the Superintendent, who shall thereafter fulfill the functions of the Title IX Coordinator regarding that report/complaint, or delegate the function to another person.

NOTE: For any allegation of sexual assault on a student under the age of 18, such conduct shall be reported immediately to the Concord Police Department (CPD) and DCYF per Board policy #432 Reporting Child Abuse and Neglect. If the alleged respondent (perpetrator) is a person holding a license or credential from the NHDOE (i.e., "credential holder"), then a report shall also be made pursuant to Board policy **{**}GBEAB**.

Any student may bypass the District's reporting policy and report directly to:

N.H. Commission on Human Rights

2 Chennell Drive
Concord, NH 03301
(603) 271-2767

US Department of Health and Human Services
Office for Civil Rights

Region 1, JFK Building, Room 1875
Boston, MA 02203
(617) 565-1340

Employees and applicants for employment wishing to report sexual harassment under Title IX should report the behavior to the Title IX Coordinator. For those instances involving employees that do not fit the definition of sexual harassment under Title IX, the District's response will be governed under other applicable laws and policies per Board policy. District employee grievance procedures under Title IX do not have to be exhausted before an employee can file a complaint with the:

Office for Civil Rights (OCR) at the Office for Civil Rights, US Department of Education, 8th Floor, 5 Post Office Square, Boston, MA 02109-3912

In addition to in-school reports, a complainant or parent/guardian may pursue a criminal complaint with CPD and/or DCYF at the numbers listed below. Investigations conducted by the recipient may run simultaneously with those outside of the District and the outcome of one investigation does not determine the outcome of another.

Outside Resources for Sexual Harassment Support

FOR AN EMERGENCY or if you are in Immediate Danger: Dial 911

CPD: (603) 225-8600

DCYF: (603) 271-6562

Concord Hospital: (603) 230-1200

Suicide Prevention Lifeline: (800) 841-6229 or text 741741 (for suicidal thoughts).

Crisis Center of Central NH: (866) 841-6229 (Free/Confidential 24hr. Crisis Line)

Support groups

Hospital accompaniment

Emergency shelter

Court advocacy

Education and outreach

"Haven": (603) 994-7233 for domestic and sexual violence (24 hr. confidential hotline)

Employee Assistance Program: (877) 622-4327 (24/7 work/life support program)

2. District response to report of sexual harassment.

The District will promptly respond when there is actual knowledge of sexual harassment, even if a formal complaint has not been filed. The District shall treat complainants and respondents equitably by providing supportive measures to the complainant and by following the Title IX Grievance Process prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a

respondent. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

As soon as reasonably possible after receiving a report of alleged sexual harassment from another District employee or after receiving a report directly through any means, the Title IX Coordinator shall contact the complainant to:

- i. discuss the availability of and offer supportive measures with or without the filing of a formal complaint;
 - ii. consider the complainant's wishes with respect to supportive measures;
 - iii. explain to the complainant the process for filing a formal complaint.
3. Formal complaints.

Pursuant to federal regulations and this policy, a formal, signed complaint alleging sexual harassment and a request that the District investigate the allegations is required before the District may conduct a formal investigation of sexual harassment or take any action (other than supportive measures) against a person accused of sexual harassment. Once a formal complaint of sexual harassment is received, the Title IX Coordinator shall commence the Title IX Grievance Process set out in Sec. III below. The process for filing a formal complaint is set forth in Sec. III.A.

4. Limitation on disciplinary action.

In no case shall the District impose disciplinary consequences or sanctions against a respondent who has been accused of conduct which may constitute sexual harassment, until the Title IX Grievance Process has been completed.

5. Emergency removal and administrative leave.

At any point after receiving a report or formal complaint of sexual harassment, the Title IX Coordinator (or other District official charged with a specific function under this policy or the Title IX Process: e.g., investigator, decision maker, etc.) may request the Superintendent to direct that an individualized safety and risk analysis be performed to determine whether a respondent student is an immediate threat to the physical health or safety of any person. In the event that the safety and risk analysis determines that the respondent student presents an immediate threat to the physical health and safety of any person, the District may remove that student, provided that such removal is in full compliance with the Individuals with Disabilities Education Act (IDEA), a student's individualized education program (IEP) and or 504 plan if applicable. Such emergency removal shall not be disciplinary. The District must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal and shall continue to offer educational programming until a final determination is made pursuant to the Title IX Grievance Process.

