

Policy Committee Meeting  
Wednesday, May 5, 2021, 12:00 PM  
SAU 33 Office/Remote  
Agenda

I. Call to Order

II. Proof of Posting

III. NHSBA Special Policy Update

NHSBA Cover Sheet

Raymond Policy

JJ Student Rights and Responsibilities

JJA Student Due Process

JJC Student Conduct

JJCD Student Conduct Discipline and Due Process

JJCI-R Modification of a Weapons Expulsion

NHSBA Sample Policy

JJ Student Rights and Responsibilities

JJA Student Due Process (withdrawn)

JJC Student Conduct

JJCD Student Discipline and Due Process

JJCI-R Modification of Expulsions (withdrawn)

IV. Organizational Chart

Current Policy

CCA-R Organizational Chart

Draft Updated Policy

CCA-R Organizational Chart

V. NHSBA Title IX Policy Update

NHSBA Cover Sheet

Raymond Policy

*No corresponding policy*

GBAA Sexual Harassment, Sexual Violence, Staff

GCCBC Family and Medical Leave Act

JBAA Sexual Harassment - Students

NHSBA Sample Policy

ACAC Sexual Harassment

GBAA Sexual Harassment Staff (withdrawn)

GCCBC FMLA Leave

JBAA Sexual Harassment Students (withdrawn)

**NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION  
POLICY SERVICES  
SPECIAL POLICY UPDATE  
STUDENT CONDUCT, DISCIPLINE AND DUE PROCESS  
RSA 193:13 / HB1558**

This Special Policy Update includes revisions to sample policies impacted by the 2020 amendments to RSA 193:13 pertaining to student discipline. The amendments were included as part of HB1558, an education omnibus bill, and passed as 2020 N.H. Laws Chapter 38:1.

HB1558 also included provisions endorsing use of Multi-Tiered System of Support for Behavioral Health and Wellness, or MTSS-B (2020 N.H. Laws 38:27-30). The revised sample policies included with this update do not fully incorporate a MTSS-B system, but are constructed to accommodate districts which have established MTSS-B (or the earlier PBIS).

The amendments to 193:13, like the endorsement of MTSS-B, are designed to effect greater emphasis on the emotional and academic needs of students through support and intervention strategies prior to using exclusion from school through suspension and expulsion. The amendments also:

1. limit the duration of long-term (“LT”) suspensions to 20 days;
2. limit the reasons a student may receive a long-term suspension;
3. require intervention plans for students who are re-entering after a long-term suspension;
4. specifically allow for educational services to be provided to an expelled student;
5. require districts to adopt separate standards for short term suspensions of less than 5 days, and those of five or more days;
6. establish/clarify avenues for modification/reinstatement/enrollment after expulsion; and
7. create avenue of appeal if board/district declines reinstatement or enrollment of an expelled student.

**Sample Policies Included in this Update:**

**JI – Student Rights and Responsibilities**

[Priority/Required By Law policy]

***See Also: JIC, & JICD***

- NHSBA Sample policy JI has been revised to reflect withdrawal of sample policy JIA, along with other minor language changes.

### **JIA – Student Due Process**

[Withdrawn]

- NHSBA withdrew sample policy JIA as the subject matter is fully incorporated into the newly revised JICD.

### **JIC– Student Conduct**

[Recommended policy]

***Related Policies: JIA, JICD, JICDD, & JICK***

***See Also: JICD-R***

- NHSBA sample policy JIC has been recategorized as “Priority/Required by Law” Policy completely restructured to reflect the legislative overhaul of RSA 193:13.

### **JICD – Student Discipline and Due Process**

[Priority/Required By Law policy]

***Related Policies: JI, JIA, JIC, JICDD, & JICK***

***See Also: JICD-R***

- NHSBA sample policy JICD was completely restructured to reflect the legislative overhaul of RSA 193:13..

### **JICI-R – Modification of Weapons Expulsion**

[Withdrawn Administrative Procedure]

***Related Policies: Policy Codes***

***See Also: appendix***

- NHSBA withdrew former sample procedural document JICI-R as part of revisions to sample policies JI, JIC and JICD to reflect 2020 amendments to RSA 193:13. The subject matter of former JICI-R is fully incorporated into sample policy JICD.

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Raymond School District Policy - JI

STUDENT RIGHTS AND RESPONSIBILITIES

Student rights and responsibilities shall be published in the Parent-Student Handbook. Rights and responsibilities relative to student discipline shall be available in written or oral form for students, parents and guardians for whom English is a second language, whenever practical. Student disciplinary procedures will be implemented pursuant to the provision of Board Policies JIA and JICD.

Adopted: December 17, 2008

Student Rights and Responsibilities

Category: Priority/Required by Law

Related Policies: JIC & JICD



ADOPTION/REVISION NOTES –

Remove text between highlighted lines “~ ~ ~ ~” above and below, as well as all other highlights.

- (a) General – As with all sample policies, NHSBA recommends that each district carefully review this sample prior to adoption/revision to assure suitability with the district’s own specific circumstances, internal coding system, current policies, and organizational structures.
- (b) Highlighted language or blank, underscored spaces indicate areas which Boards must review/change/complete to reflect local personnel titles, internal or external policy references, duty assignments etc.
- (c) {\*\*} indicates a reference to another NHSBA sample policy. A district should check its own current policies and codes to assure internal consistency.
- (d) Withdrawn and earlier versions of revised policies should be maintained separately as part of the permanent records of the District.



Student rights and responsibilities shall be published annually in the applicable student handbook, and will be made available in another language or presented orally upon request. Student disciplinary procedures will be implemented pursuant to Board Policies {\*\*} JIC and {\*\*} JICD.

**District Policy History:**

First reading: \_\_\_\_\_

Second reading/adopted: \_\_\_\_\_

**District revision history:**

**Legal References:**

- RSA 189:15, Regulations
- NH Code of Administrative Rules, Section Ed 306.04(a)(3), Student Discipline
- NH Code of Administrative Rules, Section Ed 306.04(f), Student Discipline
- NH Code of Administrative Rules, Section Ed 317.04(b), Disciplinary Procedures

**Legal References Disclaimer:** These references are not intended to be considered part of this policy, nor should they be taken as a comprehensive statement of the legal basis for the Board to enact this policy, nor as a complete recitation of related legal authority. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

**When adopting this sample or variation of the same, a district should not include the NHSBA history or NHSBA policy notes appearing below. The district should, to the extent possible, include its own adoption/revision history, as well as the legal references and disclaimer as indicated above.**

**NHSBA history:** Revised March 2021, May 2008, October 2005, November 1999, and July 1998.

**Student Rights and Responsibilities**

**NHSBA revision notes, March 2021**, policy was revised to reflect withdrawal of sample policy JIA, with other minor language changes.

w/p-update/2021-U1 Special/JI Student Rights and Responsibilities 2021-U1

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## **STUDENT DUE PROCESS**

Students facing discipline will be afforded all due process rights given by law. The Superintendent or his/her written designee is authorized to suspend any student for ten days or less for violations of school rules or policies. Should the Superintendent desire to extend a suspension beyond 10 days, or seek expulsion of a student, such student will be afforded a hearing consistent with the provisions of RSA 193:13, I (b) and (c), N.H. Dept. of Education Rule 317.04, and Board Policy JICD-R.

If a student is disabled under the Individuals with Disabilities Act (IDEA), the New Hampshire RSA 186-C, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, or any other law providing special rights to disabled students, those laws shall govern and shall supersede these local policies to the extent these local policies are inconsistent with those laws. Accordingly, any suspension or expulsion of a child with a disability as defined in Ed 1102.01(t) shall be in accordance with Ed 1124.01.

Student due process rights shall be printed in the Parent-Student Handbook and will be made available in another language or presented orally upon request.

### **Legal References:**

*RSA 189:15, Regulations*

*RSA 193:13, Suspension and Expulsion of Pupils*

*NH Code of Administrative Rules, Section Ed 306.04(a)(3), Policy Development, Discipline*

*NH Code of Administrative Rules, Section Ed. 306.04(f), Student Discipline*

*NH Code of Administrative Rules, Section Ed 317.04, Disciplinary Procedures*

Adopted: August 1, 2002

Revised: February 20, 2008

Revised: October 16, 2019

Student Due Process

Category: *Withdrawn*



**ADOPTION/REVISION NOTES –**

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- (b) Highlighted language or blank, underscored spaces indicate areas which Boards must review/change/complete to reflect local personnel titles, internal or external policy references, duty assignments etc.*
- (c) {\*\*} indicates a reference to another NHSBA sample policy. A district should check its own current policies and codes to assure internal consistency.*
- (d) Withdrawn and earlier versions of revised policies should be maintained separately as part of the permanent records of the District.*



**WITHDRAWN / date district withdraws /**

Former policy {\*\*}JIA was withdrawn to correspond with revisions to Board policies {\*\*}JI, {\*\*}JIC and {\*\*}JICD.

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**NHSBA history:** Withdrawn – March 2021; Revised – July 2019, September 2008, October 2005, November 1999 and July 1998

**NHSBA revision notes, March 2021.** NHSBA withdrew former sample policy JIA as part of revisions to sample policies JI, JIC and JICD to reflect 2020 amendments to RSA 193:13. The subject matter of former JIA is fully incorporated into sample JICD.

w/p-update/2021-U1 Spring/JIA Student Due Process Withdrawn 2021-U1

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STUDENT CONDUCT

See also JICD, JICDD, JICDA

**A. General Conduct Standards and Disciplinary Concepts.**

Student conduct that causes material or substantial disruption to the school environment, interferes with the rights of others, presents a threat to the health and safety of students, employees, and visitors, violates other Board policies or is otherwise inappropriate is prohibited. Students are expected to maintain appropriate classroom behavior that allows teachers and staff to perform their professional duties effectively and without disruption. Students will conduct themselves in a manner fitting to their age level and maturity, and with respect and consideration for the rights of others, while on School District property or on property within the jurisdiction of the School District; while on school owned and/or operated school or chartered vehicles; and/or while attending or engaged in school activities. Students may also be disciplined for off-campus behavior in accordance with the provisions of Policies JICDD and JICK.

Terms, and levels of discipline are established in Policy JICD, as are the due process procedures to be afforded relative to each level of discipline. Disciplinary measures as defined in that policy include, but are not limited to, removal from the classroom, detention, in-school suspension, out-of-school suspension, restriction from activities, probation, and expulsion.

Due process in accordance with all applicable laws will be afforded to any student involved in a proceeding that may result in suspension, exclusion, or expulsion. Students expelled from school may be reinstated by the Board under the provisions of RSA 193:13.

**B. Implementation and Notice.**

The School Board delegates to the Superintendent the responsibility of adopting and implementing such age-appropriate rules and regulations for each school as he/she, in consultation with the appropriate building Principal, deems necessary to implement this policy.

The content of RSA 193:13, this policy, and any such rules and regulations adopted hereunder, shall be printed in the student handbook(s) and distributed to all students, and parents/guardians. The Superintendent shall also assure that this policy, the content of 193:13, and any such rules and regulations adopted under this policy are made available on the District's website, with additional notice provided to the student body as the Superintendent or building Principal deems appropriate (e.g., periodic postings and notices).

Rules and regulations adopted and published under this policy will be deemed to be regulations and policies of the School Board and maintained as School Board records. The Superintendent shall provide to the School Board copies of all student handbook(s), and other rules and the regulations adopted under this policy. The School Board retains the authority to modify, supersede, or suspend any such rules and regulations consistent with the Board's statutory authority, and other Board policies regarding review of administrative rules, regulations and procedures.

**C. Parental Notification of Simple Assaults.**

Pursuant to RSA 193-D:4, I (b), the Superintendent is directed to adopt and implement procedures regarding notification to parents/guardians of each student involved in a simple assault (victim and perpetrator) occurring during the school day, when such assault causes: any form of bodily injury, including bruising or discoloration, or would otherwise constitute a disciplinable offense under either District or building rules of conduct. For purposes of this policy, "simple assault" shall have the same meaning as that provided in RSA 631:2-a (a simple assault occurs when one purposefully or knowingly causes bodily injury or unprivileged physical contact to another; or recklessly causes bodily injury to another or negligently causes bodily injury to another by means of a deadly weapon).

**D. Disciplinary Removal of Students with Disabilities.**

If a student is disabled under the Individuals with Disabilities Act (IDEA), the New Hampshire RSA 186-C, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, or any other law providing special rights to disabled students, those laws shall govern and shall supersede these local policies to the extent these local policies are inconsistent with those laws. Accordingly, any suspension or expulsion of a child with a disability as defined in Ed 1102.01(t) shall be in accordance with Ed 1124.01.

