

# Memo

**To:** Dover School Board  
**CC:** Dover Administrators/Leadership  
**From:** Sandra Crosson  
**Date:** September 5, 2012  
**Re:** Updated Policies and Procedures regarding Nondiscrimination, Harrassment, and Sexual Harassment

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In a recent review of our school board policies regarding Nondiscrimination, Harassment, and Sexual Harassment, attorneys at Drummond Woodsum recommended updating the language and legal references to reflect changes in laws and best practices. Based on their recommendation, the following changes are offered:

1. Harassment and Sexual Harassment policies should be defined separately for students and employees because employment laws affect policies and procedures regarding employees and schools have a different responsibility to students than employees. Therefore policy ACAB has been redefined to refer to "employees" only and policy ACAA proposed to refer to "students" only.
2. The grievance procedure should be the same for any complaint of discrimination against an employee, and the same for any complaint of discrimination against a student. Therefore a procedure for AC is not needed (i.e. AC-R). This procedure is recommended to be replaced by ACAB-R and ACAA-R.
3. A procedure for responding to an employee complaint of discrimination and harassment is proposed in ACAB-R and a procedure for responding to a student complaint of discrimination and harassment is proposed ACAA-R.
4. In ACAB-R "How to Make a Complaint", section B, the board has the option of specifying an alternative school administrator and a written complaint. The proposal here uses the general language "another school administrator" and omits reference to a requirement for a written complaint.
5. The language proposed in these policies has been carefully vetted by attorneys at Drummond Woodsum law firm. The policies include mandatory language from the cited laws and legal references.

NOTE: The 3 policies AC, ACAA, and ACAB represent a group of interrelated policies. The Nondiscrimination Policy (AC) is an umbrella policy covering all protected classes referenced in multiple laws prohibiting discrimination and harassment.

<b>DOVER SCHOOL DISTRICT</b>	<b>POLICY CODE: AC</b>
<b>DATE OF ADOPTION:</b>	<b>PAGE 1 OF 2</b>

<b>FIRST READING</b>
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**NONDISCRIMINATION/EQUAL OPPORTUNITY**

Discrimination against and harassment of school employees because of age, sex, race, creed, color, marital status, familial status, physical or mental disability, genetic information, national origin or sexual orientation are prohibited. Discrimination against and harassment of students because of sex, race, creed, color, age, marital status, familial status, physical or mental disability, national origin or sexual orientation are prohibited.

The Board directs the school administration to implement a continuing program designed to prevent discrimination against all applicants, employees, students and individuals with disabilities having access rights to school premises and activities. The District will designate a Nondiscrimination Officer who will be responsible for ensuring compliance with all federal and state requirements relating to nondiscrimination. The Nondiscrimination Officer will be a person with direct access to the Superintendent.

The Board directs the administration to implement internal complaint procedures for resolving complaints of discrimination under this policy and to provide adequate notice of the availability of such complaint procedures.

The Board directs the administration to provide notice of compliance with federal and state civil rights laws to all applicants for employment, employees, students, parents, and other interested persons, as appropriate.

The District will require all persons, agencies, vendors, contractors, and other persons and organizations doing business with or performing services for the District to subscribe to all applicable federal and state laws pertaining to contract compliance.

- Legal Reference:
- Equal Employment Opportunities Act of 1972 (P.L. 92-261) amending Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000(e) et seq.)
  - Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.)
  - Title VI of the Civil Rights Act of 1964 (P.L. 88-352)
  - Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.)
  - Equal Pay Act of 1963 (29 U.S.C. § 206)
  - Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq.); 34 CFR § 104.7, as amended
  - Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), as amended

**DWM DRAFT POLICY – 2012**

**NEPN/NSBA Code: AC**

Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. § 2000ff et seq.)