The Title IX Coordinator shall keep the Superintendent informed of any employee respondents so that any necessary reports to NHDOE can be made in compliance with applicable administrative rules and the New Hampshire Code of Conduct for Educational Professionals. In appropriate cases, the Superintendent may place an employee respondent on non-disciplinary administrative leave pursuant to RSA 189:31.

III. Title IX Grievance Process.

Accommodations:

The District is committed to providing accessible and understandable reporting, complaint and grievance procedures. Any party or witness requiring an accommodation due to a disability, language barrier, or for any other reason should inform the Title IX Coordinator or a District employee as soon as possible.

The Title IX Grievance Process is used only upon the filing of a formal complaint of sexual harassment as described in **Sec. III.A, below**. The provisions of Section I of the policy are incorporated as part of the Title IX Grievance Process. Upon receipt of a formal complaint of sexual harassment, the Title IX Coordinator will coordinate the District's efforts to comply with its responsibilities related to the Title IX Grievance Process.

A. Process for filing a formal complaint of sexual harassment.

The Title IX Grievance Process is initiated by way of a formal complaint ("complaint" or "formal complaint") filed by the complainant, the complainant's parent/guardian, or the Title IX Coordinator. The complainant may file a complaint or choose not to file a complaint and simply receive the supportive measures. If the complainant does not file a complaint, the Title IX Coordinator may sign a formal complaint, but only if initiating the grievance process against the respondent is not clearly unreasonable in light of the known circumstances and in other cases where, in the exercise of good judgment and in consultation with the District's attorney as appropriate, the Title IX Coordinator determines that a grievance process is necessary to comply with the obligation not to be deliberately indifferent to known allegations of sexual harassment (Examples of when the Title IX Coordinator may sign a formal complaint are where: a pattern of misconduct exists on the part of the alleged offender; a risk exists that the alleged offender will commit additional acts of relationship violence or sexual misconduct; a weapon was used or a safety risk exists regarding other students or employees; or the conduct in the complainant's report has not been adequately resolved through provision of supportive measures). If the complaint is filed by the Title IX Coordinator, he/she is not a party to the action, and the District must comply with all of the provisions of the Title IX Grievance Process relative to respondents and complainants. The Title IX Coordinator will inform an alleged victim prior to signing a formal complaint where a victim's request for anonymity cannot be honored or circumstances require the Title IX Coordinator to sign a formal complaint.

If no formal complaint is filed by the complainant, the complainant's parent/guardian, or the Title IX Coordinator, no disciplinary action may be taken against the respondent based on conduct that would constitute sexual harassment under this policy.

Although there is no time limit per se to filing a formal complaint, for complaints initiated by the complainant or his or her parent/guardian, the complainant must be employed by the District or participating in or attempting to participate in the education program or activities of the District at the time of filing. Although the District will initiate the Title IX Grievance Process regardless of when the formal complaint is submitted, delays in reporting may significantly impair the ability of school officials to investigate and respond to the allegations.

At a minimum, a formal complaint must:

1. contain the name and address of the complainant and the student's parent or guardian if the complainant is a minor student;
2. describe the alleged sexual harassment;
3. request an investigation of the matter; and
4. be signed by the complainant or otherwise indicate that the complainant is the person filing the complaint.

The complaint may be filed with the Title IX coordinator in person, by mail, or by email. Complaint forms may be obtained from the Title IX Coordinator or on the District website.

B. Initial steps and notice of formal complaint.

1. The Title IX Coordinator will provide notice to the complainant and the complainant's parent/guardian if the complainant is under 18 years of age, and to the respondent (if known) and the respondent's parent/guardian if the respondent is under 18 years of age, as well as to any other known parties, of the following:
 - a. this Title IX Grievance Process, including any informal resolution process;
 - b. the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview; "sufficient details" shall include to the extent known: identities of persons involved, the conduct allegedly constituting sexual harassment, and the date and location of the incident;
 - c. a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
 - d. that each party may have an advisor of their choice, who may be, but is not required to be, an attorney. If the complainant or respondent is a member of

a collective bargaining unit, they have the right to have union representation present throughout the formal grievance process, in addition to an advisor.