**Legal References:**

RSA 193:13, Suspension and Expulsion of Pupils

RSA 193-D:4, Written Report Required

RSA 631:2-a, Simple Assault

NH Code of Administrative Rules, Section Ed. 306.04(f)(4), Student Discipline

NH Code of Administrative Rules, Section Ed. 306.06, Culture and Climate

NH Code of Administrative Rules, Section Ed. 317.04(b), Disciplinary Procedures

See appendix: JICD – R

Adopted: August 1, 2002

Revised: October 5, 2011

Revised: January 2, 2019

STUDENT CONDUCT

Category: Priority/Required by Law

Related Policies: JICD, JICDD, JICI, JICK
See also Appendix: JICD-R



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(b) Highlighted language or blank, underscored spaces indicate areas which Boards must review/change/complete to reflect local personnel titles, internal or external policy references, duty assignments etc.
(c) {\*\*} indicates a reference to another NHSBA sample policy. A district should check its own current policies and codes to assure internal consistency.
(d) Withdrawn and earlier versions of revised policies should be maintained separately as part of the permanent records of the District.



A. General Policy.

The School Board is committed to promoting a safe, healthy, orderly and supportive school and learning environment. To achieve that for all, it is important for students to conduct themselves in a manner fitting to their age level and maturity, and with respect and consideration other students, District personnel and other members of the community. Students are expected and required to maintain appropriate behavior that allows teachers and staff to perform their professional duties effectively and without disruption while on School District property or on property within the jurisdiction of the School District (including vehicles); and/or while attending or engaged in school activities.

Expectations for student conduct and standards of behavior shall be communicated through written Board policies, as well as District and/or school rules. Those policies and rules should be included in a Code of Conduct \_\_\_ [1Delete footnote] for each school.

Student conduct that causes material or substantial disruption to the school environment, interferes with the rights of others, presents a threat to the health and safety of students, employees, or visitors, and/or violates the Code of Conduct \_\_\_, or classroom rules is

1 No law or regulation requires something called a “code of conduct”. However, boards and schools are required to have a policy for “rules of conduct”, and “penalties for misbehavior”, and be disseminated to parents and guardians. (Ed 306.04(f), and (g)). Ed 306.06 further requires fair and consistent implementation of the outdated term “code of discipline”. This sample policy uses “Code of Conduct” to reference the collection of Board policies, school and district administrative rules, and policies & rules pertaining to disciplinary consequences. Any district which does not use term Code of Conduct for such rules, should replace with the District’s own title, e.g., Expectations and Standards of Behavior and Consequences. In mid-May, 2021, NHSBA will make available upon request a template for a code of conduct based upon MTSS-B.

## STUDENT CONDUCT

prohibited. Response to violations of the Code of Conduct \_\_\_\_\_, however, should be designed to maximize student academic, emotional and social success, while at the same time assuring safety of all students, staff and school visitors. With this objective, the Board endorses adoption of a Multi-Tiered System of Support for Behavioral Health and Wellness (“MTSS-B”) as the framework for the Code of Conduct \_\_\_\_\_. [2delete footnote] District personnel who interact with students are expected to utilize progressive disciplinary measures, and to place emphasis on educating students so they may grow in self-discipline. Suspensions and expulsions shall be administered consistent with the applicable Code of Conduct and Board policy {\*\*}JICD.

### B. Student Code of Conduct[ \_\_\_\_\_ ]

The School Board delegates to the Superintendent, in consultation with the appropriate building Principal and counselors, the responsibility of adopting and implementing a [Student Code of Conduct] with such age-appropriate rules and regulations for each school as he/she deems necessary to implement the objectives of this policy, and reflects the three-tiered support prevention of framework of MTSS-B: school-wide approaches; targeted supports for at-risk students; and individualized services for highest-needs students.

The Code of Conduct for each school shall be submitted to the School Board for review [3delete footnote] each year, either separately or with the applicable student handbook. Consistent with the Board's statutory authority, and other Board policies regarding review of administrative rules, regulations and procedures, the School Board retains the authority to modify, supersede, or suspend any provision of the Code of Conduct \_\_\_\_\_.

The Code of Conduct \_\_\_\_\_ shall include:

1. A graduated and age-appropriate system of supports and intervention strategies, such as:
  - parent conferences,
  - counseling,
  - peer mediation,
  - instruction in conflict resolution and anger management,
  - parent counseling and training,
  - community service, and
  - rearranging class schedules.
2. Graduated and age-appropriate disciplinary consequences such as:
  - restriction from extra-curricular activities,
  - temporary (same day) removal from class or activity,

<sup>2</sup> MTSS-B was endorsed by the legislature specifically through 2020 amendments to RSA 135-F, and the “supports” required under 193:3, XI(a), and included in paragraph B.1 above.

<sup>3</sup> An annual review should be sufficient for Board oversight, as the Board will always retain authority require revisions (within legal limits). Pre-approval often creates timing issues as necessary adjustments from school year, and processes reflecting new legislative changes, are not identified until the end of the school year. If the Board wishes annual pre-approval of the Code of Conduct, it should include a date for submission, keeping in mind the board meeting calendar for summer and the need to have handbook ready.

**STUDENT CONDUCT**

- detention,
  - temporary reassignment/in-school suspension,
  - out-of-school suspension, and
  - expulsion.
3. Provisions describing how and when short term suspensions of up to 5 days, short term suspensions up to 10 days, long term suspensions up to 20 days, and/or expulsion should be imposed. These standards shall make reference to and reflect:
- the nature and degree of disruption caused to the school environment;
  - the threat to the health and safety of pupils and school personnel, volunteers or visitors;
  - whether the conduct or behavior is isolated or repeated.

All temporary (same day) removal from classrooms or activities, restriction from activities, detentions, suspensions and expulsions shall comport with applicable laws, regulations and Board policy {\*\*}JICD.

4. Information regarding RSA 193:13, 193-D, this policy, Board policy {\*\*}JICD, and other Board policies or District/school rules regulating student conduct on and off-campus. Except where the complete text of a statute, regulation or policy is required, the Code of Conduct should include age appropriate language. E.g., summaries for elementary grade levels.

**C. Implementation and Notice.**

The Superintendent shall assure that the Code of Conduct, complete with the information set out in section B.4, above, shall be printed in full in each student handbook, made available to parents at the beginning of the school year, publicly available on the school, District and/or SAU district website [or in some other manner to assure parental notification if neither the school district nor SAU maintain a website].

Additionally, building Principal(s) shall assure student awareness of the Code of Conduct and other District policies and building rules through print, postings and periodic announcements.

The Superintendent should also designate personnel to explore the availability of and pursue any State or Federal grants, technical assistance and professional development opportunities available to facilitate implementation of MTSS-B per RSA 135-F:5, I(c) and (d).

**D. Parental Notification of Simple Assaults.**

Pursuant to RSA 193-D:4, I (b), the Superintendent is directed to adopt and implement procedures requiring parents/guardians of each student involved in a simple assault (victim and perpetrator) occurring during the school day, when such assault causes: any form of bodily injury, including bruising or discoloration, or would otherwise constitute a disciplinable offense under the Code of Conduct \_\_\_\_\_. For purposes of this policy, "simple assault" shall have the same meaning as that provided in RSA 631:2-a (a simple assault occurs when one purposefully or knowingly causes bodily injury or unprivileged physical contact to another; or recklessly

**STUDENT CONDUCT**

causes bodily injury to another or negligently causes bodily injury to another by means of a deadly weapon).

**E. Disciplinary Removal of Students with Disabilities.**

If a student is disabled under the Individuals with Disabilities Act (IDEA), the New Hampshire RSA 186-C, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, or any other law providing special rights to disabled students, those laws shall govern and shall supersede these local policies to the extent these local policies are inconsistent with those laws. Accordingly, any class or activity removal, suspension or expulsion of a child with a disability as defined in Ed 1102.01(t) shall be in accordance with Ed 1124.01.

**District Policy History:**

First reading: \_\_\_\_\_

Second reading/adopted: \_\_\_\_\_

District revision history:

**Legal References:**

*RSA 135-F:5, System of Care for Children/Duties of Commissioner of Dept. of Education*

*RSA 193:13, Suspension and Expulsion of Pupils*

*RSA 193-D:4, Written Report Required*

*RSA 631:2-a, Simple Assault*

*NH Code of Administrative Rules, Section Ed. 306.04(f)(4), Student Discipline*

*NH Code of Administrative Rules, Section Ed. 306.04(g), Suspension & Expulsion*

*NH Code of Administrative Rules, Section Ed. 306.06, Culture and Climate*

*NH Code of Administrative Rules, Section Ed. 317.04(b), Disciplinary Procedures*

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**NHSBA history:** Revised – March 2021; September 2018; May 2018; April 2011; September 2009; October 2004; November 1999; July 1998

**NHSBA revision note, March 2021:** Policy JIC was revised to reflect 2020 amendments to RSA 193:13. Among other things, those amendments largely are designed to effect greater emphasis on the emotional and academic needs of students through support and intervention strategies prior to using exclusion from school through suspension and expulsion. The amendments also (a) limit the duration of long-term (“LT”) suspensions to 20 days, (b) limit the reasons a student may receive a LT suspension, and (c) require districts to adopt separate standards for short term suspensions of <5 days, and those of >5.

w/p-update/2021-U1 Special/JIC Student Conduct 2021-U1 (f)

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## Raymond School District Policy - JICD

### STUDENT CONDUCT, DISCIPLINE, AND DUE PROCESS

Inappropriate student conduct that causes material and substantial disruption to the school environment interferes with the rights of others, or presents a threat to the health and safety of others will not be tolerated. Students are expected to exhibit appropriate classroom behavior that allows teachers to communicate and educate effectively.

Students will conduct themselves in a manner fitting to their age level and maturity and with respect and consideration for the rights of others while on school district property or property within the jurisdiction of the school district; while on school owned and/or operated school or chartered vehicles; while attending or engaged in school activities; and while away from school grounds if misconduct will directly affect the good order, efficient management and welfare of the school district. Consequences for the misconduct will be fair and developmentally appropriate in light of the circumstances.

Students who fail to abide by this policy and the administrative regulations supporting it may be disciplined for conduct which disrupts or interferes with the education program; conduct which disrupts the orderly and efficient operation of the school district or school activity; conduct which disrupts the rights of other students to participate in or obtain their education; conduct that is violent or destructive; or conduct which interrupts the maintenance of a disciplined atmosphere. Disciplinary measures include, but are not limited to, removal from the classroom, detention, suspension, probation, and expulsion.

Suspension means an in-school suspension, an out-of-school suspension, long-term suspension, a restriction from activities or loss of eligibility. An in-school suspension means the student will attend school but will be temporarily isolated from one or more classes while under supervision. An in-school suspension will not exceed ten consecutive school days. An out-of-school suspension means the student is removed from the school environment, which includes school classes and activities. An out-of-school suspension will not exceed ten days. A long-term suspension will not exceed an additional ten days. A restriction from school activities means a student will attend school and classes but will not participate in practice or other extra-curricular activities.

Probation means a student is given a conditional suspension of a penalty for a definite period of time in addition to being reprimanded. The conditional suspension will mean the student must meet the conditions and terms for the suspension of the penalty. Failure of the student to meet these conditions and terms will result in immediate reinstatement of the penalty.

Expulsion means an action by the Board to remove a student from the school environment, which includes, but is not limited to, classes and activities, for a period of time set by the Board.

Due process in accordance with all applicable laws will be afforded to any student involved in a proceeding that may result in suspension, exclusion, or expulsion. Students expelled from school may be reinstated by the Board under the provisions of RSA

193:13.

The Superintendent may modify expulsion requirements as provided in RSA 193:13, IV.

Students receiving special education services will be disciplined in accordance with the student's IEP and all applicable provisions of the Individual with Disabilities Education Act (IDEA).

At all times, students are required to conduct themselves in accordance with behavioral standards set forth in Policy JIC and all other applicable Board policies.

Students and parents will be notified annually of this policy.

**Legal References:**

*RSA 193:13, Suspension & Expulsion of Pupils*

*NH Code of Administrative Rules, Section Ed 306.04(a)(3), Student Discipline*

*NH Code of Administrative Rules, Section Ed 306.04(f), Student Discipline*

*NH Code of Administrative Rules, Section Ed 317.04(b), Disciplinary Procedures*

See Appendix: JICD-R

Adopted: August 1, 2002

Revised: June 3, 2009

Revised: May 2, 2012



Student Discipline and Due Process

Category: Priority/Required by Law

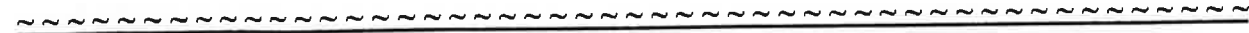
Related Policies: JI, JIC, JICI & JICK
See also Appendix JICD-R



ADOPTION/REVISION NOTES –

All text between the highlighted lines “~ ~ ~ ~” above and below, and all highlights within the policy should be removed prior to adoption.

