

Sexual Harassment – Employee/Staff

I. PURPOSE

The purpose of this policy is to maintain a learning and working environment that is free from sexual harassment, including sexual violence, as defined below.

Sexual harassment is against the law and is against Portsmouth School Board policy. Any form of sexual harassment is strictly prohibited.

It is a violation of this policy for any employee to harass other employees, students, parents or others participating in programs, services, and/or activities provided by the Portsmouth School Department, through conduct or communication of a sexual nature as defined by this policy.

For the purposes of this policy, the term “employee” shall include, but not be limited to, all School Department staff, teachers, non-certified personnel, administrators, volunteers, coaches, and/or other such personnel whose employment position or work in a Department school is directed by the School Department.

The School Department will investigate all complaints, either formal or informal, verbal or written, of alleged sexual harassment. The School Department will further take steps to address any substantiated allegations of sexual harassment, by taking prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These steps could include, but are not limited to, disciplining any employee who sexually harasses or is sexually violent toward, another employee, student, parent, or other persons participating in programs, services, and/or activities provided by the School Department.

II. SEXUAL HARASSMENT DEFINED

Harassing conduct may take many forms, including verbal acts and name-calling, graphic and written statements, which may include use of cell phones or the Internet, or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Sexual harassment shall include, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of sexual nature when:

- (1) The conduct creates a hostile learning or working environment because it is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by the School Department; and/or
- (2) The conduct creates a hostile working environment because it is sufficiently severe, pervasive, or persistent so as to interfere with or limit an employee’s ability to participate in or benefit from the services, activities, or work opportunities offered by the School Department; and/or
- (3) The conduct consists of/ includes violence of a sexual nature; and/or

- (4) The conduct or communication has the purpose or effect of demanding sexual favors in exchange for benefits; and/or
- (5) Submission to or rejections of the conduct or communication is used as the basis for educational decisions affecting a student.

III. REPORTING PROCEDURES

1. The Superintendent or his/her written designee is ultimately responsible for ensuring the implementation of the procedures of this policy. Additionally, the Superintendent may develop and implement additional administrative regulations in furtherance of this policy.
2. Any employee who believes he or she has been the victim of sexual harassment, or who is aware that someone else, including a student, parent, or third party, may be a victim of such harassment, should report the alleged act(s) to the building Principal. If the alleged perpetrator is the Principal, complainant(s) may file their concerns with any other School Department employee, who shall then report the allegation to the Superintendent. The School Board encourages reporting employees to use the Sexual Harassment and Sexual Violence Employee/Staff Report Form (GBAA-R) that is available on the School Department web site, from the Principal, or from the Title IX Coordinator.
3. In each building, the Principal is the person responsible for receiving oral or written reports of sexual harassment. Upon receipt of a report, the Principal will forward the report to the Title IX Coordinator immediately, without screening or investigating the report. If the report is given verbally, the Principal shall reduce it to written form within 24 hours and then forward it to the Title IX Coordinator. Failure to forward any sexual harassment report or complaint as provided herein may result in disciplinary action.
4. The School Board designates the Title IX Coordinator as the School Department officer to receive any report or complaint of sexual harassment in the Portsmouth School Department. If the complaint involves the Superintendent, the Title IX Coordinator shall inform the Chairperson of the School Board. The School Department shall post the name of the Title IX Coordinator in conspicuous places throughout school buildings and on the School Department web site, including a telephone number and mailing address. Submission of a complaint or report of sexual harassment will not affect the employee's standing in school, future employment, or work assignments.
5. The School Department will respect the confidentiality of the complainant and the person(s) against whom the complaint is filed as much as possible, consistent with the School Department's legal obligations and the necessity to investigate allegations of sexual harassment and take disciplinary action when the conduct has occurred.

IX. INVESTIGATION PROCEDURES

The Title IX Coordinator will authorize an investigation upon receipt of a report or complaint alleging sexual harassment. This investigation may be conducted by trained School Department personnel or by a third party authorized by the Superintendent. The Title IX Coordinator and Superintendent will ensure that no complaint will be investigated by a person named in that complaint.

