

<b>DOVER SCHOOL DISTRICT</b>	<b>POLICY CODE: ACAA-R</b>
<b>DATE OF ADOPTION: April 10, 2017</b>	<b>PAGE 1 OF 5</b>

## **STUDENT DISCRIMINATION, HARASSMENT, AND BULLYING COMPLAINT PROCEDURE**

This procedure has been adopted by the 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 ACAA - Harassment and Sexual Harassment of Students, and/or complaints of bullying as described in policy JICK – Pupil Safety and Violence Prevention: Bullying and Cyberbullying. Complaints alleging discrimination or harassment of employees or other third parties (such as parents, volunteers, vendors, etc.) should be addressed through the Board’s Employee and Third Party Discrimination and Harassment Complaint Procedure (ACAB-R).

### **Definitions**

For purposes of this procedure:

- A. A “Complaint” is defined as an allegation that a student has been discriminated against or harassed on the basis of sex, sexual orientation, gender identity, religion, race, color, creed, ancestry, national origin, age, marital status, familial status, economic status, physical or mental disability, and/or an allegation that a student has been subjected to bullying/cyberbullying by other students.
  
- B. “Discrimination or harassment” means discrimination or harassment on the basis of sex, sexual orientation, gender identity, religion, race, color, creed, ancestry, national origin, age, marital status, familial status, economic status, or physical or mental 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 on the basis of sex shall include acts of “sexual violence,” which refers to 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 so as to interfere with or limit that individual’s ability to participate in the District’s programs or activities by creating a hostile, intimidating or offensive educational environment.
  
- C. “Bullying” means a single a single significant incident, or a pattern of incidents involving a written, verbal, or electronic communication, or a physical act or gesture, or any combination thereof, directed at another pupil which:
  - a) physically harms a pupil or damages the pupil’s property;
  - b) causes emotional distress to a pupil;
    - For the purposes of this policy, the term “emotional distress” means distress that materially impairs the student’s

participation in academic or other school sponsored activities. The term “emotional distress” does not include the unpleasantness or discomfort that accompanies an unpopular viewpoint.

- c) interferes with a pupil’s educational opportunities;
- d) creates a hostile educational environment; or
- e) substantially disrupts the orderly operation of the school.

“Bullying” shall include actions motivated by an imbalance of power based on a pupil’s actual or perceived personal characteristics, behaviors, or beliefs, or motivated by the pupil’s association with another person and based on the other person’s characteristics, behaviors, or beliefs if those actions cause one or more of the results in paragraphs (a) through (e) above.

The above-referenced conduct is only considered “bullying” if it:

- (a) Occurs on, or is delivered to, school property or a school-sponsored activity or event, on or off school property; or
  - For the purposes of this policy, the term “school property” means all real property and all physical plant and equipment used for school purposes, including public or private school buses or vans.
- (b) Occurs off school property or outside of a school-sponsored activity or event, and if the conduct interferes with a pupil’s educational opportunities or substantially disrupts the orderly operations of the school or school-sponsored activity or event.

- D. “Cyberbullying” means bullying conduct, as described in paragraph C of this section, that takes place through the use of electronic devices.
  - For the purposes of this policy, the term “electronic devices” includes, but is not limited to, telephones, cellular phones, computers, pagers, electronic mail, instant messaging, text messaging, and websites.

### **How to Make a Complaint**

- A. Any individual who believes a student has been discriminated against, harassed, or bullied should report his/her concern promptly to the Building Administrator or the Superintendent’s designee and utilize this complaint procedure. Written reports are preferred, but not required. The Board has provided a model Complaint form, which is available on the school district website in the Policies section. (See form ACAA-E). Individuals who are unsure whether unlawful discrimination, harassment, or bullying has occurred or who need assistance in preparing a written complaint are encouraged to discuss the situation with the Building Administrator or the Superintendent’s designee.
- B. School employees shall report possible incidents of discrimination, harassment, or bullying of students to the Building Administrator or the Superintendent’s designee.