- e. that each party is entitled to inspect and review evidence; and
 - f. a reference to any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
2. The Title IX Coordinator will contact the complainant to discuss and offer supportive measures.
 3. The Title IX Coordinator may contact the respondent to discuss, and/or impose non-disciplinary supportive measures.
 4. The Title IX Coordinator will examine the allegations in the formal complaint to determine whether, even if assumed true, the allegations are sufficient to sustain a finding of sexual harassment under this policy. If the Title IX Coordinator was not involved with preparing the formal complaint, the Title IX Coordinator will contact the complainant to discuss the complaint and whether amendment is appropriate, in which case the process of **Sec. III.C.4** will apply.
 5. If the formal complaint fails to satisfy the definition of sexual harassment in this policy, the complaint shall be dismissed as provided in **Sec. III.G**, below.
 6. If the complaint is not dismissed, the Title IX Coordinator will consult with the Superintendent as to whether the Title IX Coordinator should act as the investigator or whether a different District employee shall act in that capacity. At the same time, the Title IX Coordinator and the Superintendent shall appoint the person who will make the initial determination of responsibility (IDM). Ordinarily the building Principal shall serve as the IDM or the Superintendent, in consultation with the Title IX Coordinator, shall appoint an IDM on a case-by-case basis. In all cases, the investigator and the IDM must be properly trained, otherwise qualified and be free from any conflict of interest.
 7. If the report alleges sexual harassment by the Superintendent, the Title IX Coordinator will inform the Board President and the Assistant Superintendent, the latter of whom shall have authority to seek guidance from the District's general counsel, but shall not delay the District's response to the report as outlined in this policy.

C. General provisions and additional definitions relative to Title IX Grievance Process.

1. Copies and notices. Except as specifically stated elsewhere in this policy, for any document, information, or material required to be delivered to a party or to a person assigned with responsibility under the Title IX Grievance Process, the manner of transmittal may be by electronic mail, regular mail or such other manner reasonably calculated to assure prompt delivery with evidence thereof (such as a commercial carrier or other receipted delivery). Hand delivery will only be

permitted if made to the District official charged with the specific function under this policy (e.g., Title IX Coordinator, Superintendent, investigator, decision maker(s), etc.). Any document required to be delivered to a minor (i.e., complainant/respondent), or other non-eligible student, must also be delivered to the minor's parent/guardian. Copies should also be sent to each party's advisor(s). (Under federal regulations, copies of the investigative evidence, as well as the investigative report, must be forwarded to a party's advisor(s).

2. Risk analysis and emergency removal. At any point during the Title IX Grievance Process, the Title IX Coordinator may arrange for an individualized safety and risk analysis as described in **Sec. II.J.5**, following which a student may be removed.
3. Administrative leave. At any point during the Title IX Grievance Process, the Superintendent, at his/her own discretion, and with or without consulting the Title IX Coordinator, may place an employee on administrative leave pursuant to RSA 189:31.
4. Additional allegations. If in the course of an investigation, the District decides to investigate allegations about the complainant or respondent not included in the previous notice, the District shall simultaneously provide notice of the additional allegations to the parties whose identities are known, to the parties' parent/guardian (if minors), and to each party's advisor(s).
5. No interference with legal privileges. At no point in process will the Title IX Coordinator, the investigator, any decision maker, or any other person participating on behalf of the District require, allow, rely upon, or otherwise use questions or evidence that constitutes, or seeks disclosure of information protected under a legally recognized privilege (e.g., doctor/patient, attorney/client, clergy, etc.), unless the person holding such privilege (parent/guardian for minor student) has waived the privilege in writing to use the information with respect to the Title IX Grievance Process.
6. Consolidation of complaints. The District may consolidate formal complaints of allegations of sexual harassment where the allegations arise out of the same facts or circumstances and the formal complaints are against more than one respondent; or by more than one complainant against one or more respondents; or by one party against the other party. When the District has consolidated formal complaints so that the grievance process involves more than one complainant or more than one respondent, references to the singular "party," "complainant," or "respondent" include the plural, as applicable.
7. Remedies: range of disciplinary sanctions and remedial actions upon final determination of responsibility.
 - a. "Disciplinary sanctions" are consequences imposed on a respondent when she/he is found responsible for sexual harassment under this policy. Remedial actions are actions intended to restore or preserve a

complainant's equal access to educational programs and activities of the District.

- b. "Disciplinary sanctions" against an *employee* respondent may include any available sanction available for the discipline of employees, up to and including dismissal or non-renewal for any other violation of Board policy, NH Code of Conduct for Educational Professionals, applicable individual or collective bargaining contract, or state or federal laws or regulations.
- c. "Disciplinary sanctions" against a *student* may include any available discipline or sanction, up to and including expulsion, under the policies, rules and procedures that establish the District's student code of conduct.
- d. "Remedial actions" as to a respondent after a final finding of responsibility, whether employee or student, may include the imposition upon a responsible respondent of any additional non-disciplinary measures appropriate to effecting a remedy for sexual harassment, and may include such measures as no-contact orders, scheduling adjustments, removal or exclusion from extracurricular activities, class reassignments, limits on future class registrations, restrictions on access to various spaces in the school buildings, reassignment of attendance, and similar measures fine-tuned to respond appropriately to the circumstances surrounding a successful complainant's right to access the District's program and activity.