- (a) The 2021 revisions to JICD should be considered concurrently with 2021 revisions to sample policy JIC.
(b) RSA 193:13, the statute regarding suspension and expulsion was amended significantly in 2020. That statute is explicitly linked to RSA 193-D (Safe Schools), Dept. of Ed. rule 317. Because amendments to either would supersede this policy, NHSBA has chosen not to reprint applicable sections but rather reference with appropriate links to the statute or rule; see, e.g., footnotes 2, 3, 5 – 8.
(c) General – As with all sample policies, NHSBA recommends that each district carefully review this sample prior to adoption/revision to assure suitability with the district’s own specific circumstances, internal coding system, current policies, and organizational structures. Highlighted language or blank, underscored spaces indicate areas which Boards must review/change/complete to reflect local personnel titles, internal and external policy references, duty assignments etc.
(d) {\*\*} indicates a reference to another NHSBA sample policy. A district should check its own current policies and codes to assure internal consistency.
(e) Withdrawn and earlier versions of revised policies should be maintained separately as part of the permanent records of the District.



A. Policy Statement.

This policy establishes the substantive parameters, procedures and due process that shall apply before a student may be subject to temporary (same day) removal from classrooms or activities, restriction from activities, detentions, suspensions and/or expulsion. Pursuant to Board policy {\*\*}JIC, response to misconduct, including disciplinary measures and consequences should be designed to maximize student academic, emotional and social success, while at the same time assuring safety of all students, staff and school visitors. Administration of any of the consequences described in this policy shall be consistent with the system of supports and graduated sanctions established pursuant to Policy {\*\*}JIC and the applicable Code of Conduct \_\_. [1remove footnote]

1 No law or regulation requires something called a “code of conduct”. However, boards and schools are required to have a policy for “rules of conduct”, and “penalties for misbehavior”, and be disseminated to parents and guardians. (Ed 306.04(f), and (g)). See also sample policy JIC. Ed 306.06 further requires fair and consistent implementation of the outdated term “code of discipline”. This sample policy uses “Code of Conduct” to reference the collection of Board policies, school and district administrative rules, and policies & rules pertaining to disciplinary consequences. Any district which does not use term Code of Conduct for such rules, should replace with the District’s own title, e.g., Expectations and Standards of Behavior and Consequences.

**Student Discipline and Due Process****B. Standards and Procedures Relative to Disciplinary Consequences.**

1. "**Removal from the classroom**" means a student is sent to the building Principal's office or other designated area during the same school day. It is within the discretion of the person in charge of the classroom or activity to remove the student.

Students may be removed from the classroom at the classroom teacher's discretion if the student refuses to obey the teacher's directives, becomes disruptive, fails to abide by school or District rules, or the Code of Conduct, or otherwise impedes the educational purpose of the class. Before ordering the removal, the staff member ordering the removal shall warn the student of the infraction and allow the student to respond.

Detentions are not appealable.

2. "**Restriction from school activities**" means a student will attend school, classes, but will not participate in other school extra-curricular activities, including such things as competitions, field trips, and performances. A student who has been restricted from school activities may participate in practices at the discretion of the person imposing the restriction.

Before ordering the restriction, the supervising employee (e.g., teacher, coach, director, Principal, etc.) ordering the restriction shall warn the student of the infraction and allow the student to respond. If the restriction is immediate and outside of school hours, provision must be made to assure the student is not left unsupervised. The terms of the restriction shall be communicated to the Principal and the student's parent/guardian.

Restrictions under this policy are not appealable.

3. "**Detention**" means the student's presence is required for disciplinary purposes before or after the hours when the student is assigned to be in class, and may occur on one or more Saturdays.

Students may be assigned classroom detention at the classroom teacher's discretion, and building detention at the Principal's discretion, if the student refuses to obey the teacher/employee's directives, becomes disruptive, fails to abide by printed classroom, school or District rules, or the Code of Conduct, or otherwise impedes the educational purpose of the class. Before ordering the detention, the staff member ordering the detention shall warn the student of the infraction and allow the student to respond. Parents/guardians shall be notified at least 24 hours prior to a student serving detention.

Detentions before or after school shall not exceed one hour, and Saturday detentions shall not exceed three hours. The building Principal is authorized to establish, announce and post additional guidelines and rules regarding detention, supervision, building access, etc.. The length and timing of the detention, is within the discretion of the licensed employee disciplining the student or the building Principal, pursuant to the posted rules of the school.

Detentions are not appealable.

4. "**Temporary Reassignment**" or "in-school suspension" means the student will attend school but will be temporarily isolated from one or more classes while under supervision. A

## Student Discipline and Due Process

temporary reassignment should not exceed five consecutive school days. Parents/guardians shall be notified at least 24 hours prior to the administration of a temporary reassignment.

The building Principal is authorized to issue reassignment, restrictions from activities, or place a student on probation for repeated failure to conform to the Code of Conduct \_\_\_\_, classroom rules, or for any conduct that causes material or substantial disruption to the school/class environment, interferes with the rights of others, presents a threat to the health and safety of students, employees, and visitors, is otherwise inappropriate, or is prohibited by law.

5. **“Probation”** means a student is given a conditional suspension of a penalty for a definite period of time in addition to being reprimanded. The conditional suspension will mean the student must meet the conditions and terms for the suspension of the penalty. Failure of the student to meet these conditions and terms will result in reinstatement of the penalty. Notwithstanding the assignment of probation, no imposition of the suspended consequence may be administered unless and until all of the provisions of this policy applicable to the suspended consequence (i.e., long-term suspension, expulsion, etc.) are satisfied.
6. **“Out-of-school suspension”** means the temporary denial of a student's attendance at school for a specific period of time. It includes short-term and long-term out of school suspensions.
  - a. **Short-term suspension.** A “short-term suspension” means an out-of-school suspension of ten (10) consecutive school days or less. RSA 193:13, I (a).<sup>2</sup>

The Superintendent or his/her written designee<sup>3</sup> is authorized to suspend a student for ten (10) school days or less.

A short term suspension may be imposed only for:

- i. Behavior that is detrimental to the health, safety, or welfare of pupils or school personnel (including, but not limited to, and act of theft, destruction or violence, as defined in RSA 193-D:1); or
- ii. Repeated and willful disregard of the reasonable rules of the school that is not remediated through imposition of the district's graduated sanctions described in {\*\*}JIC and the Code of Conduct \_\_\_\_.

Pursuant to RSA 193:13, XI(b) and Board policy {\*\*}JIC, a short-suspension over 5 days must conform to the standards included in the Code of Conduct \_\_\_\_\_.

**Before any short-term suspension may be imposed, a student is entitled to the minimum due process (notice before meeting of the charge and explanation of evidence, notice of the possibility of suspension, opportunity for the student to**

<sup>2</sup> The text of any state law (“RSA”) referenced in this policy may be located with the following link:  
<http://www.gencourt.state.nh.us/rsa/html/nhtoc.htm>

<sup>3</sup> RSA 193:13, I(a) designates the Superintendent as the person with authority to suspend, but specifically allows the Superintendent to delegate that authority “in writing”. This should be done before the start of each year.

## Student Discipline and Due Process

respond, and a written decision explaining the disciplinary taken). See New Hampshire Department of Education Rule Ed 317.04(f)(1).<sup>4</sup>

- b. Long-term suspension. A “long-term suspension” is the extension or continuation of a short-term suspension for a period **not to exceed an additional 10 days** beyond the duration of the short-term suspension.

The Superintendent [<sup>5</sup>delete footnote] is authorized to continue the suspension and issue a long-term suspension of a pupil for a period in excess of ten (10) school days, provided only that if the Superintendent issued the original short-term suspension, then the School Board may designate another person to continue the short-term suspension and issue the long-term suspension.

A long-term suspension may only be imposed for:

- i. an act that constitutes an act of theft, destruction or violence, as defined in RSA 193-D<sup>6</sup>;
- ii. bullying pursuant to Board policy {\*\*}JICK when the pupil has not responded to targeted interventions **and** poses an ongoing threat to the safety or welfare of another student; or
- iii. possession of a firearm, BB gun, or paintball gun.

Prior to a long-term suspension, the student will be afforded a hearing on the matter. The informal hearing need not rise to the level and protocol of a formal hearing, **but the process must comply with the requirements of Ed 317.04 (f)(2), and (f)(3)(g)**, including, without limitation, the requirements for advance notice and a written decision.

- c. Appeal of long-term suspension. Any long-term suspension issued other than by the School Board under this policy, is appealable to the School Board, provided the Superintendent or School Board chair receives the appeal in writing within ten (10) days after the issuance of the Superintendent's [*or other person designated under B.6.b, above*] hearing and written decision required under N.H. Dept. of Education Rule Ed. 317.04 (f)(2)c, and sub-paragraph B.6.b, above. The Board shall hold a hearing on the appeal, but will rely upon the record of the decision being appealed from.

Any suspension in excess of ten (10) school days shall remain in effect while this appeal is pending unless the School Board stays the suspension while the appeal is pending. Any request to stay a long-term suspension should be included in the original appeal.

<sup>4</sup> As of March 2021, Ed 317 has not been revised to reflect 2020 amendments to RSA 193:13. The text of any regulation of the NH Department of Education may be located with the following link:  
<https://www.education.nh.gov/who-we-are/deputy-commissioner/office-of-governance/administrative-rules>

<sup>5</sup> RSA 193:13 and Ed. 317 both authorize the School Board to designate a representative to issue long term suspensions. Most districts designate the Superintendent, an assistant superintendent, or student services administrator. Alternatively, the Board itself may issue a long term suspension (not recommended).

<sup>6</sup> <http://www.gencourt.state.nh.us/rsa/html/XV/193-D/193-D-1.htm> That list is subject to change. The statute should be reviewed prior to any long term suspension for an act of theft, destruction of violence.

### Student Discipline and Due Process

- d. Educational Assignments. As required by RSA 193:13, V, educational assignments shall be made available to students during both short and long term suspensions.
- e. Alternative Educational Services. The school shall provide alternative educational services to a suspended pupil whenever the pupil is suspended **in excess of 20 cumulative days** within any school year. The alternative educational services shall be designed to enable the pupil to advance from grade to grade.
- f. Re-entry Meetings and Intervention Plans. Prior to returning to regular classes, a suspended student, and parent/guardian (when available) shall meet with the building Principal or his/her designee to assist the student in smoothly returning to the school setting.

Any time a pupil is suspended **more than 10 school days in any school year**, upon the pupil's return to school the school district shall develop an intervention plan designed to proactively address the pupil's problematic behaviors by reviewing the problem behavior, re-teaching expectations, and identifying any necessary supports.

- g. Attendance Safe Harbor. A student may not be penalized academically solely by virtue of missing class due to a suspension.
7. **“Expulsion”** means the complete denial of a pupil's attendance at school for any of the reasons listed in RSA 193:13, II and IV. An expulsion may be for either a stated duration or permanent.
- a. Grounds for Expulsion. Any pupil may only be expelled by the School Board, and only for the following grounds:
    - i. A repetition of an act that warranted long term suspension under section B.6.b, above;
    - ii. Any act of physical or sexual assault that would be a felony if committed by an adult;
    - iii. Any act of violence pursuant to RSA 651:5, XIII<sup>7</sup>;
    - iv. Criminal threatening pursuant to RSA 631:4, II(a)<sup>8</sup>; or
    - v. For bringing or possessing a firearm as defined in Section 921 U.S.C. Title 18 within a safe school zone as prohibited under RSA 193-D:1<sup>9</sup>, or under the Gun Free School Zones Act, unless such pupil has written authorization from the Superintendent.

Before expelling a pupil, the Board shall consider each of the following factors:

- (1) The pupil's age.

<sup>7</sup> <http://www.gencourt.state.nh.us/rsa/html/LXII/651/651-5.htm>

<sup>8</sup> <http://www.gencourt.state.nh.us/rsa/html/LXII/631/631-4.htm>

<sup>9</sup> <http://www.gencourt.state.nh.us/rsa/html/XV/193-D/193-D-1.htm>

**Student Discipline and Due Process**

- (2) The pupil's disciplinary history.
  - (3) Whether the pupil is a student with a disability.
  - (4) The seriousness of the violation or behavior committed by the pupil.
  - (5) Whether the school district or chartered public school has implemented positive behavioral interventions under paragraph V.
  - (6) Whether a lesser intervention would properly address the violation or behavior committed by the pupil.
- b. **Due Process to Be Afforded Prior to Expulsion.** Prior to any expulsion, the District will ensure that the **due process standards set forth in Ed 317.04(f)(3) through 317.04(m)**<sup>10</sup> are followed.
- c. **Duration of Expulsion.** An expulsion will run for the duration stated in the written decision or until the School Board or Superintendent restores the student's permission to attend school as provided in this policy. An expulsion relating to a firearm in a safe school zone per B.7.a.v, shall be for a period of not less than 12 months.
- d. **Educational Services.** The Superintendent is authorized, but not required, to arrange for educational services to be provided to any student residing in the District who has been expelled by the District or by any other school.

