

Student Discrimination and Harassment Complaint Procedure

This procedure has been adopted by the RSU 40 Board in order to provide a method of prompt and equitable resolution of student complaints of discrimination or discriminatory harassment as described in policies AC - Nondiscrimination/Equal Opportunity and Affirmative Action and ACAA - Harassment and Sexual Harassment of Students. Complaints alleging discrimination or harassment of employees or other third parties (such as parents, volunteers, vendors, etc.) should be addressed through the Board's Policy ACAB-R Employee Nondiscrimination/Harassment Complaint Procedure.

Definitions

For purposes of this procedure:

- A. A "Complaint" is defined as an allegation that a student has been discriminated against or harassed based on race, color, sex, sexual orientation, religion, ancestry, national origin, or disability.
- B. "Discrimination or harassment" means discrimination or harassment based on race, color, sex, sexual orientation, religion, ancestry, national origin, or disability. "Discrimination" may include treating individuals differently, or interfering with or preventing them from enjoying the advantages or privileges afforded to others because of their membership in a protected class. Discrimination based on sex will include acts of "sexual violence," which refers to acts of physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. "Harassment" may include oral, written, graphic, electronic, or physical conduct relating to an individual's actual or perceived membership in a protected class that is sufficiently severe, pervasive, or persistent to interfere with or limit the individual's ability to participate in the school unit's programs or activities by creating a hostile, intimidating, or offensive educational environment. The term "sexual orientation" under state law means a person's "actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression."
- C. Complaints of bullying not involving the protected classes described above may be pursued under Board policy JICK – Bullying.

How to Make a Complaint

- A. Any individual who believes that a student has been discriminated against or harassed should report their concern promptly to building principal and utilize this complaint procedure. Written reports are preferred, but not required. Individuals

who are unsure whether discrimination or harassment has occurred, or who need assistance in preparing a written complaint, are encouraged to discuss the situation with building principal.

- B. School staff will report possible incidents of discrimination or harassment of students to the building principal. Parents and other adults are also encouraged to report any concerns about possible discrimination or harassment of students.
- C. Students and others will not be retaliated against for making a complaint or participating in an investigation. Retaliation is illegal under state and federal nondiscrimination laws and any retaliation by students or school staff will result in disciplinary measures, up to and including expulsion or dismissal.
- D. Students are encouraged to utilize the school unit's complaint procedure. However, students are hereby notified that they also have the right to report complaints to the police, the Maine Human Rights Commission, State House Station 51, Augusta, ME 04333 (telephone: 207-624-6290), and/or to the federal Office for Civil Rights, Regional Director, U.S. Department of Education, 5 Post Office Square, 8th Floor, Boston, MA 02110-1491 (telephone: 617-289-0111).

Complaint Handling and Investigation

- A. Building principals will respect the confidentiality of the complainant and the individual(s) against whom the complaint is filed to the extent possible, consistent with RSU 40's legal obligations, including the necessity to investigate allegations of discrimination and/or harassment, to take appropriate disciplinary action, and to ensure the safety of the school community.
- B. Building principals will promptly inform the Superintendent and the person(s) who is the subject of the complaint that a complaint has been received.
- C. The building principal may pursue a prompt and equitable informal resolution of the complaint with the agreement of the parties involved. Any party to the complaint may decide to end an informal resolution process and pursue the formal process at any point. The informal resolution is subject to the approval of the Superintendent, who will consider whether the informal resolution is in the best interest of the parties and the school unit in light of the particular circumstances and applicable policies and laws.
- D. The complaint will be investigated by building principal unless the Superintendent designates another person to investigate it on their behalf. Any complaint about an

employee who holds a supervisory position will be investigated by a person who is not subject to that supervisor's authority. Any complaint about the Superintendent should be submitted to the Chair of the Board of Directors, who should consult with legal counsel concerning the handling and investigation of the complaint.

1. The person who is the subject of the complaint will be provided with an opportunity to be heard as part of the investigation. The complainant will not be required to attend meetings with the subject of the complaint, but may choose to do so as part of the resolution process.
2. The complainant and the subject of the complaint may suggest witnesses and/or submit materials they believe are relevant to the complaint.
3. If the complaint is against an employee of the school unit, any applicable individual or collective bargaining contract provisions will be followed.
4. The individual conducting the investigation will keep a written record of the investigation process.
5. The building principal may take interim remedial measures to facilitate the complainant's access to school programs and activities, and reduce the risk of further discrimination or harassment, while the investigation is pending. Examples of interim measures include, but are not limited to, ordering no contact between individuals, changing schedules or classes, etc.
6. The building principal will use a preponderance of the evidence standard (i.e. more likely than not) when evaluating the evidence and will consult with the Superintendent concerning the investigation, conclusions, and any remedial and/or disciplinary actions.
7. The investigation will be completed within 20 business days of receiving the complaint, if practicable.
8. If the building principal determines that discrimination or harassment occurred, they will, in consultation with the Superintendent:
 - i. Determine what remedial action, if any, is needed to end the discrimination or harassment, remedy its effects and prevent recurrence; and

- ii. Determine what disciplinary action should be taken against the person(s) who engaged in discrimination or harassment, if any.
9. Within five business days, inform the complainant and the subject of the complaint in writing of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).
10. After the conclusion of the investigation, the complainant or the subject of the complaint may seek an appeal of the findings solely based on either (a) prejudicial procedural error or (b) the discovery of previously unavailable relevant evidence that could significantly affect the outcome. Appeals must be submitted in writing to the Superintendent within 10 business days of receiving notice of the outcome of the investigation. Upon receipt of a valid appeal, the Superintendent will review the investigation report and may conduct further investigation if deemed appropriate. The Superintendent's decision on the appeal will be provided in writing to the parties within 15 business days, if practicable. The Superintendent's decision will be final.

Legal Reference: Americans with Disabilities Act (42 USC §12101 et seq., as amended; 28 CFR § 35.107)
Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 CFR § 104.7)
Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.; 34 CFR §106.8)
Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)
20 USC § 1232g; 34 CFR Part 99
Maine Human Rights Act 5 MRS § 4551 et seq.
MHRC/MDOE Joint Rule Chapter 94-348 and 05-071, ch. 4
20-A MRS §§ 6001 et seq.
20-A MRS § 6554

Cross Reference: AC - Nondiscrimination/Equal Opportunity and Affirmative Action
ACAA - Harassment and Sexual Harassment of Students

This is a required policy.

Adopted: October 11, 2014

Revised: November 19, 2015
July 12, 2018