NH RSA 186:11; 354-A:7

NH Code Admin. R. Ed. 303.01(i)

Cross Reference:     ACAA - Harassment and Sexual Harassment of Students  
                              ACAA-R – Student Discrimination and Harassment  
                              Complaint Procedure  
                              ACAB - Harassment and Sexual Harassment of School Employees  
                              ACAB – Employee Discrimination and Harassment Complaint Procedure

<b>DOVER SCHOOL DISTRICT</b>	<b>POLICY CODE: ACAA</b>
<b>DATE OF ADOPTION:</b>	<b>PAGE 1 OF 2</b>

<b>FIRST READING</b>
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**HARASSMENT AND SEXUAL HARASSMENT OF STUDENTS**

Harassment of students because of sex, sexual orientation, religion, race, color, ancestry, national origin, age, marital status, familial status, pregnancy, physical or mental disability is prohibited. Such conduct is a violation of Board policy and may constitute illegal discrimination under state and federal laws.

Harassment includes but is not limited to verbal abuse based on sex, sexual orientation, religion, race, color, ancestry, national origin, age, marital status, familial status, pregnancy, physical or mental disability. Complaints of bullying and cyberbullying not based on the characteristics described above may also be pursued under Board Policy JICK – Pupil Safety and Violence Prevention.

**Sexual Harassment**

Sexual harassment includes but is not limited to unwelcome sexual advances, requests for sexual favors or pressure to engage in sexual activity, physical contact of a sexual nature, gestures, comments, or other physical, written or verbal conduct that is gender-based that interferes with a student’s education. School employees, fellow students, volunteers and visitors to the school, and other persons with whom students may interact in order to pursue school activities are required to refrain from such conduct.

Harassment/sexual harassment of students by school employees is considered grounds for disciplinary action, up to and including discharge. Harassment/sexual harassment of students by other students is considered grounds for disciplinary action, up to and including expulsion. The Superintendent will determine appropriate sanctions for harassment of students by persons other than school employees and students.

The Superintendent or the employee designated as the Nondiscrimination Officer will investigate complaints of harassment in accordance with the Student Discrimination and Harassment Complaint Procedure. School employees, students, and parents shall be informed of this policy/procedure through handbooks and/or other means selected by the school administration.

Legal Reference: Americans with Disabilities Act (28 CFR § 35.07), as amended  
 Section 504 of the Vocational Rehabilitation Act (29 USC § 794), as amended; 34 CFR § 104.7

Title IX of the Education Amendments of 1972 (20 USC § 1681 et seq.)

Title VI of the Civil Rights Act of 1964 (P.L. 88-352)

NH Code Admin. R. Ed. 303.01(i) and (j)

Cross Reference: ACAA-R – Student Discrimination and Harassment Complaint Procedure  
AC – Nondiscrimination/Equal Opportunity  
JICFA - Hazing  
JICK – Pupil Safety and Violence Prevention

DOVER SCHOOL DISTRICT	POLICY CODE: ACAA-R
DATE OF ADOPTION:	PAGE 1 OF 3

<b>FIRST READING</b>
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## STUDENT 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 student complaints of discrimination or discriminatory harassment as described in policies AC - Nondiscrimination/Equal Opportunity and ACAA - Harassment and Sexual Harassment of Students.

### 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, religion, race, color, ancestry, national origin, age, marital status, familial status, pregnancy, physical or mental disability is prohibited.
- B. “Discrimination or harassment” means discrimination or harassment on the basis of sex, sexual orientation, religion, race, color, ancestry, national origin, age, marital status, familial status, pregnancy, physical or mental disability.
- C. Complaints of bullying and cyberbullying not involving the protected classes described above may also be pursued under Board Policy JICK – Pupil Safety and Violence Prevention..

### How to Make a Complaint

- A. Any individual who believes a student has been discriminated against or harassed should report his/her concern promptly to the **Building Administrator** and utilize this complaint procedure. Students or parents who are unsure whether discrimination or harassment has occurred are encouraged to discuss the situation with the **Building Administrator**.
- B. School employees are expected to report possible incidents of discrimination or harassment of students.