**C. Modification or Reinstatement After Suspension or Expulsion.**

Expelled or suspended students may request a modification of, or reinstatement from, an expulsion or suspension as provided below. Except for students establishing residency from out-of-state, requests for modification or reinstatement from expulsion/suspension shall be submitted in writing to the Superintendent no later than August 15. The request should set forth the reasons for the request, and include additional information to establish that it is in the best interest of the student and school community to reinstate the student. Such additional information may include such things as work history, letters of reference, medical information, etc. All reinstatements shall include an Intervention Plan as described in paragraph B.6.f, above, including such conditions as the reinstating authority (Superintendent or Board) deem appropriate.

1. **Modification by Superintendent.** Subject to all other applicable laws, regulations and Board policies, and paragraph C.3, below (relating to firearms), the Superintendent is authorized to reinstate any student who has been suspended or expelled from a school in this District, and or enroll a student suspended or expelled from another school or district, on a case-by-case basis.
2. **Review and reinstatement by Board.** A student may request the School Board (of the district of attendance) to review an expulsion decision prior to the start of each school year by filing a written request with the Superintendent detailing the basis of the request. The Board will determine whether and in what manner it will consider any such request after consultation with the Superintendent.

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<sup>10</sup> <https://www.education.nh.gov/who-we-are/deputy-commissioner/office-of-governance/administrative-rules>

**Student Discipline and Due Process**

3. **Modification of Expulsion for Firearms.** A student who has been expelled from this District or any other public or private school for bringing or possessing a firearm in a safe school zone as prohibited under RSA 193-D1, or under the Gun Free Schools Act, may only be reinstated or enrolled if the Superintendent first determines: possession of the firearm was inadvertent and unknowing; the firearm was for sporting purposes and the student did not intend to display the firearm to any other person while within the safe schools zone; the student is/was in the fifth or lower grade when the incident occurred; or the Superintendent determines that the firearm was not loaded; and that no ammunition was reasonably available; and that the pupil had no intention to display the firearm to other students.

Additionally, the School Board may enroll a student expelled from a school outside of New Hampshire for a violation of the Gun Free Schools Act upon the student establishing residency.

- D. **Appeals to State Board of Education.** Any decision by the Board (i) to expel a student, (ii) not to reinstate a student upon request, or (iii) enroll a student from another state who had been expelled for a violation of the Gun Free Schools Act, may be appealed to the State Board of Education at any time that the expulsion remains in effect, subject to the rules of the State Board of Education.
- E. **Sub-committee of Board.** For purposes of sections B.6 and B.7 of this policy, "Board" or "School Board" may either be a quorum of the full Board, or a subcommittee of the Board duly authorized by the School Board.

- F. **Superintendent and Principal Designees.**

Except where otherwise stated in this policy, the Superintendent may delegate any authority s/he has under this policy, and a principal may delegate any authority s/he has under this policy, to other appropriate personnel.

- G. **Disciplinary Removal of Students with Disabilities.**

If a student is disabled under the Individuals with Disabilities Act (IDEA), the New Hampshire RSA 186-C, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, or any other law providing special rights to disabled students, those laws shall govern and shall supersede these local policies to the extent these local policies are inconsistent with those laws. Accordingly, any suspension or expulsion of a child with a disability as defined in Ed 1102.01(t) shall be in accordance with Ed 1124.01.

- H. **Notice and Dissemination.**

This policy shall be made available to families, students and staff as provided in Board policy {\*\*}JIC.

- I. **Conflict in Law or State Regulation.**

If any provision of this policy shall conflict with State or Federal law, or regulation of the New Hampshire Department of Education, then such law or regulation shall apply, and the remainder of the policy shall be read and interpreted to be consistent with the law or regulation. School

Student Discipline and Due Process

administrators and families are strongly encouraged to review the links for pertinent statutes and laws as referenced in this policy.

District Policy History:

First reading: \_\_\_\_\_
Second reading/adopted: \_\_\_\_\_

District revision history:

Legal References:

- 18 U.S.C. § 921, Et seq., Firearms
20 U.S.C. § 7151, Gun-Free Schools Act
RSA 189:15, Regulations
RSA 193:13, Suspension & Expulsion of Pupils
RSA Chapter 193-D, Safe Schools Zones
RSA 631:4, Criminal Threatening
RSA 651:5, XIII "Act of Violence"
NH Code of Administrative Rules, Section Ed 306.04(a)(3), Discipline
NH Code of Administrative Rules, Section Ed 306.04(f), Student Discipline Policy
NH Code of Administrative Rules, Section Ed. 306.04(g), Suspension & Expulsion
NH Code of Administrative Rules, Section Ed 317.04, Suspension and Expulsion of Pupils Assuring Due Process Disciplinary Procedures
In re Keelin B., 162 N.H. 38, 27 A.3d 689 (2011)

Legal References Disclaimer: These references are not intended to be considered part of this policy, nor should they be taken as a comprehensive statement of the legal basis for the Board to enact this policy, nor as a complete recitation of related legal authority. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

When adopting this sample or variation of the same, a district should not include the NHSBA history or NHSBA policy notes appearing below. The district should, to the extent possible, include its own adoption/revision history, as well as the legal references and disclaimer as indicated above.

NHSBA history: Revised - \_\_\_\_\_ 2021, May 2018, September 2017, April 2011, May 2008, November 2007, October 2005, and November 1999

NHSBA revision notes, \_\_\_\_\_ 2021, Policy JICD was revised to reflect 2020 amendments to RSA 193:13, which Policy JIC was revised to reflect 2020 amendments to RSA 193:13. Among other things, those amendments largely are designed to effect greater emphasis on the emotional and academic needs of students through support and intervention strategies prior to using exclusion from school through suspension and expulsion. The amendments also (a) limit the duration of long-term ("LT") suspensions to 20 days, (b) limit the reasons a student may receive a LT suspension, and (c) require districts to adopt separate standards for short term suspensions of <5 days, and those of >5.

w/p-update/2021-U1 Special/JICD - Student Discipline and Due Process 2021-U1 (f)

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Raymond School District Policy – JICI-R

MODIFICATION OF A WEAPONS EXPULSION

Pursuant to RSA 193:13, IV, the Superintendent may, upon written application of an expelled pupil, recommend modification to the expulsion. Prior to the School Board's consenting to such a modification, the pupil shall be required to submit to the Superintendent sufficient evidence in the form of letters, work history or other documents or testimony demonstrating that it is in the school's best interest and the pupil's best interest to allow a modification. In making such a decision, due regard will be given to other pupils and staff whose safety and well-being shall be of paramount importance.

**ADMINISTRATIVE PROCEDURE TO ACCOMPANY POLICY JICI-R  
APPENDIX A**

An expelled pupil has the right to request a review of the expulsion prior to the start of each school year.

A request for review should be directed by the pupil to the Superintendent ~~of Schools~~ and should be received by the Superintendent on or before August 15. The request shall set forth each and all reasons why the pupil's right to attend school should be reinstated. Of particular importance would be such information as might convince school authorities that the conduct which led to the expulsion would not be repeated.

The Superintendent and the Principal or an Assistant Principal at the applicable school shall direct written recommendation to the Board with a copy to the pupil.

The expulsion may be continued: the pupil may be reinstated without conditions; or the pupil may be required to meet certain conditions prior to reinstatement. A code of conduct and consequences may be established for a reinstated pupil which are more strict than for the general student population.

**ADMINISTRATIVE PROCEDURE TO ACCOMPANY POLICY JICI-R  
APPENDIX B**

The mandatory 12-month expulsion from school for bringing or possessing a firearm in a safe school zone may be modified on a case-by-case basis in the sole discretion of the Superintendent in the following situations:

1. The Superintendent determines that possession of the firearm was inadvertent in that another person had left the firearm in the pupil's vehicle; and the pupil had not noticed that s/he was bringing the firearm within the safe school zone; or
2. The Superintendent determines that the pupil intended to use the firearm for sport immediately before or after school and had no intention to display the firearm to other students.
3. The Superintendent determines that the firearm was not loaded; and that no ammunition was reasonably available; and that the pupil had no intention to display the firearm to other students.

*See policies IHBA, JICD & JICI*

Adopted: February 18, 2015

Modification of Weapons Expulsions

Category: Withdrawn



ADOPTION/REVISION NOTES –

All text between the highlighted lines “~ ~ ~” above and below, and all highlights within the policy should be removed prior to adoption.

- (a) General – As with all sample policies, NHSBA recommends that each district carefully review this sample prior to adoption/revision to assure suitability with the district’s own specific circumstances, internal coding system, current policies, and organizational structures.
(b) Highlighted language or blank, underscored spaces indicate areas which Boards must review/change/complete to reflect local personnel titles, internal or external policy references, duty assignments etc.
(c) {\*\*} indicates a reference to another NHSBA sample policy. A district should check its own current policies and codes to assure internal consistency.
(d) Withdrawn and earlier versions of revised policies should be maintained separately as part of the permanent records of the District.



WITHDRAWN / date district withdraws /

Former administrative procedure {\*\*}JICI-R was withdrawn to correspond with revisions to Board policies {\*\*}JI, {\*\*}JIC and {\*\*}JICD.

When adopting this sample or variation of the same, a district should not include the NHSBA history or NHSBA policy notes appearing below. The district should, to the extent possible, include its own adoption/revision history, as well as the legal references and disclaimer as indicated above.

NHSBA history: Withdrawn – March 2021

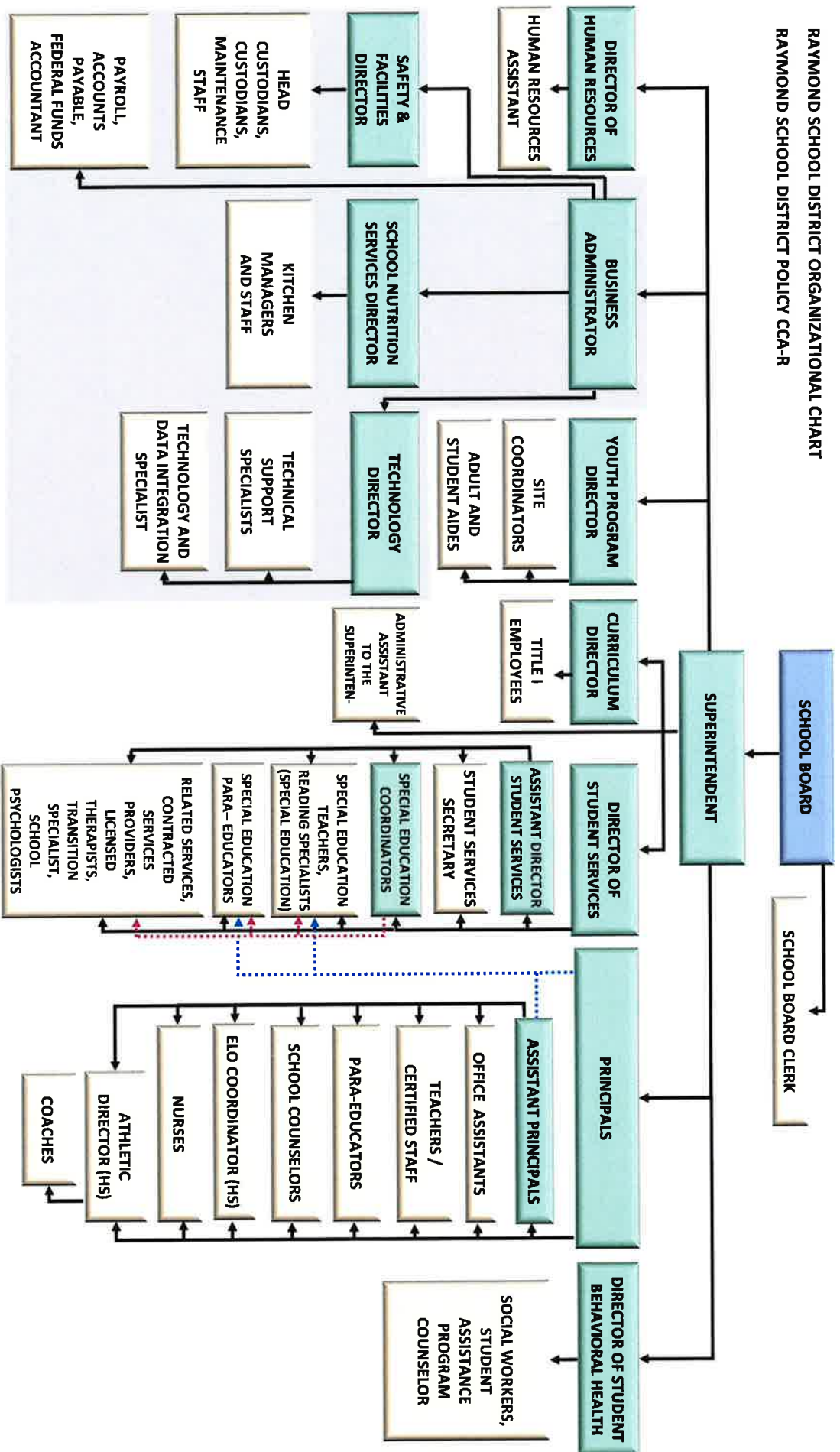
NHSBA revision notes, March 2021. NHSBA withdrew former sample procedural document JICI-R as part of revisions to sample policies JI, JIC and JICD to reflect 2020 amendments to RSA 193:13. The subject matter of former JICI-R is fully incorporated into sample policy JICD.

