

## **Concord School District Policy #414 \***

### **Sexual Harassment**

The purpose of this policy is to maintain a learning environment for everyone 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 person to harass another person through conduct or communication of a sexual nature as defined by this policy.

The District will investigate all complaints, either formal or informal, verbal or written, of sexual harassment and will discipline any person who sexually harasses another person.

#### **I. Sexual harassment clarified and defined**

Concord School District expressly prohibits all forms of sex-based harassment: sexual harassment (including sexual violence) and gender-based harassment.

Sexual harassment is persistent, offensive and unwelcome conduct of a sexual nature. It includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature.

Sexual violence is a form of sexual harassment. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse and sexual coercion.

The District also prohibits gender-based harassment, which is unwelcome conduct based on a person's gender or perceived lack of conformity with traditional gender stereotypes.

Sex-based harassment can be carried out by school employees, students or third parties. Any person can experience sex-based harassment irrespective of any aspect of that person's identity.

For students, sex-based harassment creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's programs. When the school becomes aware of possible sex-based harassment, it will take appropriate steps to investigate.

Any sexual contact or relationship between adults and students is strictly prohibited. Inappropriate physical contact between an adult and a student, whether the behavior is welcome or unwelcome, is grounds for dismissal. There is no circumstance in which these behaviors between adults and students are permissible. Any allegation of such contact will lead to the adult being placed on administrative leave immediately.

The District complies with all state and federal laws dealing with sex-based harassment. This policy seeks to educate members of the community about the nature of sex-based harassment as part of broader efforts to create a healthy and safe culture and climate in the school community.

Sex-based harassment of an adult occurs under the law when submission to such conduct is either an explicit or implicit term or condition of employment or any employment decision (e.g. promotion, training, timekeeping or overtime assignments, etc.); or the conduct has the purpose or effect of substantially interfering with an individual's work performance, or creating an intimidating, hostile or offensive work environment.

#### Identifying sex-based harassment

Sex-based harassment can take various forms, many of which violate state or federal laws. Not all forms of sex-based harassment may be readily apparent to every member of the community. It may be direct and overt or it may be subtle and ambiguous. It may be behavior that is repeated, or it may be more severe behavior that occurs only once.

Individuals might unintentionally act in a manner that others experience as sexually harassing. It is the responsibility of all members of the community to ensure that their words, actions and interactions with others always reflect the intent to promote respect and trust. Attempts to justify such behavior as a "prank" or "joke" do not change its harassing nature. Whatever the basis for the harassment, it is prohibited.

The following behaviors are examples of harassing behaviors. The list is suggestive rather than exhaustive, and members of the community should seek advice and assistance in any circumstance in which they are made to feel uncomfortable by the behavior of another.

Some examples of harassment are:

- physical assault, including rape or any coerced or non-consensual sexual relations
- sexual advances, whether they involve physical touching or not
- sexual physical contact
- sexual or lewd jokes, remarks, leering, whistling, brushing against the body or other suggestive or insulting gestures or comments
- inquiries into one's sexual experiences or activities or discussion of one's own sexual experiences or activities other than discussed in a confidential medical or mental health visit
- audiotaping, videotaping, or otherwise recording others in sexual or other potentially embarrassing circumstances and forwarding or threatening to forward the recorded material to others
- intimidating or suggestive remarks about an individual's gender or sexual orientation, whether actual or implied
- sexually suggestive or degrading sounds or remarks (written, oral or electronically transmitted), including graffiti and the spreading of sexual rumors, made to or about another member of the community

- the use of District technology to transmit sexually suggestive, offensive and/ or degrading material, whether received at the District or elsewhere
- the open display of sexually offensive objects, pictures and messages

## **II. 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 or who has witnessed 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 Principal, who shall then immediately notify the Superintendent and the Concord Police Department (CPD). The Principal will also notify the parent(s) or guardian(s) of the alleged victim that a report was made to the school and to the CPD.
3. The Board encourages all students and staff members to use the report form available from the Principal or Superintendent. Reports will also be accepted electronically or verbally.
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 and the CPD 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 and the CPD. Failure to forward any sexual harassment report or complaint as provided herein will result in disciplinary action. If the complaint involves the Principal, the complaint shall be filed directly with the Superintendent.
5. The District will respect the confidentiality of the complainant and the person(s) against whom the complaint is filed as much as possible, consistent with the District's legal obligations and the necessity to investigate allegations of sexual harassment and take disciplinary action when the conduct has occurred.
6. 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 Board.
7. If a sexual harassment complaint or accusation is made against an employee or volunteer, that person will be placed on administrative leave within 24 hours of the determination that an investigation is required. Any complaint that involves a staff member will be investigated by an independent investigator.
8. 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. Consideration will be given to the development of a safety plan, to accommodations to support the reporter and to changing the offender's class schedule.

9. 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 District's legal obligations and the necessity to investigate allegations of sexual harassment and take disciplinary action when the conduct has occurred.

### **III. 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 Superintendent or by the 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 Superintendent will be provided with a written factual report and recommended action. The Superintendent shall update the Board annually on the number and disposition of complaints.

### **IV. District action**

1. For students, 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. Education on this topic will also be mandatory as part of the education process. Discipline will be issued in accordance 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.

2. For staff, if the investigating party determines that the alleged conduct constituted sexual harassment, the Superintendent may discipline the offending employee. Such discipline may include, but is not limited to, a warning, training, temporary suspension and/or dismissal. Any discipline will be in accordance with all laws and collective bargaining agreements, if applicable.

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 in violation of other related Board policies, will be addressed on a case-by-case basis by the Superintendent, who may order the offending employee to engage in some remedial action.

## **V. Retaliation**

Retaliation is any form of intimidation, reprisal, or harassment directed against an individual who reports sexual harassment provides information during an investigation of such behavior, or witnesses or has information about such behavior. Retaliation may include behaviors such as being ostracized, having rumors or misinformation spread about the reporter.

Retaliation against any individual for reporting violations of the policy, whether by the object of the complaint or someone else, will not be tolerated and will be subject to the same strict discipline as harassment itself. Each retaliatory offense will be investigated and sanctioned separately. Individuals who themselves are not complainants, but who participate in an investigation, for example, as witnesses or investigators, will also be protected from retaliation under this policy.

## **VI. 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.

## **VII. 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 District from taking immediate action to protect victims of alleged sexual abuse. (See [Policy #432 Reporting Child Abuse and Neglect](#).)

## **VIII. Age-appropriate sexual harassment policy**

Per the requirements of [Ed 303.01\(j\)](#), the 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 Principal(s) are charged with establishing policies, rules, protocols and other necessary age-appropriate information or materials for the District's elementary schools.

### **IX. Bypass 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 Chennell Drive, 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:**

Ed 303.01(j), *Substantive Duties of School Boards; Sexual Harassment Policy*

Ed 306.04(a)(9), *Sexual Harassment*

RSA 193-D:4

Appendix: GBAA-R, BBA-R

Adopted June 4, 2018. Revised Sept. 3, 2019 (made identical to Policy #521)

Corresponds to NHSBA Policy JBAA

Also Policy #521