

Employee Nondiscrimination/Harassment Complaint Procedure

This procedure has been adopted by the Board in order to provide a method of prompt and equitable resolution of employee complaints of discrimination and harassment as described in policies AC – Nondiscrimination/Equal Opportunity and Affirmative Action and ACAB – Harassment and Sexual Harassment of School Employees. This procedure may also be used by other individuals (excluding students), such as parents, volunteers and vendors to the schools who wish to make a complaint of discrimination or harassment. Complaints alleging harassment or discrimination against students based on protected status should be addressed through the Board’s Student Discrimination and Harassment Complaint Procedure (ACAA-R).

The RSU 40/MSAD 40 Affirmative Action Plan will include designation of an Affirmative Action Officer who will be responsible for ensuring compliance with all Federal and State requirements related to nondiscrimination. The Affirmative Action Officer will be appointed by the Superintendent and will be a person with direct access to the Superintendent.

The Superintendent/Affirmative Action Officer shall be responsible for ensuring that notice of compliance with Federal and State civil rights laws is provided to all applicants for employment, employees, students, parents and others, as appropriate.

Definitions

For purposes of this procedure:

- A. “Complaint” is defined as an allegation that an employee or other third party has been discriminated against or harassed on the basis of race, color, sex, sexual orientation, sexual preference, age, religion, ancestry, national origin, genetic information or disability.
- B. “Discrimination or harassment” means discrimination or harassment on the basis of race, color, sex, sexual orientation, sexual preference, age, religion, ancestry, national origin, genetic information 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. “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 so as to interfere with or limit that individual’s ability to participate in the school unit’s programs or activities by creating a hostile, intimidating or offensive environment.

- C. Whenever the term “employee” is used in this procedure it includes other third parties who are making a complaint of discrimination or harassment.

How to Make a Complaint

- A. Any employee who believes they have been harassed or discriminated against is encouraged to try to resolve the problem by informing the individual(s) that the behavior is unwelcome or offensive and by requesting that the behavior stop. This shall not prevent the employee, however, from making an immediate formal complaint.
- B. Any employee who believes they have been harassed or discriminated against should report their concern promptly to their immediate supervisor or building principal. If the employee is uncomfortable reporting concerns to these officials the employee may report the concern to the Superintendent. Written reports are preferred, but not required.

Employees who are unsure as to whether unlawful discrimination or harassment has occurred, or who need assistance in preparing a written complaint, are encouraged to discuss their concerns with their immediate supervisor, building principal, or Superintendent. Employees will not be retaliated against for reporting suspected discrimination or harassment, or for participating in an investigation. Retaliation is illegal under federal and state nondiscrimination laws, and any retaliation will result in disciplinary measures, up to and including dismissal.

- C. Any employee who believes they have been discriminated against or harassed is encouraged to utilize the school unit’s complaint procedure. However, employees are hereby notified that they also have the right to report incidents of discrimination or harassment to the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 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. The person receiving the complaint will promptly inform the Superintendent and the person who is the subject of the complaint that a complaint has been received.
- B. The person receiving the complaint may pursue an informal resolution of the complaint with the agreement of the parties involved. Any party to the complaint may decide to end the informal resolution process and pursue the formal process at any point. The informal resolution is subject to the approval of the Superintendent, who shall consider whether the resolution is in the best interest of the school unit and the parties in light of the particular circumstances and applicable policies and law.
- C. The complaint will be investigated by the Superintendent/designee. 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 Board Chair, 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 shall not be required to attend meetings with the person who is the subject of the complaint, but may choose to do so as part of the resolution process.
 - 2. If the complaint is against an employee of the school unit, any rights conferred under an applicable collective bargaining agreement shall be applied.
 - 3. The complainant and the subject of the complaint may suggest witnesses and/or submit materials they believe are relevant to the complaint.
 - 4. Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.
 - 5. The Superintendent/designee shall keep a written record of the investigation process.
- 6. The Superintendent may take interim remedial measures (consistent with any applicable collective bargaining agreement provisions) to reduce the risk of further discrimination or harassment while the investigation is pending.

An example of a remedial measure is ordering no contact between the individuals involved.

7. The Superintendent shall consult with the Affirmative Action Officer concerning the investigation, conclusions, and any remedial and/or disciplinary actions.
 8. The investigation shall be completed within 21 business days of receiving the complaint, if practicable.
- D. Affirmative Action Officer determines that discrimination or harassment occurred, the Affirmative Action Officer, in consultation with the Superintendent shall:
1. Determine what remedial action, if any, is required to end the discrimination or harassment, remedy its effect and prevent recurrence;
 2. Determine what disciplinary action should be taken against the person(s) who engaged in discrimination or harassment, if any; and
 3. Inform the employee who made the complaint and the person(s) who engaged in the discrimination or harassment in writing of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).
- E. After the conclusion of the investigation, the employee who made the Complaint or the subject of the Complaint may seek an appeal of the findings solely on the basis of either (a) prejudicial procedural error or (b) the discovery of previously unavailable relevant evidence that could significantly impact the outcome. Appeals must be submitted in writing to the Superintendent within 10 business days after receiving notice of the resolution. Upon receipt of a valid appeal, the Superintendent shall review the investigation report and may conduct further investigation if deemed appropriate. The Superintendent's decision on the appeal shall be provided within 15 business days.
- F. If the employee is dissatisfied with the decision of the Superintendent, the employee may appeal to the School Board within 14 business days after receiving notice of the Superintendent's decision. The Board will consider the appeal in executive session at its next regular meeting or a special meeting. The Superintendent's decision, along with the complaint, any responses, the investigation report and related documents will be submitted to the Board by the Superintendent. The complainant shall be allowed to be heard. The person(s) against whom the complaint was made

shall be invited and allowed to be heard. If present, the complainant's representative and the representative of the person(s) against whom the complaint was made will also be given the opportunity to be heard. After reviewing the Superintendent's submissions and hearing from the parties, the Board shall make a decision as to whether to affirm or modify the Superintendent's conclusions. The Board's decision is final.

- Legal Reference: Americans with Disabilities Act (28 CFR § 35.107), as amended
 Rehabilitation Act of 1973 (Section 504) (34 CFR § 35.07), as amended
 Title IX of the Educational Amendments of 1972 (34 CFR § 106.8(b))
 Age Discrimination in Employment Act (34 CFR § 110.25)
 Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. § 2000ff et seq.)
 Maine Human Rights Act (5 M.R.S.A. § 4571 et seq., 4681 et seq.), as amended
- Cross Reference: AC – Nondiscrimination/Equal Opportunity and Affirmative Action
 ACAB – Harassment and Sexual Harassment of School Employees

This is a required policy.

Adopted: February 25, 2002

Revised: March 7, 2013
 January 21, 2016