w/p-update/2021-U1 Spring/JICI-R Modification of Expulsions Withdrawn 2021-U1

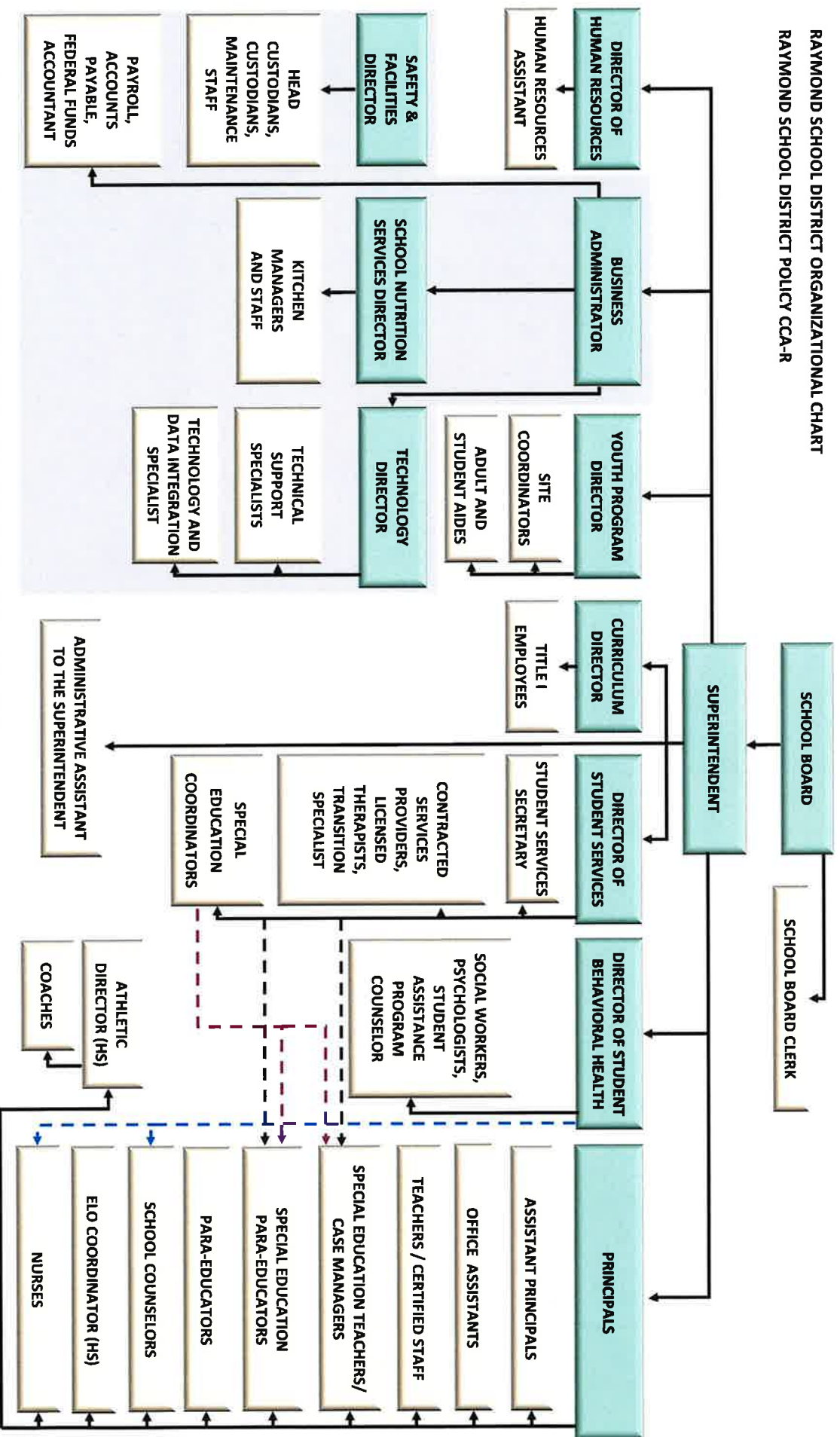
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RAYMOND SCHOOL DISTRICT ORGANIZATIONAL CHART  
 RAYMOND SCHOOL DISTRICT POLICY CCA-R



RAYMOND SCHOOL DISTRICT ORGANIZATIONAL CHART  
 RAYMOND SCHOOL DISTRICT POLICY CCA-R



Adopted: 5.14.89, Revised: 3.19.96, 10.19.00, 4.18.02, 11.2.05, 8.23.06, 4.4.07, 10.3.07, 4.15.15, 5.23.18, 3.18.20

**NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION**  
**POLICY SERVICES**  
**2020 “TITLE IX” SPECIAL POLICY UPDATE**

“TITLE IX” SPECIAL POLICY UPDATE

This special policy update is in response to the recent passage of new federal regulations pertaining to Title IX of the Education Amendments of 1972 and protections against sexual harassment.<sup>1</sup>

Title IX is a federal law that applies to all public schools. It states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." While this language is brief, federal regulations and case law have expanded the ways in which this applies to school districts. Many of you are likely familiar with the broad categories that Title IX covers such as: (1) establishing a framework for addressing grievances related to sexual harassment; (2) prohibiting discrimination in the educational program; and (3) requiring equity in athletics;

The new Title IX regulations relate only to sexual harassment and go into effect on **August 14, 2020**. New sample policy ACAC is designed to satisfy the new requirements. To meet that effective date, NHSBA recommends that districts waive any requirement of “2 readings” and adopt sample ACAC. The board could also at the same time require that the policy be scheduled for review and revision over the succeeding months after the initial adoption. (NHSBA’s Fall 2020 Policy Update will include a few policies and forms that relate to the new ACAC policy.)

Because these new regulations go into far more detail about what is required of school districts when they respond to reports and complaints of sexual harassment, NHSBA created a stand-alone sample policy to align with those requirements. Fully complying with the new regulations, however, will require a combination of passing the new policy, training staff, and ensuring that appropriate notification of these changes are publicized to the community.

Additionally, the new regulations include several components needing attention in the short term that we wanted to bring to your attention. These include the following:

- The employee designated to oversee Title IX compliance must be specifically referred to as the Title IX Coordinator. His/her contact information must be provided on the school district's website, if any, and in employee and student handbooks. *NHSBA further recommends that the trained, designated Title IX Coordinator also be*

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<sup>1</sup> The update also includes an unrelated version of GCCBC policy regarding FMLA.

*designated as the Human Rights or Non-Discrimination Officer described in sample policies AC and AC-E.*

- Districts should train all K-12 employees about the need to report information of sexual harassment promptly to the District Title IX Coordinator. The new regulation imputes to the District knowledge when ANY employee has notice of sexual harassment or allegations of sexual harassment. *(NHSBA will be presenting two webinars in September 2020 regarding various reporting requirements imposed on school district employees).*
- School districts must notify applicants for admission and employment as well as parents/legal guardians of the name or title, office address, email address, and telephone number of the Title IX Coordinator.
- If the school district has a website, training materials used to train Title IX personnel must be provided there for public access.
- A new recordkeeping requirement mandates that all records from sexual harassment investigations, appeals and results from appeals, and materials used to train Title IX Coordinators must be maintained for seven years.

Due to these changes, we recommend ensuring that all district employees are trained on the updated requirements. Additionally, we encourage all districts to work with their board attorney to ensure that the implementation of this policy and any procedures align with all legal requirements.

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## **ACAC – Title IX Sexual Harassment Policy & Grievance Process**

[Priority/Required by Law policy]

***Related Policies: AC, AC-E, GBEAB, JICK & JLF***

- This new policy is intended to replace former samples JBAA and GBAA. This policy is intended to reflect the requirements of new federal regulations pertaining to Title IX of the Education Amendments Act of 1972. In general, the new regulations impose several procedural steps in responding to sexual harassment, create a new definition of sexual harassment, and require a district to respond promptly, equitably (to complainants and “respondents” (alleged perpetrators)), and in a manner that is not deliberately indifferent whenever it has actual knowledge of sexual harassment in an educational program or activity of the District.

**GBAA – Sexual Harassment – Employees/Staff**  
[Withdrawn policy]

- NHSBA withdrew former sample policy GBAA, and replaced it with new sample ACAC, which is intended to fulfill requirements of federal regulations effective August 2020 relative to Title IX protections and procedures regarding sexual harassment, and the first of which pertains to all other prohibited harassment (i.e., race, age etc.).

**GCCBC – FMLA Leave**  
[Recommended policy]

- Revisions to GCBC reflect a provision found in 2019 HB4 (codified as RSA 189:73) which expanded FMLA benefits to employees by reducing the number of required annual hours to qualify from 1250 to 900, and also removed the threshold number of employees (formerly 50). The result is that most paraprofessionals and other full day, school year employees will qualify.

**JBAA – Sexual Harassment - Students**  
[Withdrawn policy]

- NHSBA withdrew former sample policy JBAA, and replaced it with new ACAC, which is intended to fulfill requirements of federal regulations effective August 2020 relative to Title IX protections and procedures regarding sexual harassment, and the first of which pertains to all other prohibited harassment (i.e., race, age etc.).

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1 - NHSBA Spring 2020 Policy Update - Cover Document.docx

**TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS***Category: Priority/Required by Law**Related Policies: AC, AC-E, GBEAB, JICK & JLF***ADOPTION NOTES –*****This text box, and all highlights within the policy should be removed prior to adoption.***

- (a) *This policy is intended to replace former samples JBAA and GBAA. This policy is intended to reflect the requirements of new federal regulations pertaining to Title IX of the Education Amendments Act of 1972. In general, the new regulations create a new definition of sexual harassment, require a district to respond promptly, equitably (to complainants and “respondents” (alleged perpetrators)), and in a manner that is not deliberately indifferent, whenever it has actual knowledge of sexual harassment in an educational program or activity of the District.*
- (b) *The new regulations create a complex process for addressing allegations of sexual harassment. Among other things, it makes a firm distinction between “reports” and “formal complaints” of sexual harassment, imposes different responsibilities upon the district and processes for each, changes the definition of sexual harassment, , and creates ancillary obligations relative to such things as training, record keeping, and dissemination. Because the numerous burdens imposed by the regulations (specific to sexual harassment under Title IX), NHSBA has determined not to include other forms of harassment (race, age, bullying, etc.) into this sample policy.*
- (c) *The Grievance Procedure included in this policy is structured according to requirements of the Title IX regulations. Because those requirements are numerous, and largely mandatory, NHSBA has included them as part of the policy. Districts may create additional, or more specific procedures, but any such additions, must apply equally to complainants and respondents. NHSBA strongly encourages Districts seeking to expand procedures or otherwise modify this policy to consult with the District’s attorney(s).*
- (d) ***Short term*** – *Because the effective date of the regulations is August 14, 2020, NHSBA recommends that boards waive any policy requiring a pre-review by a policy committee and/or two readings, and approve on an emergency basis, and then reschedule the policy for a more complete review and approval. Additionally, it is important that districts implement the following as soon as possible:*
- a. designation and training of a Title IX Coordinator;*
  - b. training of all employees as to reporting requirement;*
  - c. training of all personnel involved in ordinary disciplinary processes as to the prohibition of any disciplinary sanction relative to sexual harassment without a “determination of responsibility” following the Title IX Grievance Process.*
- (e) *This policy includes several footnotes, some with yellow highlight, and some without. Those without indicate footnotes we recommend leaving in the policy, while the highlights, like highlighted in-line text, present options for districts to consider, information for the district to input, or simply, explanatory information, and should be removed. Highlighted footnotes should be removed from the approved policy.*
- (f) *Because of the numerous internal paragraph and section references (highlighted), it is important that districts take care before changing numbering and lettering of sections or paragraphs. The highlights should be removed.*
- (g) *General – As with all sample policies, NHSBA recommends that each district carefully review this sample prior to adoption to assure suitability with the district’s own specific circumstances, internal coding system, current policies, and organizational structures. Highlighted language or blank, underscored spaces indicate areas which Boards must change/complete to reflect local personnel titles, policy references, duty assignments etc.*
- (h) *{\*\*} indicates a reference to another NHSBA sample policy. A district should check its own current policies and codes to assure internal consistency.*



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The definition of “Sexual Harassment” is found in Section II.B of this Policy. Instructions for making a report or complaint of sexual harassment are found in Section II.J.1. The “Title IX Grievance Process” is Section III, and the procedure for filing a formal complaint to initiate the grievance process is found in Section III.A

**I. RESTATEMENT OF POLICY PROHIBITING DISCRIMINATION ON THE BASIS OF SEX.**

Per Board policy AC, Title IX of the Education Amendments Act of 1972 (“Title IX”), as well as RSA 193:38, among others, 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 in the District.