- C. Students and others will not be retaliated against for making a Complaint. 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. However, students are hereby notified that they also have the right to report complaints to the New Hampshire Commission for Human Rights, 2 Chenell Drive, Unit 2, Concord, NH 03301-8501 (telephone: 603-271-2767) 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 **Building Administrator** shall promptly inform the Superintendent and the person(s) who is the subject of the Complaint that a Complaint has been received.
- B. The **Building Administrator** may pursue a prompt and equitable informal resolution of the Complaint with the agreement of the parties involved. The informal resolution 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.
- C. The Complaint will be investigated by the **Building Administrator**, 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 School 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.
  - 2. If the Complaint is against an employee of the District, any applicable individual or collective bargaining contract provisions shall be followed.
  - 3. Privacy rights of all parties to the Complaint shall be maintained in accordance with applicable state and federal laws.
  - 4. The **Building Administrator** shall keep a written record of the investigation process.

5. The **Building Administrator** may take interim remedial measures to reduce the risk of further discrimination or harassment while the investigation is pending.
  6. The **Building Administrator** shall consult with the Superintendent concerning the investigation, conclusions, and any remedial and/or disciplinary actions.
  7. The investigation shall be completed within 21 business days of receiving the Complaint, if practicable.
- D. If the **Building Administrator** determines that discrimination or harassment occurred, he/she shall, in consultation with the Superintendent:
1. Determine what remedial action is required, if any;
  2. Determine what disciplinary action should be taken against the person(s) who engaged in discrimination or harassment, if any; and
  3. Inform the complainant in writing of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).
- E. If the complainant is dissatisfied with the resolution, an appeal may be made in writing to the Superintendent within 14 business days after receiving notice of the resolution. The Superintendent shall review the investigation report and may conduct further investigation if deemed appropriate. The Superintendent's decision shall be final.

Legal Reference: Americans with Disabilities Act (28 CFR § 35.07), as amended  
Section 504 of the Vocational Rehabilitation Act (29 U.S.C. § 794), as amended; 34 CFR § 104.7  
Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.)  
Title VI of the Civil Rights Act of 1964 (P.L. 88-352)  
20 U.S.C. § 1232g; 34 CFR Part 99  
NH Code Admin R. Ed. 303.01(i) and (j)

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

DOVER SCHOOL DISTRICT	POLICY CODE: ACAB-R
DATE OF ADOPTION:	PAGE 1 OF 3

FIRST READING
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## Employee 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 ACAB – Harassment and Sexual Harassment of School Employees.

### 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 age, sex, race, creed, color, marital status, familial status, physical or mental disability, national origin or sexual orientation.
- B. “Discrimination or harassment” means discrimination or harassment on the basis of age, sex, race, creed, color, marital status, familial status, physical or mental disability, national origin or sexual orientation.

### 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 harassed or discriminated against should report their concern promptly to the **Building Administrator**. If the employee is uncomfortable reporting concerns to the **Building Administrator**, he/she may report the concern to **another school administrator**.

Employees who are unsure as to whether unlawful discrimination or harassment has occurred are encouraged to discuss their concerns with the **Building Administrator**. Employees will not be retaliated against for reporting suspected discrimination or harassment.