Upon the initiation of an investigation, the investigator will provide the complainant and the respondent (the person who is alleged to have engaged in harassment) with notice that:

- (1) They each have the right to present witnesses and other evidence during the investigation;
- (2) If the alleged victim(s) of harassment opts to participate in mediation or other informal resolution, they will not be required to work out the problem directly with the alleged perpetrator(s) without appropriate involvement by the School Department. Additionally, such alleged victim(s) will be assured that an informal process can be ended by alleged victim(s) at any time in order to begin the formal investigation and subsequent stages of the complaint process;
- (3) Notice that both complainant(s) and accused individual(s) will be timely notified of the outcome of any School Department investigation; and
- (4) The School Department has an obligation, following substantiated instances of sexual harassment, to take appropriate steps to address the effects of any harassment, including supporting victim's access to School Department programs, services, and activities.

The investigator will consider the nature of alleged conduct, the surrounding circumstances, the relationship between the parties, and the context in which the alleged incidents occurred. Whether particular action(s) or incident(s) constitute sexual harassment requires a determination, based on a preponderance of the evidence, from all the facts and surrounding circumstances.

The investigation may consist of personal interviews with the complainant(s), the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstance(s) giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator. Students who are interviewed may have a parent or other representative present.

In addition, the School Department may take immediate intermediate steps, at its discretion, to protect the complainant(s), student(s) and employee(s) pending completion of an investigation of alleged sexual harassment.

If the Superintendent determines that a third-party designee should conduct the investigation, the School Department must provide the investigator with a copy of the Sexual Harassment Policy GBAA which includes investigation procedures.

X. RECOMMENDATION

Upon completion of an investigation conducted by either School Department personnel or a third party, the Superintendent will be provided with a written factual report and recommended action. If an investigation reveals that discriminatory harassment has occurred, the School Department will take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and its effects, and prevent the harassment from recurring.

XI. SCHOOL DEPARTMENT ACTION

If the investigating party determines that the alleged conduct constituted sexual harassment, the Superintendent may discipline the offending employee(s), including but not limited to, steps such as a warning, training, temporary suspension, or dismissal. Any discipline will be in accordance with all laws and Portsmouth School Department Collective Bargaining Agreements, if applicable.

The complainant(s) and the respondent(s) will be informed of the results of the investigation in a timely manner. If the investigating party determines that the alleged conduct did not constitute sexual harassment, no disciplinary action will be taken.

Conduct which does not rise to the level of sexual harassment as defined by this policy, but which is nonetheless inappropriate or in violation of other related School Board policies, will be addressed on a case-by-case basis by the Superintendent, who may order the offending employee(s) to engage in some remedial action.

The appeal of any disciplinary action taken will be governed by the applicable Portsmouth School Department Collective Bargaining Agreement.

XII. REPRISAL

The School Department will not tolerate retaliation by any employee against any individual, including other employees, students, and/or third parties, who report alleged sexual harassment or who testifies, assists, or participates in an investigation, proceeding, or hearing relating to a sexual harassment complaint. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment. The School Department may discipline any employee(s) who engages in such retaliation.

XIII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES

These procedures do not deny the right of any individual to pursue other avenues of recourse, which may include filing charges with the Commissioner of Education, initiating civil action, or seeking redress under state criminal statutes and/or federal law.

XIV. SEXUAL HARASSMENT AS SEXUAL ABUSE

Under certain circumstances, sexual harassment may constitute sexual abuse under New Hampshire law. In such situations, the School Department shall comply with all applicable laws.

Nothing in this policy will prohibit the School Department from taking immediate action to protect victims of alleged sexual abuse.

XV. TITLE IX COORDINATOR

Jeanette Souther

Director of Pupil Services & Instruction and Title IX Coordinator

Portsmouth School Department

1 Junkins Avenue, Suite 402

Portsmouth, NH 03801

(603) 431-5080

XVI. NOTICE OF BY-PASS OF POLICY

Any individual with a sexual harassment complaint may choose to report it directly to either of the following regulatory agencies:

N.H. Commission on Human Rights

2 Industrial Park Drive

Concord, NH 03301

Telephone (603) 271-2767

US Department of Education

Office for Civil Rights, Region 1

5 Post Office Square

8th Floor, Suite 900

Boston, MA 02109

Telephone (617) 289-0111

Legal Reference:

NH Code of Administrative Rules, Section Ed. 303.01(j), Substantive Duties of School Boards; Sexual Harassment Policy

NH Code of Administrative Rules, Section 306.04(a)(8), Student Harassment

NH Code of Administrative Rules, Section 306.04(a)(9), Sexual Harassment

RSA 354-A:7, Unlawful Discriminatory Practices

Title IX of the Education Amendments of 1972 and its implementing regulation at 34

C.F.R. Part 106

Appendix: GBAA-R, BBA-R