**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, and only to address, *sexual harassment as defined in Title IX and Sec. II.B*, below, that 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. 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.

The purpose of this Policy, however, is to address, and only to address, sexual harassment as defined in Title IX that occurs within the educational programs and activities of the district. 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.

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.

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.<sup>1</sup> Volunteers and visitors who engage in sexual harassment will be directed to leave school property and/or be reported to law enforcement, the NH Division of Children, Youth and Families (DCYF), as appropriate. A third party under the supervision and control of the school system will be subject to termination of contracts/agreements, restricted from access to school property, and/or subject to other consequences, as appropriate.

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<sup>1</sup> [Remove this footnote] The status of respondents who are not students, applicants, or employees is not clear under the Regulations. The District has the right to dismiss a formal complaint at any time during the investigation or adjudication if the respondent is “no longer” employed or enrolled in the school system. However, there is no clear right to act against a third-party respondent for alleged sexual harassment before or after a formal complaint is filed and either adjudicated or dismissed. Consult the District’s attorney if a third party is a respondent in a sexual harassment case.

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The Superintendent shall have overall responsibility for implementing this Policy, and shall annually appoint a District Title IX Coordinator<sup>2</sup> as that position is described in Section II.C, below. The name and contact information for the Title IX Coordinator is 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 a notice, 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.

**“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 weekday 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”); or the responsibility to decide any appeal (at times “appeals decision maker”) 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.

**“Formal Complaint”** means a document filed 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 of sexual harassment.

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

**“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), occurring in a school system education program or activity that satisfies one or more of the following:

1. A school 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;

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<sup>2</sup> [REMOVE] A specific position titled “Title IX Coordinator” is now mandated by federal regulations. NHSBA recommends that the person appointed as Title IX Coordinator also be designated as the District's Human Rights or Anti-Discrimination Officer (see sample policy AC). This dual appointment will help assure that a case is processed appropriately as a Title IX or other harassment case as the circumstances require – either from the outset, or as the case progresses (i.e., moving a case to a different track, e.g., bullying, or from another track).

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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 (this standard requires consideration of all the facts and circumstances, including, but not limited to, the ages and disability statuses of the harasser and victim and the number of individuals involved and their authority; **OR**
3. Sexual assault, dating violence, domestic violence, or stalking as defined in state or federal law.<sup>3</sup>

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.

*Note: incidents of the above conduct would still need to satisfy one or more of the criteria in paragraphs 1-3 of this definition.*

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 arise 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 Policy and Title IX Grievance Process.** Except as used in other laws (e.g., Title VII) or policies (e.g., Board policy JICK{\*\*}) pertaining to harassment, including of a sexual nature, other than Title IX sexual harassment, all references to “sexual harassment” in this policy mean sexual harassment that meets the above definition.

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 in which the school

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<sup>3</sup> [REMOVE] NHSBA has purposefully refrained from including statutory definitions for the terms in section 3 of the definition of sexual assault. If a district WISHES to include definitions, refer to 34 CFR 106.30(a), and the corresponding state statutes.

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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, 3<sup>rd</sup> 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.*

“**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; and
4. Increased monitoring or supervision
5. [district may add additional types of supportive services (non-punitive/disciplinary)].

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 exclusive exceptions stated required in Sec. II.E, below.

**C. Title IX Coordinator.**

The Title IX Coordinator shall respond promptly to all general reports as well as formal complaints of sexual harassment. The Title IX Coordinator shall receive general and specific reports of sexual harassment, and coordinate the District’s responses to both reports and formal complaints of sexual harassment so that the same are prompt and equitable. 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. 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. engaging with the parents/guardians of parties to any formal complaint of sexual harassment;
5. coordinating with District and school-level personnel to facilitate and assure implementation of investigations, and remedies, and helping to assure that the District otherwise meets its obligations associated with reports and complaints of sexual harassment;

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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 assure appropriate training and professional development of employees and others in accordance with Sec. II.D of this Policy; and
8. helping to assure 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 assure 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 the Title IX Grievance Process, including hearings, appeals, and information resolution processes). The training must also include avoiding prejudgment of the facts, conflicts of interest and bias.

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

Investigators must receive training 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 JLF{\*\*});

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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 the New Hampshire Department of Education as required under N.H. Code of Administrative Rules Ed 510 regarding violations of the NH Code of Conduct for Education Professionals.

Additionally, 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 school 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<sup>4</sup>;
5. Any respondent; and
6. Any witness.

Any supportive measures provided to the complainant or respondent shall be kept confidential to the extent that maintaining such confidentiality does not impair the ability of the District to provide the supportive measures.

**F. Retaliation Prohibited.**

Retaliation against any person who makes a report or complaint, or against any person who assists, participates, or refuses to participate<sup>5</sup> 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. A finding of responsibility alone is insufficient to conclude that a person made a materially false statement in bad faith. Complaints of retaliation with respect to reports or formal complaints of sexual harassment shall be filed under the District's general grievance process.

**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 complainants 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] {OR, BUT only if the District does not maintain a website} [available to members of the public as government records]* the following information:

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<sup>4</sup> 34 CFR 106.71 (a).

<sup>5</sup> 34 CFR 106.71 (a).

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1. The District's policy of non-discrimination on the basis of sex (included in Board policy AC{\*\*});
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, AC-E{\*\*});
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.

Additionally, the District will make this Policy, as well as any materials used to train personnel as required under Sec. II.D [*publicly available on the district's website*] ***{OR, BUT only if the District does not maintain a website}*** [*available to members of the public as government records*].

**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,
  - b. The basis for the District's conclusion that its response was not deliberately indifferent; and
  - c. Documentation which:
    - 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
    - If no supportive measures were provided to a complainant, explains the reasons why such a response was not clearly unreasonable in light of the known circumstances.
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;

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- b. All materials used to train Title IX Coordinators, investigators, and decision-makers.

**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 her/himself or another person. **However, 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, s/he shall, without delay, inform the Title IX Coordinator<sup>6</sup> 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. 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 staff member, including, for instance, a counselor, teacher or principal.

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 DCYF per Board policy **{\*\*}JLF**. If the alleged respondent (perpetrator) is a person holding a license or credential from the New Hampshire Department of Education (i.e., "credential holder"), then a report shall also be made pursuant to Board policy **{\*\*}GBEAB**.

**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<sup>7</sup> 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:

<sup>6</sup> [REMOVE] The new regulations charge the District with "actual knowledge" or a report of sexual harassment as soon as any employee of the district (other than a respondent/alleged harasser) receives the information. Accordingly, it is imperative that Districts adequately train all employees of the District about reporting responsibilities beginning with school year 2020-21.

<sup>7</sup> The Title IX Coordinator may offer supportive measures to a complainant, even if the information from the complainant does not/does not appear to meet the full definition of sexual harassment under this Policy. Districts should consult with counsel before it "imposes" any supportive measures against a respondent.



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

Pursuant to federal regulations, and this Policy, a formal complaint that contains an allegation of 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 by the Title IX Coordinator, s/he 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.<sup>8</sup>

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 does present 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 IDEA, a student's IEP and or 504 plan if applicable. Such emergency removal shall not be disciplinary. However, 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 of Schools informed of any employee respondents so that he/she can make any necessary reports to New Hampshire Department of Education 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.

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<sup>8</sup> [REMOVE] Emergency removal/administrative removal should not be seen as the equivalent or alternative to a disciplinary short or long-term suspension. The US DOE in the commentary to the regulations cautioned: The threshold for an emergency removal under § 106.44(c) is ... high to prevent recipients from using emergency removal as a pretense for imposing interim suspensions and expulsions. (85 Fed. Reg. Vol. 97, p. 30234). See also Sec. II.J.4.

**TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS****III. TITLE IX GRIEVANCE PROCESS.**

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 (e.g., reports of sexual assault, employee on student harassment, repeat reports, or the conduct in the complainant's report has not been adequately resolved through the 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.

If no formal complaint is filed by the complainant or the Title IX Coordinator no disciplinary action may be taken against the respondent based upon 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/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. Additionally, 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.<sup>9</sup> Complaint forms may be obtained from the Title IX Coordinator [*or on the District and school websites*].

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<sup>9</sup>[REMOVE]] If the school system has an electronic portal for reporting sexual harassment to the Title IX coordinator, note it in the text.

**TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS****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 a non-eligible student under FERPA), and to the respondent (if known) and the respondent's parent/guardian (if the respondent is a non-eligible student under FERPA), 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;
  - 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<sup>10</sup> 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, then 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 or other employee shall act in that capacity. At the same time, the Title IX Coordinator and the Superintendent shall appoint the person who shall make the initial determination of responsibility (initial decision maker). *[ The District's policy contains additional language regarding appointment of decision maker. Can be optional language, e.g., {"Ordinarily the building principal shall serve as the initial decision maker..." or "The Superintendent, in*

<sup>10</sup> [REMOVE] NHSBA recommends that districts review their respective codes of conduct for a provision that prohibits making false statements or knowingly submitting false information during any investigation of discrimination, bullying or sexual harassment.

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*consultation with the Title IX Coordinator, shall appoint an initial decision maker on a case-by-case basis. ....”<sup>11</sup>*] In all cases, the investigator and the initial decision maker must be properly trained and otherwise qualified (see Sec. II.D “Training”, and Section II.G “Conflict of Interest”).

7. If the report alleges sexual harassment by the Superintendent, the Title IX Coordinator will inform the School Board Chair and the [\_\_\_\_\_ *{state title of alternate}* Assistant Superintendent/BA/BM}, 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 or other non-eligible student, must also be delivered to the minor’s parent/guardian. Copies should also be sent to a party’s advisor if the information for the advisor has been previously communicated to the sending party. (Under federal regulations, copies of the investigative evidence, as well as the investigative report, must be forwarded to a party’s advisor. See Sections III.E.3, and III.E.4).
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, and 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 that were not included in the previous notice, the District shall simultaneously provide notice of the additional allegations to the parties whose identities are known.
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.

<sup>11</sup> [REMOVE] A district with enough trained personnel, can designate specific personnel as decision maker(s), or it may be addressed on a case-by-case basis. However, a decision maker must have adequate training as provided in Sec. II.D, and be free from conflict of interest as provided in Sec. II.G. Districts may find it more cost effective to retain an independent “decision maker”, and even the investigator, rather than maintain staff trained in accordance with the standards discussed in Sec. II.D.

**TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS**

6. Consolidation of Complaints. The District may consolidate formal complaints of allegations of sexual harassment where the allegations of sexual harassment 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 s/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 the 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 comprehensive 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 requirements, 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 provide 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 the formal complaint.<sup>12</sup> In more complex cases, the time necessary

<sup>12</sup> [REMOVE] This time frame may be modified. The board should establish a realistic time frame that is achievable and may want to seek a recommendation from the board attorney. The board is required to provide a “prompt” resolution of formal

**TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS**

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. *[With the exception of paras b&c, the below are timeframes recommended by NHSBA. Both para. b & c, however, are minimum timeframes mandated under the federal regulations.]*
  - a. Investigation 20 +/- days as the complexity of the case demands (Sec. III.E.1)
  - b. 10 days for reviewing information prior to conclusion of investigation
  - c. 10 days after receiving report to respond to report
  - d. 10 days for decision maker to allow initial questions
  - e. 10 days for responses to questions
  - f. 10 days for questions and responses to follow-up questions.
  - g. 10 days for determination of responsibility decision
  - h. 10 days for appeal (6 additional days for administrative steps)
  - i. 10 days for argument/statement challenging or supporting determination
  - j. 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 things 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 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, 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 about the complainant's prior sexual behavior 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;

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complaints and should strive to balance the need for an expeditious process with the need to provide school officials and parties sufficient time for action at each step in the grievance process. Additional time is provided for the appeals phase of the process.

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- c. Provide an 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 of their choice. The investigator may restrict any others 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 an equal opportunity to inspect and review any evidence obtained as part of the investigation that is 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 a hard copy, and the parties must have at least 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, and 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 with parties and witnesses, site visit, 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, if any. Each party will have 10 days from receipt to provide the Title IX Coordinator a written response to the investigative report.
  5. It serves all parties when investigations proceed diligently and conclude within a reasonable time, which may vary case by case. In most cases, it is expected that the investigator will conclude the initial investigation, and provide the parties the evidence and other information required under Sec. III.E.2. Not more frequently than every other week, any party may request the Title IX Coordinator to obtain and provide the parties with a basic status report on the investigator's progress toward completion. In most cases, the investigator should conclude the investigation within 10-20 days [*NHSBA recommends*] after receiving a Formal Complaint.