- C. Any employee who believes he/she has been discriminated against or harassed is encouraged to utilize the District’s complaint procedure. However, employees are hereby notified that they also have the right to report incidents of discrimination or harassment to the New Hampshire Commission on Human Rights, 2 Chenell Drive, Concord, NH 03301-8501 (telephone: 603-271-2767) 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 **Building Administrator** will promptly inform the Superintendent and the person who is the subject of the Complaint that a Complaint has been received.
- B. The **Building Administrator** may pursue an informal resolution of the Complaint with the agreement of the parties involved. The informal resolution is subject to the approval of the Superintendent who shall consider whether the resolution is in the best interest of the parties in light of the particular circumstances and applicable policies and law.
- C. The Complaint will be investigated by the **Building Administrator**, 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 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.
  2. If the Complaint is against an employee of the District, any rights conferred under an applicable collective bargaining agreement shall be applied.
  3. Privacy rights of all parties to the Complaint shall be maintained in accordance with applicable state and federal laws.
  4. The **Building Administrator** shall keep a written record of the investigation process.
  5. The **Building Administrator** 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.
  6. The **Building Administrator** shall consult with the Superintendent concerning the investigation, conclusions, and any remedial and/or disciplinary actions.
  7. The investigation shall be completed within 21 calendar days of receiving the Complaint, if practicable.

D. If the **Building Administrator** determines that discrimination or harassment occurred, he/she shall, in consultation with the Superintendent:

1. Determine what remedial action is required, if any;
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 in writing of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).

E. If the employee who made the Complaint is dissatisfied with the resolution, he/she may appeal to the Superintendent within 14 calendar days after receiving notice of the resolution. The Superintendent shall review the investigation report and may conduct further investigation if deemed appropriate. The Superintendent's decision shall be final.

Legal Reference: Americans with Disabilities Act (28 CFR § 35.07)  
Section 504 of the Vocational Rehabilitation Act (29 U.S.C. § 794); 34  
CFR § 104.7  
Title IX of the Educational Amendments of 1972 (34 CFR § 106.8(b))  
Age Discrimination in Employment Act (34 CFR § 110.25)  
NH Code Admin. R. Ed. 303.01(i) and (j)

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

DOVER SCHOOL DISTRICT	POLICY CODE: ACAB
DATE OF ADOPTION:	PAGE 1 OF 2

<b>FIRST READING</b>
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## **HARASSMENT AND SEXUAL HARASSMENT OF SCHOOL EMPLOYEES**

Harassment of school employees because of age, sex, race, creed, color, marital status, familial status, physical or mental disability, national origin or sexual orientation is prohibited. Such conduct is a violation of Board policy and may constitute illegal discrimination under state and federal laws.

### **Harassment**

Harassment includes but is not limited to verbal abuse, threats, physical assault and/or battery based on age, sex, race, creed, color, marital status, familial status, physical or mental disability, national origin or sexual orientation.

### **Sexual Harassment**

Unwelcome sexual advances, suggestive or lewd remarks, requests for sexual favors, and other verbal and physical conduct of a sexual nature constitute sexual harassment when:

- A. Submission to such conduct is made either explicitly or implicitly a term or condition of an employee's work environment or employee benefits;
- B. Submission to or rejection of such conduct by an employee is used as the basis for decisions on employment benefits; and/or
- C. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Any employee who engages in harassment or sexual harassment will be subject to disciplinary action, up to and including discharge.

All complaints of harassment will be investigated in accordance with the School Employee Discrimination and Harassment Complaint Procedure.

### **Notice and Training**

Annually, each employee shall receive a copy of this policy and the School Employee Discrimination and Harassment Complaint Procedure. This may be accomplished by including the policy/procedure with employee paychecks or by using other appropriate means to ensure that each employee receives a copy.

Legal References: Title IX of the Education Amendments of 1972 (20 USC § 1681 et seq.)  
Title VI of the Civil Rights Act of 1964 (42 USC § 2000d)  
Americans with Disabilities Act (42 USC § 12101 et seq.)  
Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.); 34 CFR § 104.7  
Title VII (42 USC § 2000c-2; 29 CFR § 1604.11)  
Age Discrimination in Employment Act (29 USC §623)  
NH RSA 354-A:7  
NH Code Admin. R. Ed. 303.01(i) and (j)

Cross Reference: ACAB-R- School Employee Discrimination and Harassment  
Complaint Procedure  
AC- Nondiscrimination/Equal Opportunity