

## Sexual Harassment - Students

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### **I. PURPOSE**

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

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 student to harass another student through conduct or communication of a sexual nature, as defined by this policy.

The Portsmouth School Department will investigate all complaints, either formal or informal, verbal or written, of alleged sexual harassment involving students. 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 student who sexually harasses or engages in sexual violence toward another student.

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

; and/or.

Relevant factors to be considered when determining whether a sexually hostile environment has been created will include, but not be limited to, whether the conduct was sexual in nature; whether the conduct was unwelcome; the type of the conduct, how often it occurred, and how long it continued; whether persons subjected to the conduct viewed the environment as hostile; whether an average reasonable person in the same circumstances as the alleged victim would view the environment as hostile; the age and sex of the alleged harasser and the subject or subjects of the harassment; whether the alleged harasser was in a position of power over the

student subjected to the harassment; the number of individuals involved; where the harassment occurred; and whether there are other incidents of sexual harassment at the school involving the same or other students.

Examples of sexual harassment may include, but not be limited to, physical touching; graffiti of a sexual nature; displaying or distributing sexually explicit drawings, pictures, and/or written materials; sexual gestures or obscene jokes; touching oneself sexually or talking about one's sexual activities in front of others; or spreading rumors about or rating other students or others as to appearance, sexual activity, or performance.

### **III. REPORTING PROCEDURES**

1. Any student who believes he or she has been the victim of sexual harassment, or who is aware that someone else may be a victim, should report the alleged act(s) immediately to any School Department employee or the building Principal. If a student initially reports the alleged act to a School Department employee, that employee shall immediately notify the building Principal, who shall then immediately notify the Title IX Coordinator.
2. The School Board encourages all students and staff members to use the Sexual Harassment and Sexual Violence Student Report Form (JBAA-R) available from the Principal, Superintendent, or the School Department website. While the use of the formal Reporting Forms is voluntary for complainants, it is mandatory that the building Principals and Title IX Coordinator use this form.
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 was 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 may result in disciplinary action. If the complaint involves the building Principal, complainants may file their concerns directly with the Superintendent; employees who receive a report involving a building Principal should forward the report directly to the Title IX Coordinator.
4. Submission of a complaint or report of sexual harassment will not affect the student's standing in school, grades, work assignments, eligibility for extra-curricular activities, or any other aspect of the student's educational program.
5. The School Department will respect the confidentiality of the complainant and the individual(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 been substantiated.

### **IV. 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(s) 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 opt 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 any informal process can be ended by an 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 circumstances 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, interim 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 and investigation procedure.

## **V. RECOMMENDATION**

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. Accordingly, 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.

## **VI. SCHOOL DEPARTMENT ACTION**

If the investigating party determines that the alleged conduct constituted sexual harassment, the Superintendent may discipline the offending student(s). Such discipline may include, but is not limited to, a warning, suspension, or expulsion. Any discipline, and any appeals, will be in accordance with all laws, if applicable.

The complainant(s) and 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 that 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.

#### **VII. REPRISAL**

The School Department will not tolerate any retaliation against individuals who report alleged sexual harassment or against any person 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 will address any such retaliation, through steps that could include, but are not limited to, discipline, suspension, and/or expulsion.

#### **VIII. 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.

#### **IX. 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 victim(s) of alleged sexual abuse.

#### **X. 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  
Telephone (603)431-5080

#### **XI. 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 Chenelle Drive  
Concord, NH 03301  
Telephone (603) 271-2767

US Department of Education  
Office for Civil Rights, Region 1  
JFK Building, Room 1875  
Boston, MA 02109  
Telephone (617) 289-0111

*Legal References:*

*Ed 303.01(j), Substantive Duties of School Boards; Sexual Harassment Policy*

*Ed 306.04(a)(9), Sexual Harassment*

*Appendix: GBAA-R, BBA-R*