Additional remedial actions may include recommendations that a school-wide or system-wide response is needed in order to respond to the sexual harassment in a way that is not clearly unreasonable under the circumstances. In such cases, the Superintendent shall direct additional staff training, harassment prevention programs, or such other measures as determined appropriate to protect the safety of the educational environment and/or to deter sexual harassment.

D. Timeframe of grievance process.

The District shall make a good faith effort to conduct a fair, impartial grievance process in a timely manner designed to provide all parties with a prompt and equitable resolution. It is expected that in most cases, the grievance process will be concluded through at least the determination of responsibility decision within 80 days after filing of a formal complaint. In more complex cases, the time necessary to complete a fair and thorough investigation or other circumstances mean that a determination of responsibility cannot reasonably be made within that timeframe.

1. Summary of grievance process timeline.
 - a. Investigation twenty (20) +/- days as the complexity of the case demands (Sec. III.E.1)
 - b. Ten (10) days for reviewing information prior to conclusion of investigation

- c. Ten (10) days after receiving report to respond to report
 - d. Ten (10) days for decision maker to allow initial questions
 - e. Ten (10) days for responses to questions
 - f. Ten (10) days for questions and responses to follow-up questions.
 - g. Ten (10) days for determination of responsibility decision
 - h. Ten (10) days for appeal (six (6) additional days for administrative steps)
 - i. Ten (10) days for argument/statement challenging or supporting determination
 - j. Ten (10) days for decision on appeal
2. Delays and extensions of time. At any stage of the grievance process, the District (through the Superintendent, or if the Superintendent is the respondent, the Title IX Coordinator or designee) may for good cause allow for temporary delays or extensions of time upon request of either party, or on his/her own initiative. Examples of good cause may include such factors as availability of parties or witnesses, school or school administrative office holidays or vacations, referral back to an earlier stage of the grievance process, concurrent law enforcement or other agency activity, or the need to obtain interpreters or accommodation of disabilities. For any such delay or extension of time, the Superintendent or the Title IX Coordinator will provide written notice to the parties of the delay/extension and the reason(s).

E. Investigation.

The Title IX Coordinator will coordinate the investigation. The investigator shall be as appointed pursuant to **Sec. III.B.5.**

- 1. The Title IX Coordinator may conduct the investigation(s) or, in consultation with the Superintendent, designate another qualified person to investigate. The investigation and investigator must:
 - a. Include objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence. (Evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such evidence is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent.)
 - b. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on either of the parties;
 - c. Provide equal opportunity for the parties to present witnesses and other inculpatory and exculpatory evidence;

- d. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
 - e. Provide the parties with the same opportunities to have others present during any interview or other part of the investigation, including the opportunity to be accompanied to any related meeting or proceeding by the advisor(s) of their choice. The investigator may restrict any other individuals from participating, as long as the restrictions apply equally to both parties;
 - f. Provide, to a party (e.g., respondent or complainant – and parent/guardian as appropriate) whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate within the timeframes established in **Sec. III.D**, below.
 - g. Provide both parties equal opportunity to inspect and review any evidence obtained as part of the investigation directly related to the allegations raised in a formal complaint;
2. Prior to completion of the investigative report, the District, through the Title IX Coordinator, must send to each party and party's advisor, if any, the evidence subject to inspection and review in an electronic format or hard copy. The parties must be provided at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report;
 3. The investigator must prepare a written investigative report that fairly summarizes relevant evidence, including without limitation, witness credibility, discrepancies, inculpatory and exculpatory information, relevant District policies, rules and regulations, and the manner in which the same were made known to the pertinent school populations or specific parties. The investigative report shall include a description of the procedural steps taken, starting with the receipt of the formal complaint, and continuing through the preparation of the investigative report, including any notifications to the parties, interview(s) with parties and witnesses, site visit(s), and methods used to gather evidence.
 4. The investigator shall provide the investigative report in hard copy or electronic format to the Title IX Coordinator, to each party *and* each party's advisor(s), if any. Each party will have ten (10) days from receipt of the report to provide the Title IX Coordinator a written response.
 5. Not more frequently than every other week, the Title IX Coordinator will provide the parties with a status report on the investigator's progress. Absent unusual circumstances, the investigator should conclude the investigation within ten (10) to twenty (20) days after receiving a formal complaint.

