

## **EMPLOYEE & THIRD PARTY DISCRIMINATION AND 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).

### **Definitions**

For purposes of this procedure:

- A. “Complaint” is defined as an allegation that an employee has been discriminated against or harassed on the basis of race, color, sex, sexual orientation, 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, 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. The term “sexual orientation” under state law means a person’s “actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression.”
- 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 he/she has 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 he/she has been discriminated against or harassed should report their concern promptly to the Affirmative Action Officer. If the employee is uncomfortable reporting concerns to the Affirmative Action Officer, he/she may report the concern to the Superintendent of Schools. 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 the Affirmative Action Officer. 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.

Any employee who believes he/she has 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, 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, 8<sup>th</sup> Floor, Boston, MA 02110-1491(telephone: 617-289-0111).

### **Complaint Handling and Investigation**

- A. The Affirmative Action Officer will promptly inform the Superintendent and the person who is the subject of the complaint that a complaint has been received.
- B. The Affirmative Action Officer 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 Affirmative Action Officer unless the Superintendent chooses to investigate the complaint or designates another person to investigate it on his/her behalf. Any complaint about an employee who holds a supervisory position shall 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 RSU 68 Board, 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. 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 rights conferred under an applicable collective bargaining agreement shall be applied.
  4. Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.
  5. The Affirmative Action Officer shall keep a written record of the investigation process.
  6. The Affirmative Action Officer 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 Affirmative Action Officer shall consult with the Superintendent concerning the investigation, conclusions, and any remedial and/or disciplinary actions.
  8. The investigation shall be completed within 21 calendar days of receiving the complaint, if practicable.
- D. If the Affirmative Action Officer determines that discrimination or harassment occurred, he/she shall, in consultation with the Superintendent:
1. Determine what remedial action, if any, is required to end the discrimination or harassment, remedy its effect and prevent recurrence; and
  2. Determine what disciplinary action should be taken against the person(s) who engaged in discrimination or harassment, if any.
- E. 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).
- F. 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 14 calendar 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 21 calendar days, if practicable. The Superintendent's decision shall be final.

Legal Reference: Americans with Disabilities Act (42 USC § 12101 et seq., as amended; 28 CFR § 35.107)  
Section 504 of the Vocational Rehabilitation Act of 1973 (Section 504) (29 USC § 794 et seq., as amended; 34 CFR § 35.07)  
Title IX of the Educational Amendments of 1972 (20 USC § 1681 et seq.; 34 CFR § 106.8(b))  
Age Discrimination in Employment Act (29 USC § 623 et seq.; 34 CFR § 110.25)  
Genetic Information Nondiscrimination Act of 2008 (42 USC § 2000ff et seq)  
Maine Human Rights Act (5 MRSA § 4681 et seq.)  
26 MRSA §§ 806-807

Cross Reference: AC – Nondiscrimination/Equal Opportunity and Affirmative Action  
ACAB – Harassment and Sexual Harassment of School Employees

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