**F. Determination of Responsibility and Initial Decision Maker.**

The determination of responsibility of the respondent shall be made by the initial decision maker as appointed pursuant to Section III.B.5.

**TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS**

1. Prior to making a determination of responsibility, the initial decision maker will afford each party 10 days *[NHSBA recommends]* to submit written, relevant questions to the initial decision maker that the party wants asked of any party or witness.
2. The initial decision-maker 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 about the complainant's prior sexual behavior 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<sup>13</sup>.
3. The initial decision maker will provide the questions to the party/witness, with copies to each party, and provide no less than 10 days *[NHSBA recommends]* for written responses, likewise to be provided to each party.
4. The initial decision maker will provide 5 days *[NHSBA recommends]* each for supplementary, limited follow-up questions and 5 days *[NHSBA recommends]* for answers, and may provide for additional rounds of follow-up questions, as long as the provision is extended to both parties equally.
5. The initial decision maker may not make any creditability 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 initial decision maker may impose disciplinary sanctions and remedies as described in Section III.C7, above.
8. The standard to be used for formal complaints in determining whether a violation has occurred and/or that the respondent is responsible is the preponderance of the evidence standard,<sup>14</sup> which is only met when the party with the burden convinces the fact finder (the initial decision maker) 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 10 days *[NHSBA recommends]* 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 the 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;

<sup>13</sup> [REMOVE] The Federal regulations neither provide a definition for consent, nor require a District to have a specific definition.

<sup>14</sup> [REMOVE] The regulations allow districts to choose between the "preponderance of the evidence" or "clear and convincing" standard, as long as it applies the same standard to both employee and student cases. NHSBA recommends using the preponderance standard as that is the one used in all other cases heard within the school context. If a district determines to elect the higher evidentiary standard, it should consult with its private attorneys for language and advice.



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- c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of the District's applicable codes of conduct, policies, administrative regulations or rules to the facts;
  - e. A statement of, and rationale for, the result as to each allegation, 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 allegations therein;
  - b. The respondent is no longer enrolled or employed by the District; or
  - c. Specific 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 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 any investigation or taking action under other District policies, code of conduct or administrative rules/regulations. In some cases, 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 or 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 there are multiple determinations of responsibility, the written appeal shall specify which ones are included in the appeal. The

**TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS**

written appeal must be received by the Superintendent within 10 days [*NHSBA recommends*] 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 bases, 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.
  - iv. [*Additional bases may be added by a district if made 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, below, 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 3 days [*NHSBA recommends*] of receipt of the written appeal, the Superintendent shall appoint a decision maker for appeal ("appeals decision maker"),<sup>15</sup> who must have adequate training as provided in Section II.D, be free from conflict of interest as provided in Section II.G, and may not be the same person as the initial decision maker, the person who ordered dismissal, the investigator(s), or the Title IX Coordinator. Upon the appointment of the appeals decision maker, the Superintendent shall provide a Notice of Appeal to each party and to the Title IX Coordinator, with a copy of the written appeal. The Notice of Appeal must include information about all deadlines and timeframes in the appeal stage.
4. Each party shall have 10 days [*NHSBA recommends*] from the date the Notice of Appeal is delivered to the parties to submit to the appeals decision maker a written statement, with copies to the Superintendent, Title IX Coordinator, and other party a statement ("appeal statement") in support of, 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 given to the appeals decision maker. 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.

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<sup>15</sup> Although the school board is not precluded from serving as a decision maker with respect to appeals, before it may do so, each member of the board must meet both the training and conflict of interest requirements described in Sections II.D and II.G. Such training may be provided on an as-needed basis, but because of necessary timelines, the framework will need to be in place long before a case is appealed.

**TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS**

6. The appeals decision maker 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 appeals decision maker shall provide a written appeals decision after considering the record and the parties' appeal statements. The appeals decision maker 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 appeals decision maker 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 10 days [*NHSBA recommends*] 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 that 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, 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. The issue of responsibility for the conduct at issue shall not be subject to further review or appeal within the District.

**J. Informal Resolution.**

At any time prior to reaching a determination regarding responsibility (but only after the filing of a formal complaint), the District may offer an optional informal resolution process<sup>16</sup> (e.g., mediation, arbitration), provided that the District:

1. Provides written notice to the parties disclosing:
  - a. The allegations of the formal complaint;
  - b. The requirements of the information resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to an informal final 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 participating in the informal resolution process, including the records that will be maintained or could be shared.

<sup>16</sup> [REMOVE] The regulations do not require districts to offer an information resolution process. When it does offer the process, it must adhere to the provisions included in this Sec. III.J.

**TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS**

2. Obtains the parties' voluntary written consent to the informal resolution process; and

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

**District Policy History:**

*NHSBA recommends that all districts adopt this sample policy as quickly as possible. Accordingly, we are recommending that districts waive any requirement of "2 readings" before adopting this policy. The board could also at the same time require that the policy be scheduled for review and revision over the succeeding months after the initial adoption.*

**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*

***Legal References Disclaimer:** These references are not intended to be considered part of this policy, nor should they be taken as a comprehensive statement of the legal basis for the Board to enact this policy, nor as a complete recitation of related legal authority. Instead, they are provided as additional resources for those interested in the subject matter of the policy.*

***When adopting this sample or variation of the same, a district should not include the NHSBA history or NHSBA policy notes appearing below. The district should, to the extent possible, include its own adoption/revision history, as well as the legal references and disclaimer as indicated above.***

**NHSBA history:** New policy – June 2020.

**NHSBA revision notes, June 2020,** this new policy is intended to replace former samples JBAA and GBAA. This policy is intended to reflect the requirements of new federal regulations pertaining to Title IX of the Education Amendments Act of 1972. In general, the new regulations impose several procedural steps in responding to sexual harassment, create a new definition of sexual harassment, and require a district to respond promptly, equitably (to complainants and "respondents" (alleged perpetrators)), and in a manner that is not deliberately indifferent whenever it has actual knowledge of sexual harassment in an educational program or activity of the District.

w/p-update/2020/spring/ACAC Sexual Harassment (f) 2020-U2

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## Raymond School District Policy - GBAA

### SEXUAL HARASSMENT AND SEXUAL VIOLENCE - STAFF

#### **General Statement of Policy**

The purpose of this policy is to maintain a working or learning environment 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.

Sexual harassment is a form of sex discrimination that violates Section 703 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et seq.*, and Title IX.

It is a violation of this policy for any employee to harass a student or another employee through conduct or communication of a sexual nature as defined by this policy.

For the purposes of this policy, the term "employee" shall include, but not be limited to all school district staff, teachers, non-certified personnel, administrators, volunteers, coaches, and/or other such personnel who employment or position is directed by the school district.

The District will investigate all complaints, either formal or informal, verbal or written, of sexual harassment or sexual violence and will discipline any employee who sexually harasses or is sexually violent to a student or employee of the District.

#### **Sexual Harassment/Sexual Violence Defined**

1. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:
  - a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment, or of obtaining an education; or
  - b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
  - c. That conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment or education, or creating an intimidating, hostile, or offensive employment or education environment.

Any sexual harassment, as defined, when perpetrated on any student or employee by any employee will be treated as sexual harassment under this policy.

**SEXUAL HARASSMENT AND SEXUAL VIOLENCE - STAFF**  
(continued)

2. Sexual harassment may include but is not limited to:
  - a. Verbal harassment and/or abuse of a sexual nature;
  - b. Subtle pressure for sexual activity;
  - c. Inappropriate patting or pinching;
  - d. Intentional brushing against a student's or an employee's body;
  - e. Demanding sexual favors accompanied by implied or overt threats concerning an individual's employment or educational status;
  - f. Demanding sexual favors accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status;
  - g. Any sexually motivated unwelcome touching; or
  - h. Sexual violence, which is a physical act of aggression that includes a sexual act or sexual purpose.

**Reporting Procedures**

Any person who believes he or she has been the victim of sexual harassment or sexual violence by an employee of the District, or any third person with knowledge or belief of conduct that may constitute sexual harassment or sexual violence, should report the alleged acts immediately to an appropriate District official as designated by this policy. The District encourages the reporting party or complainant to use the report form available from the Principal of each building or available from the Superintendent's office.

1. In each building: The building Principal is the person responsible for receiving oral or written reports of sexual harassment or sexual violence at the building level. Upon receipt of a report, the Principal must notify the Superintendent immediately without screening or investigating the report. A written report will be forwarded simultaneously to the Superintendent. If the report was given verbally, the Principal shall reduce it to written form within 24 hours and forward it to the Superintendent. Failure to forward any sexual harassment or sexual violence 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.

SEXUAL HARASSMENT AND SEXUAL VIOLENCE - STAFF  
(continued)

2. District-Wide: The School Board hereby designates the Superintendent as the District Human Rights Officer to receive reports or complaints of sexual harassment and sexual violence from any individual, employee, or victim of sexual harassment or sexual violence and also from the building Principals as outlined above. If the complaint involves the Superintendent, the complaint shall be filed directly with the School Board.

The District shall conspicuously post the name of the Human Rights Officer, including a mailing address and telephone number.

3. Submission of a complaint or report of sexual harassment or sexual violence will not affect the individual's future employment, grades, or work assignments.
4. Use of formal reporting forms is not mandatory.

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 sexual violence and take disciplinary action when such conduct has occurred.

**Investigation and Recommendation**

By authority of the District, the Human Rights Officer, upon receipt of a report or complaint alleging sexual harassment or sexual violence shall immediately authorize an investigation. This investigation may be conducted by District officials or by a third party designated by the District. The investigating party shall provide a written report of the status of the investigation within ten (10) working days to the Superintendent. If the Superintendent is the subject of the complaint, the report shall be submitted to the Board.

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

SEXUAL HARASSMENT AND SEXUAL VIOLENCE - STAFF  
(continued)

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.

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 or sexual violence.

**School District Action**

1. Upon receipt of a recommendation that the complaint is valid, the District will take such action as appropriate based on the results of the investigation.
2. The complainant may appeal the investigations recommendations to the Superintendent (presuming the Superintendent is not the subject of the investigation), or to the Board.
3. The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant by the School District. The report will document any disciplinary action taken as a result of the complaint.

**Reprisal**

The School District will discipline any individual who retaliates against any person who reports alleged sexual harassment or sexual violence 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, reprisal, or harassment.

**Right to Alternative Complaint Procedures**

These procedures do not deny the right of any individual to pursue other avenues of recourse that may include filing charges with the Commissioner of Education, initiating civil action, or seeking redress under state criminal statutes and/or federal law.



SEXUAL HARASSMENT AND SEXUAL VIOLENCE - STAFF  
(continued)

**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 said law.

Nothing in this policy will prohibit the School District from taking immediate action to protect victims of alleged sexual abuse.

**Discipline**

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

**Bypass of Policy**

Any individual with a sexual harassment complaint may choose to bypass this Policy and accompanying regulation and proceed directly to the: N.H. Commission on Human Rights, at 2 Chenelle Dr., Concord, NH, phone 603-271-2767; or, Office of Civil Rights, Health and Human Services, Region #1 Room 2403, JFK Federal Building, Government Center, Boston Massachusetts 02203, phone 617-565-1340.

**Administrative Rule:**

*ED 303.01 (j), 1-9*

*See Appendix: GBAA-R*

Adopted: December 20, 1984

R/R: 8/20/92. 7/21/94

Revised: May 16, 2002

Revised: January 4, 2012

SEXUAL HARASSMENT – EMPLOYEES/STAFF

Category: *WITHDRAWN*

**WITHDRAWAL NOTES –**

*This text box, and all highlights within the policy should be removed prior to adoption.*

- (a) *August 2020 – NHSBA withdrew former sample policy GBAA (and related policy JBAA), and replaced it with new sample ACAC, which is intended to fulfill requirements of federal regulations effective August 2020 relative to Title IX protections and procedures relative to sexual harassment, and the first of which pertains to all other prohibited harassment (i.e., race, age etc.).*
- (b) *{\*\*} indicates a reference to another NHSBA sample policy. A district should check its own current policies and codes to assure internal consistency.*
- (c) *Withdrawn and earlier versions of revised policies should be maintained separately as permanent records of the District. Some districts maintain a “Repealed/Revised” section within their manuals while others maintain the withdrawn policy/procedure in sequence with the rest of the manual.*

**WITHDRAWN / date district withdraws \_\_\_\_\_ /**

Former policy JBAA{\*\*} was withdrawn upon the adoption of Board policies ACAA and ACAC{\*\*}

***When adopting this sample or variation of the same, a district should not include the NHSBA history or NHSBA policy notes appearing below. The district should, to the extent possible, include its own adoption/revision history, as well as the legal references and disclaimer as indicated above.***

**NHSBA history: July 2020 – NHSBA withdrew former sample policy GBAA, and replaced it with new sample ACAC, which is intended to fulfill requirements of federal regulations effective August 2020 relative to Title IX protections and procedures regarding sexual harassment, and the first of which pertains to all other prohibited harassment (i.e., race, age etc.).**

w/p-update/2020-U2/GBAA - Sexual Harassment - Employees WD (f) 2020-U2

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## Raymond School District Policy - GCCBC

### Family and Medical Leave Act

Employees may be entitled to family and medical leave under the federal Family and Medical Leave Act of 1993 (“FMLA”) and/or under RSA 189:73 when they meet all of the eligibility requirements of these laws. This policy sets forth several rules that must be applied uniformly to all employees who may be eligible for family and medical leave. This policy is not intended to expand the District’s obligations beyond the requirements of the FMLA and/or RSA 189:73. As used in this policy, “family and medical leave” means leave available under either or both the federal and state laws.