F. Determination of responsibility and IDM.

The determination of responsibility of the respondent shall be made by the IDM pursuant to **Section III.B.5.**

1. Prior to making a determination of responsibility, the IDM will afford each party ten (10) days to submit written, relevant questions to the IDM that the party wants asked of any party or witness.
2. The IDM must explain to the party proposing the questions any decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the question and evidence concern specific incidents of the complainants prior sexual behavior with respect to the respondent and are offered to prove consent.
3. The IDM will provide the questions to the party/witness, with copies to each party, and provide no fewer than ten (10) days for written responses, which will also be provided to each party.
4. The IDM will allow five (5) days each for parties to ask supplementary, limited follow-up questions and five (5) days to provide answers. Additional rounds of follow-up questions may be permitted, as long as the opportunity is extended to both parties equally.
5. The IDM may not make any credibility determinations based on the person's status as a complainant, respondent or witness.
6. The respondent must be deemed to be "not responsible" for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
7. The IDM may impose disciplinary sanctions and remedies as described in Section III.C7, above.
8. The legal standard to be used for formal complaints in determining whether a violation occurred and/or that the respondent is responsible is by a "preponderance of the evidence" standard, which is only met when the party with the burden convinces the fact finder (the IDM) that there is a greater than 50% chance that the claim is true (i.e., more likely than not).
9. The initial decision maker must issue a written determination/decision within ten (10) days after the close of the period for responses to the last round of follow-up questions. The written "initial determination of responsibility" must include:
 - a. Identification of the allegations potentially constituting sexual harassment;
 - b. A description of the procedural steps taken from receipt of the formal complaint through the Initial Determination of Responsibility, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
 - c. Findings of fact supporting any determination(s);

- d. Conclusions regarding applicability of any District codes of conduct, policies, administrative regulations, or rules to the facts;
 - e. A statement of and rationale for, the finding(s) as to each allegation(s), including a determination regarding responsibility (i.e., whether or not the respondent is responsible for sexual harassment), and any disciplinary sanctions or remedies; and
 - f. The District's procedures and permissible bases for the complainant and respondent to appeal (as set forth in Section III.H, below).
10. The decision maker shall provide the initial determination of responsibility to the Title IX Coordinator, the Superintendent, and the parties simultaneously.

G. Dismissal of a formal complaint.

1. The District must dismiss a formal complaint with regard to Title IX sexual harassment if the alleged conduct:
 - a. Would not constitute sexual harassment, even if proved;
 - b. Did not occur in the District's education program or activity; or
 - c. Did not occur against a person in the United States.
2. The District may dismiss a formal complaint with regard to Title IX sexual harassment if at any time during the investigation or determination of responsibility stage(s):
 - a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegation(s) therein;
 - b. The respondent is no longer enrolled or employed by the District; or
 - c. Circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
3. Prior to dismissal of a formal complaint, the person responsible at that stage shall consult with the Superintendent.
4. Upon dismissal of a formal complaint, the District must promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

The dismissal of a formal complaint under Title IX does not preclude the District from continuing an investigation or taking action under other District policies, codes of conduct or administrative rules/regulations. In some instances, the District may have an *obligation* to continue an investigation and proceed under a different policy or mandated process.

H. Appeals process.

1. Either party may appeal the initial determination of responsibility, the dismissal of a formal complaint, or any allegation in a formal complaint by notifying the

Superintendent in writing (“written appeal”), with a copy to the Title IX Coordinator. If multiple determinations of responsibility exist, the written appeal shall specify which determination(s) are subject to the appeal. The written appeal must be received by the Superintendent within ten (10) days of the initial determination of responsibility or written notice of dismissal being communicated to the parties.

2. An appeal under this policy may only be based upon one or more of the following, which must be stated specifically in the party’s written appeal:
 - i. Procedural irregularity that affected the outcome of the matter;
 - ii. 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
 - iii. The Title IX Coordinator, investigator(s), or decision maker(s) 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.

Additional bases for appeal may be allowed if available equally to both parties.

Appeals for any other reason or upon any determination of responsibility not included in the written appeal will not be heard.

Appeals pertain only to the determination of responsibility and non-disciplinary remedies. Once a determination of responsibility is final per **Sec. III.I**, appeals of 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.