- 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 this Complaint Procedure. Students also have the right to report complaints directly to the the police 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. Building Administrator or the Superintendent's designee shall respect the confidentiality of the complainant and the individual(s) against whom the Complaint is filed to the extent possible, consistent with the District's legal obligations, the necessity to investigate allegations of discrimination, harassment, and/or bullying/cyberbullying and take disciplinary action.
- B. The Building Administrator or Superintendents designee shall promptly inform the Superintendent and the person(s) who is the subject of the Complaint that a Complaint has been received. The information provided to the individual who is the subject of the Complaint may be limited in order to respect the complainant's request for confidentiality.
- C. The Building Administrator or Superintendent's designee shall notify the parent(s) or guardian(s) of the complainant and subject of the Complaint as soon as practicable, but not later than 48 hours after receipt of the Complaint, unless the Building Administrator or Superintendent's designee has received a written waiver of this obligation from the Superintendent. The Superintendent's decision regarding whether to waive the 48-hour parent/guardian notification obligation shall be made on a case by case basis and shall be based on his or her determination regarding whether the notification is in the best interests of the complainant and/or the subject of the Complaint.
- D. Except where the Complaint alleges sexual violence, the Building Administrator or the Superintendent's designee may pursue a prompt and equitable informal resolution of the Complaint with the agreement of the parties involved. The complainant shall not be required to attend meetings with the subject of the complaint, but may choose to do so as part of the resolution process. Any party to the Complaint may decide to end an informal resolution process and pursue the formal process at any point. The informal resolution process and outcome is subject to the approval of the Superintendent, who shall consider whether the informal resolution is in the best interest of the parties in light of the particular circumstances and applicable policies and laws.
- E. The Complaint will be investigated by the Building Administrator or the Superintendent's designee. 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 School Board, who should consult with legal counsel concerning the handling and investigation of the Complaint.

- F. The investigation shall be initiated as soon as practicable, but not later than five (5) school days after receipt of the Complaint, unless the Superintendent determines that the initiation of the investigation should be delayed and provides the Building Administrator or Superintendent's designee with a written extension. If such an extension is granted, the Superintendent or the Superintendent's designee shall notify all involved parties.
1. The person who is the subject of the Complaint will be provided with an opportunity to be heard as part of the investigation.
  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 subject of the Complaint is an employee of the District, any applicable individual or collective bargaining contract provisions shall be followed.
  4. The Building Administrator or the Superintendent's designee shall keep a written record of the investigation process.
  5. The Building Administrator or the Superintendent's designee may take interim remedial measures to 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 Administrator or Superintendent's designee shall use a preponderance of the evidence standard (i.e., more likely than not) when evaluating the evidence and shall consult with the Superintendent concerning the investigation, conclusions, and any remedial and/or disciplinary actions.
  7. The investigation shall be completed within thirty (30) school days of the initiation of the investigation, unless the Superintendent provides a written extension of up to seven (7) additional school days for completion of the investigation. If such an extension is granted, the Superintendent or Superintendent's designee shall notify all involved parties.
- G. If the Building Administrator or Superintendent's designee determines that discrimination, harassment, and/or bullying/cyberbullying occurred, he/she shall, in consultation with the Superintendent:
1. Determine what remedial action, if any is needed to end the discrimination or harassment, remedy its effects, 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. Within ten (10) school days of the completion of the investigation, inform the complainant and the person(s) who engaged in the discrimination, harassment, or bullying in writing of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).

H. After the conclusion of the investigation, the complainant 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, or the investigator's recommendation. Appeal rights for students disciplined for acts arising under this policy shall be subject to RSA 193:13 and Ed. 317. Appeals must be submitted in writing to the Superintendent within 14 calendar days of receiving notice of the outcome of the investigation. If the Superintendent performed the initial investigation or is the subject of the Complaint, the appeal shall be reviewed by the Chairman of the School Board or a designated subcommittee of the School Board. Upon receipt of a valid appeal, the Superintendent or Chairman/Subcommittee shall review the investigation report and may conduct further investigation if deemed appropriate. The decision on the appeal shall be provided in writing to the complainant within 21 business days, if practicable. The decision on appeal shall be final.

Legal Reference: Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*);  
28 CFR § 35.107  
Section 504 of the Vocational Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*); 34 CFR § 104.7  
Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*); 34 CFR § 106.8(b)  
Title VI of the Civil Rights Act of 1964 ((42 U.S.C. § 2000d *et seq.*)  
Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); 34 CFR Part 99  
NH Code Admin R. Ed. 303.01(i) and (j)  
NH Code Admin R. Ed. 317  
RSA 193:13  
RSA 186:11

Cross Reference: AC - Nondiscrimination/Equal Opportunity  
ACAA - Harassment and Sexual Harassment of Students  
ACAA-E – Report Form  
JICFA - Hazing  
JICK – Pupil Safety and Violence Prevention: Bullying and Cyberbullying