#### **1. Employee Eligibility under the Federal FMLA**

Employees are eligible for the federal FMLA if they have been employed by the District for at least 12 months, have worked at least 1,250 hours in the 12 months immediately preceding the requested leave, and are employed at a worksite where the District employs at least 50 employees within a 75-mile radius.

#### **2. Employee Eligibility and Leave under RSA 189:73**

Employees are eligible for family and medical leave under RSA 189:73 if they have been employed by the District for at least 12 months and have worked at least 900 hours in the 12 months immediately preceding the requested leave. Employees who meet RSA 189:73’s eligibility criteria will be provided with family and medical leave under the same terms and conditions as leave provided to employees eligible for leave under the federal FMLA. As permitted by law, family and medical leave under RSA 189:73 will be used concurrently with leave provided under the federal FMLA.

#### **3. FMLA Eligibility Periods**

There are two types of eligibility periods under the federal FMLA as described below.

##### **a. 12-Month Period for Birth, Adoption, or Foster Care; Serious Health Condition Purposes; Qualifying Exigency**

Eligible employees may use up to twelve (12) weeks of unpaid family and medical leave during a 12-month period for the following qualifying reasons:

1. Birth and care of the newborn child of the employee;
2. Placement with the employee of a son or daughter for adoption or foster care;
3. Care for an immediate family member (spouse, child, or parent) with a serious health condition;
4. Medical leave when the employee is unable to perform the essential functions of their job because of their own serious health condition;
5. Qualifying exigency leave for an employee whose spouse, child, or parent is a regular member of the Armed Forces on covered active duty deployed to a foreign country or a reserve member of the Armed Forces (including National Guard) on covered active duty deployed to a foreign country under a call or order to active duty in a contingency operation.

The 12-month period used to determine employee eligibility for family and medical leave for the purposes described above shall be a rolling 12-month period measured backward from the date of the employee's request for leave

#### **b. 12-Month Period for Military Caregiver Leave**

Eligible employees may use up to 26 weeks of unpaid family and medical leave during a single 12-month period to care for a spouse, child, parent, or next of kin of an eligible service member or veteran with a serious injury or illness. The 12-month period for military caregiver leave is calculated separately from the 12-month period for family and medical leave taken for other qualifying reasons (as outlined above in Section 3(a)). The 12-month period for military caregiver leave is calculated from the first day that the leave is taken for this purpose. Any military caregiver leave that is not taken within this specific 12-month period is forfeited.

The military caregiver 12-month leave period may overlap with the District's regularly designated family and medical leave period and, in certain circumstances, may impact the employee's eligibility to take family and medical leave for other qualifying reasons.

#### **4. Limitations on FMLA Leave**

Leave may be taken for childbirth, adoption, or foster care placement of a child only within twelve (12) months of that childbirth, adoption, or placement. The District may require that such family and medical leave be taken on a full-time basis. Leave for serious health conditions, either of a family member or the employee, may be taken intermittently or a reduced schedule if medically necessary. The minimum time for family and medical leave taken on an intermittent basis is one (1) hour per work day.

#### **5. Special Rules for Instructional Employees**

Instructional employees are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

- (a) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered service member, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the District may require the employee to choose either to:
  - (1) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
  - (2) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.
- (b) If an eligible instructional employee needs leave at the end of the academic term, the District may require the employee to remain on leave until the end of the term if:
  - (1) The employee wishes to begin leave (for any FMLA purpose) more than five weeks before the end of the term and to return during the last three weeks of the term;
  - (2) The employee wishes to begin leave (for any FMLA purpose except the employee's own serious health condition or a qualifying exigency arising from active duty)

during the last five weeks of the term and to return during the last two weeks of the term; or

- (3) The employee wishes to begin leave (for any FMLA purpose except the employee's own serious health condition or a qualifying exigency arising from active duty) during the last three weeks of the term and to take leave of more than five working days.

## **6. Notice by Employee**

Employees requesting leave shall provide at least 30 days' notice to the District whenever the need for such leave is foreseeable. If the employee is unable to provide thirty (30) days' notice for either foreseeable or unforeseeable leave, then the employee must provide such notice as is practicable. Upon request by the District, the employee shall provide appropriate supporting medical certification (or other certification appropriate to the particular request).

When the District has reason to believe that an employee is or will be absent for an FMLA-qualifying purpose, the District may request the appropriate information from the employee to determine the employee's eligibility for family and medical leave.

## **7. Coordination with Other Leave**

When leave is taken that qualifies both as protected family and medical leave (under the FMLA and/or RSA 189:73) and as permitted leave under any employment contract, collective bargaining agreement, or District policy, the employee shall use family and medical leave and the other type of leave concurrently, provided that the employee meets all of the eligibility requirements for each type of leave and as permitted by law. Types of leave that shall run concurrently with family and medical leave include, but are not necessarily limited to: accrued sick leave, vacation, personal leave; unpaid leave; disability leave; leave provided for absences caused related to work-related injuries; and, any other applicable types of leave

## **8. Fitness for Duty Certificate**

Before an employee returns to work from family and medical leave for the employee's own serious health condition, the employee may be required to submit a fitness for duty certification from the employee's health care provider indicating that the employee is able to return to work and perform all of the essential functions of his or her position.

## **9. Employment and Benefits Protection**

Except as permitted by law, at the end of an authorized family and medical leave, an employee will be reinstated to their former position or to a position equivalent in pay, benefits, and other terms and conditions of employment.

Employees who take protected family and medical leave will not lose any previously accrued seniority or employment benefits. However, such benefits will not continue to accrue during the employee's family and medical leave.

During family and medical leave, the District will maintain the employee's health insurance benefits under the same terms and conditions applicable to employees not on leave. If family and medical leave is paid through the use of accrued leave time, the District will deduct the employee's portion of the health plan premium as a regular payroll deduction. If family and medical leave is unpaid or paid through benefits not provided through the District's payroll system (e.g., workers' compensation or disability benefits), the employee must contact the

District to make arrangements to pay their portion of the health plan premium. Failure to make such arrangements and pay the employee-portion of the premium costs during family and medical leave may jeopardize an employee's entitlement to continuation of coverage.

Statutory Reference:

*Title 29 § 2601 et seq.*

Adopted: March 3, 1994

Revised: August 1, 2002

Revised: March 18, 2020

## FMLA Leave

*Category: Recommended*

**ADOPTION/REVISION NOTES –**

***This text box, and all highlights within the policy should be removed prior to adoption.***

- (a) *General – As with all sample policies, NHSBA recommends that each district carefully review this sample prior to adoption/revision to assure suitability with the district’s own specific circumstances, internal coding system, current policies, and organizational structures. Highlighted language – or blank, underscored spaces indicate areas which Boards must change/complete to reflect local personnel titles, policy references, duty assignments etc.*
- (b) *{\*\*} indicates a reference to another NHSBA sample policy. Each district should check its own current policies and codes to assure internal consistency.*
- (c) *Withdrawn and earlier versions of revised policies should be maintained separately as part of the permanent records of the District.*

Consistent with the federal Family and Medical Leave Act of 1993 (“FMLA”), the School District recognizes that eligible employees have access to unpaid family and medical leave for up to twelve (12) weeks during any twelve (12) month period. The intent of this policy is to summarize the Act as it applies to eligible employees of the School District. Employees should consult regulations that implement the Act for more specific definitions and criteria for use. It is not the intent of this Policy to provide additional or different provisions than those specified in the Act and its implementing regulations.

To be eligible for family or medical leave, an employee must have been employed for at least twelve (12) months, have worked at least 900 hours (average of 17.5 per week for full year employees, and 25.75 for school year employees) during the prior twelve months.

Family leave shall be provided when a son or daughter is born to the employee or when one is placed with the employee for adoption or foster care. Medical leave shall be provided for the serious health condition of the employee, or in order for the employee to take care of a spouse, child, or parent who has a serious health condition rendering him/her unable to perform the functions of his/her job.

An employee may elect, or the District may require, an employee to use accrued paid vacation, personal, or family leave for purposes of family leave. An employee may elect, or the District may require, an employee to use accrued vacation, personal, or medical/sick leave for purposes of medical leave.

The employee shall notify the District of his/her request for leave, if foreseeable, at least thirty (30) days prior to the date when the leave is to begin. If such leave is not foreseeable, then the employee shall give such notice as is practical. The District may require a certification from a health care provider if medical leave is requested. When an employee returns following a leave, he/she must be returned to the same or equivalent position of employment. The Superintendent,

FMLA Leave

or his/her designee, may reassign an employee to a different grade level, building, or other assignment (consistent with the employee's certification for professional staff).

The District shall post a notice prepared or approved by the United States Secretary of Labor stating the pertinent provisions of the FMLA, including information concerning the enforcement of the Act.<sup>1</sup> [delete footnote before adoption]

The user of this policy is also directed to the applicable provisions of any Collective Bargaining Agreements in the district.

**District Policy History:**

First reading: \_\_\_\_\_

Second reading/adopted: \_\_\_\_\_

**District revision history:**

**Legal References:**

29 U.S.C. section 2611, et seq. Family and Medical Leave Act of 1993 (Pub. L. 103-3)  
RSA 189:73, Family and Medical Leave Coverage

**Legal References Disclaimer:** *These references are not intended to be considered part of this policy, nor should they be taken as a comprehensive statement of the legal basis for the Board to enact this policy, nor as a complete recitation of related legal authority. Instead, they are provided as additional resources for those interested in the subject matter of the policy.*

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**NHSBA history:** Revised – July 2020, August 2006, November 2004, June 2004, November 1999

**NHSBA revision notes, August 2020,** revisions to GCBCC reflect a provision found in 2019 HB4 (codified as RSA 189:73) which expanded FMLA benefits to employees by reducing the number of required annual hours to qualify from 1250 to 900, and also removed the threshold number of employees (formerly 50). The result is that most paraprofessionals and other full day, school year employees will qualify.

w/p-update/2020-U2/GCCBC FMLA Leave (f) 2020-U2

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<sup>1</sup> [delete footnote before adoption]: the federal FMLA, and the required notice, only extends leave to employees who have worked at least 1,250 hours during the prior 12 months, and have worked for the Districts for 12 months, but also only applies to school districts which have at least 50 employees. Consequently, the required Federal notice will not reflect accurately the coverage of RSA 189:73 and this Policy. Districts should assure that references in employee handbooks and other materials provided to employees include the state thresholds rather than the federal.



## RAYMOND SCHOOL DISTRICT POLICY – JBAA

### Sexual Harassment – Students

#### **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.

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. 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.

### **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 at the discretion of administration.

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 and recommended action.

#### **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 up to 10 days, out-of-school long-term suspension up to 20 days, 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.

#### **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.

#### **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.

It shall also be a violation of the school district's policy for a student to harass a coach, teacher, administrator, employee or other personnel of the school district.

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**

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.

#### **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*

Approved: December 21, 2011

**SEXUAL HARASSMENT - STUDENTS**

Category: *WITHDRAWN*

**WITHDRAWAL NOTES –**

*This text box, and all highlights within the policy should be removed prior to adoption.*

- (a) *August 2020 – NHSBA withdrew former sample policy JBAA (and related policy GBAA), and replaced it with new sample ACAA which is intended to fulfill requirements of federal regulations effective August 2020 relative to Title IX protections and procedures regarding sexual harassment, and the first of which pertains to all other prohibited harassment (i.e., race, age etc.).*
- (b) *{\*\*} indicates a reference to another NHSBA sample policy. A district should check its own current policies and codes to assure internal consistency.*
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**WITHDRAWN [ date district withdraws ]**

Former policy JBAA{\*\*} was withdrawn upon the adoption of Board policy ACAC{\*\*}

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w/p-update/2020-U2/JBAA - Sexual Harassment - Students WD (I) 2020-U2

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