3. Within three (3) days of receipt of a written appeal, the Superintendent shall appoint a decision maker for appeal (ADM), who must be trained as provided in **Section II.D**, be free from any conflict of interest as provided in **Section II.G**, and may not be the same person as the IDM, the person who ordered dismissal, the investigator(s), or the Title IX Coordinator. Upon the appointment of the ADM, the Superintendent shall provide a notice of appeal to each party and to the Title IX Coordinator, along with a copy of the written appeal. The notice of appeal must include information regarding all deadlines and timeframes in the appeal stage.
4. Each party shall have ten (10) days from the date the notice of appeal is delivered to submit to the ADM a written statement (with copies to the Superintendent, Title IX Coordinator, and other party) an appeal statement supporting or challenging the determination of responsibility or dismissal.
5. Each party shall provide copies of the appeal statement to the other party, the Superintendent, and the Title IX Coordinator at the same time the appeal statement is submitted to the ADM. If the basis of the appeal is newly available evidence

affecting the outcome, the party shall submit such evidence or a summary of such evidence along with the party's appeal statement.

6. The ADM may refer an appealed issue back to a prior point in the grievance process with written notice to the parties, the Superintendent, and the Title IX Coordinator.
7. The ADM shall provide a written appeals decision after considering the record and the parties' appeal statements. The ADM will only overturn the initial determination of responsibility upon a conclusion that it was clearly erroneous (i.e., either made on unreasonable grounds, or without any proper consideration of the circumstances). If the basis or one of the bases for the appeal was new evidence, the ADM may either make a determination of responsibility regarding that evidence, or refer it back to the appropriate stage of the Title IX Grievance Process. The written appeals decision will describe the result(s) of the appeal and the rationale, with copies provided to the parties, Superintendent, and Title IX Coordinator, no more than ten (10) days after receiving the last of the parties' written statements per **Section III.H.5.**

- I. Finality of determination of responsibility.** The determination regarding responsibility becomes final either on the date the recipient, through the Superintendent, 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, on the date on which an appeal of the initial determination of responsibility would no longer be considered timely. The final determination shall be identified as the Title IX decision.

Once the Title IX decision is final, the District may implement remedies and disciplinary sanctions. The Title IX Coordinator is responsible for effective implementation of any non-disciplinary remedies, with the assistance of building and District administrative personnel, while disciplinary sanctions will be imposed by persons charged with such responsibilities under other Board policies, regulations or administrative procedures. The District may also proceed against the respondent or complainant pursuant to the District's applicable code of conduct or other Board policies, collective bargaining agreement, individual contract or administrative rules/regulations/procedures. Responsibility for the conduct at issue shall not be subject to further review or appeal within the District.

- J. Informal resolution.**

Where the facts alleged in a formal complaint are not contested, the respondent has admitted or desires to admit responsibility, or where both parties want to resolve the case without a completed investigation or hearing, the parties may participate in an informal resolution of the formal complaint that does not require a full investigation or appeal.

At any time prior to reaching a determination regarding responsibility (but only after the filing of a formal complaint), the District may offer an informal resolution process (e.g., mediation, arbitration), provided that the District:

1. Provides written notice to the parties disclosing:

- a. The allegation(s) of the formal complaint;
 - b. The requirements of the informal resolution process, including the circumstances under which parties are precluded from resuming a formal complaint arising from the same allegations; provided that at any time prior to agreeing to an informal resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
 - c. Any consequences resulting from participation in the informal resolution process, including the records that will be maintained or could be shared.
2. Obtains the parties' voluntary written consent to the informal resolution process.

In no event may the District offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Legal References:

Title IX of the Education Amendments of 1972, 20 U.S.C 1681, et seq 20 U.S.C. §1232g,
Family Educational Rights and Privacy Act
34 CFR. Part 99, Family Educational Rights and Privacy Act Regulations
34 CFR 106.8, Designation of responsible employee and adoption of grievance procedures.
34 CFR 106.30, Definitions
34 CFR 106.44, Recipient's response to sexual harassment
34 CFR 106.4, Grievance process for formal complaints of sexual harassment
34 CFR 106.71, Retaliation
RSA 193:38, Discrimination in Public Schools
NH Dept of Ed. Rules Ed 303.01 (i), School Board Substantive Duties
Ed 303.01(j), Substantive Duties of School Boards; Sexual Harassment Policy
Safe School Zone Memorandum of Understanding between Concord Police Department
and Concord School District, December 2019.

Adopted _____, 2020

Corresponds to NHSBA ACAC. See also AC, AC-E, GBEAB, JICK & JLF